WEST VIRGINIA CODE CHAPTER 29 ARTICLE 1F

WV Legislature

§29-1F-1. Wheeling Creek Watershed protection and flood prevention district compact approved.

The following Wheeling Creek Watershed protection and flood prevention district compact, which has been negotiated by representatives of the commonwealth of Pennsylvania and the State of West Virginia, is hereby approved, ratified, adopted, enacted into law and entered into by the State of West Virginia as a party thereto and signatory state, namely:

WHEELING CREEK WATERSHED PROTECTION AND FLOOD

PREVENTION DISTRICT COMPACT

Article I. Recitation of Reasons for Compact.

WHEREAS, Wheeling Creek, a tributary of the Ohio River, arises in Pennsylvania, flows through Washington and Greene Counties of that commonwealth, enters the State of West Virginia, flows through Marshall and Ohio Counties, West Virginia, and empties into the Ohio River at Wheeling, West Virginia; and

WHEREAS, The inhabitants of Marshall and Ohio Counties, West Virginia, and, also, but to a much lesser degree, the inhabitants of Washington and Greene Counties, Pennsylvania, living along Wheeling Creek have over the years experienced loss of life and property from flooding of that stream; and

WHEREAS, Surveys made by the soil conservation service of the United States Department of Agriculture indicate that the inhabitants of the four counties named can best be protected from the flooding of Wheeling Creek by flood prevention dams constructed thereon with some of the dams being located on the upper reaches of the stream and its tributaries in the commonwealth of Pennsylvania; and

WHEREAS, The federal Watershed Protection and Flood Prevention Act of 1954, as amended, authorizes, under certain circumstances, federal assistance to local organizations in preparing and carrying out undertakings for flood prevention and the conservation, development, utilization and disposal of water in watershed or subwatershed area; and

WHEREAS, No local organization within the meaning of the federal act aforesaid, established by or organized under the laws of West Virginia, is competent under state laws, to acquire land for, construct, and operate, with or without federal assistance, flood prevention facilities in the commonwealth of Pennsylvania, and it appears that no such local organization established by or organized under the laws of the commonwealth of Pennsylvania can justify the expenditure of locally raised funds to construct and operate flood prevention facilities which will benefit primarily the inhabitants of the neighboring state of West Virginia; and

WHEREAS, Facilities erected on the upper reaches of Wheeling Creek and its tributaries for flood control and prevention can nevertheless have a recreational value for the citizens of

WV Legislature

both West Virginia and Pennsylvania and particularly the citizens of Ohio and Marshall Counties, West Virginia, and Washington and Greene Counties, Pennsylvania; accordingly, for purposes of promoting that potential, as well as providing a vehicle or means whereby federal assistance may be enlisted for the protection of citizens of her neighboring state of West Virginia from the flooding of Wheeling Creek, the commonwealth of Pennsylvania joins with the State of West Virginia in negotiating and ratifying this compact; now therefore,

Article II. Wheeling Creek Watershed Protection and

Flood Prevention District Created.

The commonwealth of Pennsylvania and the State of West Virginia hereby create as an agency and instrumentality of the governments thereof a district to be known as the "Wheeling Creek Watershed protection and flood prevention district," hereinafter called the district, which shall embrace all territory in the commonwealth of Pennsylvania and the State of West Virginia, the water in which flows ultimately into Wheeling Creek or its tributaries.

Article III. Wheeling Creek Watershed Protection and

Flood Prevention Commission Created.

The commonwealth of Pennsylvania and the State of West Virginia hereby create as the governing body of the district the "Wheeling Creek Watershed protection and flood prevention commission," hereinafter called the commission, which shall be a body corporate, with the powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent concurrent action of the General Assembly of Pennsylvania and the Legislature of West Virginia or by act or acts of the Congress of the United States.

Article IV. Composition of Commission.

The commission shall consist of five commissioners from Pennsylvania and five commissioners from West Virginia, each of whom shall be a citizen of the commonwealth or state from which he is appointed. The commissioners from the commonwealth and from the state shall be chosen in the manner and for the terms provided by the laws of the commonwealth or state from which they shall be appointed, and any commissioner may be removed or suspended from office as provided by the law of the commonwealth or state from which he shall be appointed. Vacancies on the commission shall be filled in the manner provided by the laws of the commonwealth or state among whose representation on the commission the vacancy occurs.

The commissioners shall serve without compensation from the commission but they shall be paid by the commission their actual expenses incurred and incident to the performance of their duties.

Article V. Organization of Commission.

WV Legislature

The commission shall meet and organize within sixty days after the effective date of this compact, shall elect from its number a chairman and vice chairman, and shall appoint, and at its pleasure remove or discharge, such officers and legal, clerical, expert and other assistants as may be required to carry the provisions of this compact into effect, and shall determine their qualifications and fix their duties and compensation. It shall adopt a seal and suitable bylaws, and shall adopt and promulgate rules and regulations for its management and control. It may establish and maintain one or more offices within the district for the transaction of its business, and may meet at any time or place. The presence of three commissioners from the commonwealth of Pennsylvania and three commissioners from the State of West Virginia shall constitute a quorum, and a majority vote of the quorum shall be necessary to pass upon matters before the commission.

Article VI. Powers and Duties.

The commission is hereby authorized and empowered:

(a) To be and serve in the capacity of a local organization within the meaning of the Watershed Protection and Flood Prevention Act of the eighty-third Congress of the United States, second session, (Public Law 566), approved August 4, 1954, as from time to time amended, and in that capacity the commission shall have the following authority and powers:

(1) To apply for and receive federal financial and other assistance in preparing and carrying out plans for works of improvement as that term is defined in said federal act, as from time to time amended, hereinafter referred to as works of improvement, and to apply for and receive federal financial and other assistance under the aforementioned or other federal acts in preparing and carrying out plans for public fish and wildlife or recreational development in connection with works of improvement, including the construction and operation of all facilities which may be necessary or incident to such works of improvement and public fish and wildlife or recreational development in connection therewith.

(2) To acquire, or, with respect to interests in land to be acquired by condemnation, provide assurances satisfactory to the secretary of agriculture of the United States or other agent or agency of the United States that the commission will acquire such land, easements or right-of-ways as will be needed in connection with works of improvement, and public fish and wildlife or recreational development and facilities in connection with works of improvement, installed with federal assistance.

(3) To agree to operate and maintain any reservoir or other area included in a plan for works of improvement or public fish and wildlife or recreational development and facilities.

(4) To assume all or such proportionate share, as is determined by the secretary of agriculture of the United States or other agent or agency of the United States, of the cost of installing any works of improvement, involving federal assistance, with is applicable to the agricultural phases of the conservation, development, utilization and disposal of water or for fish and wildlife or recreational development and facilities or to purposes other than flood

WV Legislature

prevention and features relating thereto.

(5) To make arrangements satisfactory to the secretary of agriculture of the United States or other agent or agency of the United States for defraying costs of operating and maintaining works of improvement and public fish and wildlife or recreational development and facilities in connection with works of improvement: Provided, That such arrangements shall be based solely upon contributions, allotments or commitments of funds to the district or commission.

(6) To acquire, or provide assurance that landowners or water users have acquired, such water rights, pursuant to the law of the commonwealth or state applicable thereto, as may be needed in the installation and operation of the works of improvement and public fish and wildlife or recreational development and facilities in connection with works of improvement.

(7) To cooperate with soil conservation districts in obtaining agreements to carry out recommended soil conservation measures and proper farm plans from owners of land situated in the drainage area above each retention reservoir to be installed with or without federal assistance.

(8) To apply for and receive federal loans or advancements to finance the local share of costs of carrying out works of improvement and public fish and wildlife or recreational development and facilities in connection with works of improvement, and to submit a plan of repayment satisfactory to the secretary of agriculture or other agent or agency of the United States for any loan or advancement: Provided, That such plan of repayment shall be based solely upon contributions, allotments or commitments of funds to the district or commission.

(9) To cooperate, and enter into agreements with, the secretary of agriculture of the United States or other agent or agency of the United States, and to do all other things required, not inconsistent with the provisions of this compact and the laws of the commonwealth of Pennsylvania and the State of West Virginia, to obtain maximum federal financial assistance for works of improvement and public fish and wildlife or recreational development and facilities in connection with such works of improvement.

(b) To acquire within the district, land, easements, right-of-ways and other property rights as may be needed in connection with works of improvement and public fish and wildlife or recreational development and facilities in connection with such works of improvement and to make studies respecting, and to plan, construct, maintain and operate works of improvement within the district and public fish and wildlife or recreational development and facilities in connection with such works of improvement.

(c) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, eminent domain or otherwise, any property, real or personal, or rights therein for any of the purposes specified in this article of the compact: Provided, That eminent domain proceedings shall be instituted and prosecuted in the manner and forms provided by the laws of the commonwealth or state in which the property or property rights proceeded against are situate: Provided, however, That no property now or hereafter vested in or held

WV Legislature

by the commonwealth of Pennsylvania or the State of West Virginia, or by any county, city, town, village, district, township, municipality or other political subdivision thereof shall be taken by the district without the consent of the commonwealth, state or political subdivision which owns the same.

(d) To maintain, administer and improve any properties acquired, to charge fees for use of, and receive income from, such properties and to expend such income in carrying out the purposes and provisions of this compact, and to lease any of its property or interests therein in accordance with the following provisions and requirements: The board of commissioners of the County of Ohio, West Virginia, the county commission of Marshall County, West Virginia, the board of commissioners of Greene County, Pennsylvania, and the board of commissioners of Washington County, Pennsylvania, shall each have the option of leasing from the commission for such period as the lessee may specify all or any part of the works of improvement and the public fish and wildlife and recreational development and facilities in connection with works of improvement located within their respective counties upon the following terms and conditions: (a) That in each such lease the lessee in consideration thereof pay to the lessor the sum of $1 and agree to fully maintain at its (the lessee's) expense all works of improvement and all such development and facilities in connection therewith located within the county of the lessee in accordance with the requirements of the Watershed Protection and Flood Prevention Act of the eighty-third Congress of the United States, second session, (Public Law 566), approved August 4, 1954, as from time to time amended, and all agreements and work plans made or formulated thereunder with respect to such works of improvement and such development and facilities in connection therewith located within the county of the lessee, and that for failure of the lessee to comply with such agreement, the lessor shall be given the right in the lease agreement to cancel the lease upon thirty days' written notice to the lessee; (b) that any such lease not be inconsistent with the provisions, or impair the purposes, of this compact; and (c) that any such lease be approved by the secretary of agriculture of the United States or other federal agent or agencies having authority to extend approval under the provisions of said act and agreements and work plans made or formulated thereunder. In the event the board of commissioners or county commission of any one of the four counties named does not, within six months from the completion of the works of improvement and all such development and facilities in connection therewith located in such county, elect in writing transmitted to the commission to exercise the option given to it by the foregoing provisions, or in the event such option is exercised and the lease to such board of commissioners or county commission is subsequently canceled because of violation of the provision of the lease by the lessee, or in the event such option is exercised and the board of commissioners or county commission subsequently chooses not to renew its lease, the commissioners may lease all or any part of the works of improvement and all such development and facilities in connection therewith located within such county to any other lessee which the commission may choose, and upon such terms as may be agreed upon, provided (a) that any such lease be approved by the board of commissioners or county commission of the county in which any part or all of the works of improvement and all such development and facilities in connection therewith are located; (b) that any such lease not be inconsistent with the provisions, or impair the

purposes, of this compact; (c) that any such lease be approved by the secretary of agriculture of the United States or other federal agent or agencies having authority to extend approval under the provisions of said act and agreements and work plans made or formulated thereunder; and the option of leasing in the board of commissioners of the County of Ohio, West Virginia, the county commission of Marshall County, West Virginia, the board of commissioners of Greene County, Pennsylvania, and the board of commissioners of Washington County, Pennsylvania, shall include the right to sublease on the same terms and conditions set out in this paragraph designated (d) to any individual, corporation, municipal subdivision or municipal authority without the approval of the Wheeling Creek Watershed protection and flood prevention commission.

(e) To enter into contracts and other arrangements with agencies of the United States, with persons, firms or corporations, including both public and private corporations, with the government of the state and the government of the commonwealth, or any department or agency of the United States, the state or the commonwealth, with governmental divisions, with soil conservation, drainage, flood control, soil erosion or other improvement districts in the state or the commonwealth, for cooperation or assistance in constructing, improving, operating or maintaining works of improvement within the district, and public fish and wildlife or recreational development and facilities in connection with works of improvement, or in preventing floods, damage from sediment deposited by floodwaters, or in clearance of stream beds, or in conserving, developing, utilizing and disposing of water in the district, or for making surveys, investigations or reports thereof.

(f) To apply for, receive and use grants-in-aid, donations and contributions from any source or sources, and to accept and use, consistent with the purposes of this compact, bequests, devises, gifts and donations from any person, firm, corporation, state, commonwealth or agency or political subdivision thereof.

(g) To do any and all things necessary or convenient for the purpose of promoting, developing and advancing the purposes of said district herein set forth, and in promoting, developing and advancing the recreational development and facilities incidental to the works of improvement that shall be constructed to achieve said purposes.

(h) To delegate any authority given to it by law to any of its agents or employees, and to expend its funds in the execution of the powers and authority herein given.

(i) The commission, subject to the conditions herein, may sell, exchange or lease property, real or personal, or any interest therein.

When the property, or any interest or right therein, is being held for future use, it may be leased. When the real property, or any part thereof, or any interest or right therein, is deemed by the commission not necessary, or desirable for present or presently foreseeable future use, it may be exchanged for other property, or any interest or right therein, deemed by the commission to be necessary or desirable for present or presently foreseeable future use, or may be sold. In addition the commission may exchange real property, or any part

WV Legislature

thereof, or any interest or right therein, even though it may be desirable or necessary for present or presently foreseeable future use, if the exchange is made for other real property, or any interest or right therein, in close proximity thereto which the commission deems of equal or superior value for presently foreseeable future use. In making exchanges the commission may make allowances for differences in values of the properties being exchanged and may move or pay the cost of moving buildings, structures or appurtenances in connection with the exchange.

Every such sale of real property, or any interest or right therein or structure thereon, shall be at public auction in the county in which the real property, or the greater part thereof in value, is located, and the commission shall advertise, by publication or otherwise, the time, place and terms of such sale at least twenty days prior thereto. The property shall be sold in the manner which will bring the highest and best price therefor. The commission may reject any and all bids received at the sale. The commission shall keep a record, open to public inspection, indicating the manner in which such real property or any interest or right therein or structure thereon, was publicly advertised for sale, the highest bid received therefor and from whom, the person to whom sold, and payment received therefor. Such record shall be kept for a period of five years and may thereafter be destroyed.

The commission may insert in a deed or conveyance, whether it involves an exchange, lease or sale, such conditions as are in the public interest.

All moneys received from the exchange, sale or lease of real or personal property, or any right or interest therein, shall be paid into the commission's treasury and used for the purpose for which the commission was created.

If the commission has heretofore sold and conveyed away or leased any such property, such transaction and the documents of lease or transfer therefor are hereby approved and confirmed and shall be as effective as if the authority to lease or convey the said property had been given in this statute as originally enacted.

Article VII. Fiscal Affairs.

The commission shall submit at the appropriate or designated time to the board of commissioners of the County of Ohio, West Virginia, the county commission of Marshall County, West Virginia, the board of commissioners of Greene County, Pennsylvania, and the board of commissioners of Washington County, Pennsylvania, an annual budget of its estimated expenditures, which budget shall contain specific recommendations of the amount or amounts to be appropriated by each of the named governing bodies.

The commission shall not incur any obligation prior to the commitment or allotment of funds by the named governing bodies or by other sources adequate to meet the same.

The commission shall keep accurate accounts of all receipts and disbursements, which accounts shall be open for inspection at any reasonable time and shall be subject to audit by

WV Legislature

representatives of contributing political subdivisions and of the commonwealth of Pennsylvania and state of West Virginia. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws: Provided, That all receipts and disbursements of the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be transmitted to each contributor of funds to the district or commission.

Article VIII. Exemption from Taxes and Fees.

The district and the property belonging to the district shall be exempt from the payment of all taxes or fees imposed by the commonwealth of Pennsylvania or the State of West Virginia and by any agency and political subdivision thereof.

Article IX. Effective Date of Compact.

This compact shall become effective upon ratification by the General Assembly of the commonwealth of Pennsylvania and the Legislature of the State of West Virginia and upon approval by the Congress of the United States.

WV Legislature

§29-1F-2. Appointment of members of commission; vacancies.

In pursuance of article IV of the above compact, there shall be five members of the Wheeling Creek watershed protection and flood prevention commission from the State of West Virginia, one of whom shall be a member of the board of commissioners of the county of Ohio, West Virginia, appointed by that body to serve at its will and pleasure, one of whom shall be a citizen of the city of Wheeling, Ohio county, West Virginia, appointed by the board of commissioners of the county of Ohio, West Virginia, to serve at its will and pleasure, one of whom shall be a member of the county court of Marshall county, West Virginia, appointed by that body to serve at its will and pleasure, one of whom shall be a citizen of Marshall county, West Virginia, appointed by the county court thereof to serve at its will and pleasure, and one of whom shall be a member of the board of supervisors of the northern panhandle soil conservation district, appointed by said board of supervisors to serve at its will and pleasure: Provided, That (1) the citizen appointed by the board of commissioners of the county of Ohio, West Virginia, shall not be a member of that body; (2) the citizen appointed by the county court of Marshal county, West Virginia, shall not be a member of that body; and (3) the member appointed by the board of supervisors of the northern panhandle soil conservation district shall not be a resident of either Ohio or Marshall county, West Virginia.

Vacancies shall be filled by the appointing authority responsible for making the appointment to the position vacated.

WV Legislature

§29-1F-3. Contributions by political subdivisions.

The county court of Marshall county, West Virginia, and the board of commissioners of the county of Ohio, West Virginia, and any municipality therein, which may reasonably be expected to receive a benefit from the construction, improvement, operation or maintenance of any works of improvement, are hereby authorized and empowered to contribute moneys to the district by appropriation from their respective general funds not otherwise appropriated, and may set up in their respective budgets funds to be spent for such purposes, and such counties or municipalities may levy and collect taxes for such purposes, in the manner provided by law: Provided, That in case sufficient funds cannot be raised by ordinary levies, additional funds may be raised by the counties of Marshall and Ohio, and any such municipality, as provided by section sixteen, article eight, chapter eleven of the Code of West Virginia, 1931, as amended.

Such county court, board of commissioners, and municipal corporations are hereby authorized and empowered to transfer and convey to the district property of any kind heretofore acquired by said county court, board of commissioners, and municipalities, if acceptable to the district as adaptable for use for the purposes of the district, such transfers or conveyances to be without consideration or for such price and upon such terms and conditions as such county court, board of commissioners or municipalities shall determine to be proper.

WV Legislature

§29-1F-4. Ohio county board of commissioners authorized to transfer certain special levy receipts to the Wheeling Creek watershed protection and flood prevention commission.

The board of commissioners of the county of Ohio is hereby authorized and empowered to transfer to the Wheeling Creek watershed protection and flood prevention commission established by this article all tax revenue and interest thereon received pursuant to and as the result of the special levy election held in Ohio county on May 12, 1964, to raise funds for the Wheeling Creek watershed project, which election was authorized and called by the board of commissioners of the county of Ohio by order entered on March 31, 1964: Provided, That before making any such transfer the board of commissioners of the county of Ohio shall obtain from the Wheeling Creek watershed protection and flood prevention commission written assurances that all such revenue and interest thereon to be so transferred shall be expended solely for the purposes for which such special levies were authorized: Provided further, That upon the receipt of such written assurances the board of commissioners of the county of Ohio shall not be liable for any misapplication by the Wheeling Creek watershed protection and flood prevention commission of any such revenues and interest thereon so transferred.

WV Legislature

§29-1F-5. When commission authorized to dispose of real and personal property.

Subdivision (i), article VI, of the Wheeling Creek Watershed protection and flood prevention district compact shall be effective from the date of its enactment insofar as it relates to property situated in the State of West Virginia, but shall not apply to property situated in the commonwealth of Pennsylvania until and unless enacted by said commonwealth.

WV Legislature