

PREVENTING THE SPLINTERING OF AUTHORITY IN THE BASIN The State College Experience

"The water resources of the basin are presently subject to the duplicating, overlapping, and uncoordinated administration of a large number of governmental agencies which exercise a multiplicity of powers resulting in a splintering of authority and responsibility."

Preamble: Susquehanna River Basin Compact, P.L. 91-575; 84 Stat. 1509 et seq.

The framers of the Susquehanna River Basin Compact recognized the problem of too many government agencies attempting to manage the waters of the Susquehanna. Duplicative, overlapping and uncoordinated activities were resulting in a splintering of authority and responsibility in the basin. To prevent this splintering, the framers concluded in the commission's compact that "a single administrative agency is essential for effective and economical direction, supervision, and coordination of water resources efforts and programs of federal, state, and local governments and of private enterprise." The Susquehanna River Basin Commission (SRBC) is that single agency.

This information sheet is a case study of the State College, Pa. area where local municipalities sought additional provisions in a State College water project by establishing their own ground water rules.

What is the State College water project?

State College and the surrounding communities form a growing metropolitan area with increasing water demands. To address this, the State College Borough Water Authority (SCBWA) in 1991 began seeking additional water sources from surrounding townships.

The authority first located several ground water sources in Benner, Half Moon and Ferguson Townships, and then it applied to SRBC to install and draw water from large wells in those municipalities. SRBC regulation (803.43) requires all requests for

ground water withdrawals in the basin exceeding 100,000 gallons per day to be approved by SRBC.

Did SRBC approve the project?

SRBC carefully reviewed the SCBWA's applications, added additional conditions to each application where appropriate, then approved them. One of the factors that SRBC determines before approving any ground or surface water withdrawal application is the potential impact on water supplies for existing water users--in this case, the three townships. SRBC determined that the SCBWA's withdrawals would not diminish the water supply for existing well users.

How did the townships react to the project approval?

The townships were concerned about the location of the wells. They feared that the SCBWA withdrawals would impact existing privately-owned wells. Two of the townships responded by creating their own use-conditions to the projects. They cited their authority under Pennsylvania's municipal law regarding zoning ordinances (Pa. Municipalities Planning Code). The third township established its own special ground water withdrawal ordinance.

In all three cases, SRBC explained to the townships that their actions were not in the best interest of managing water regionally as a shared resource. SRBC's ground water regulations, in combination with the special conditions it placed on the SCBWA

projects, provided the necessary safeguards to protect adjoining well owners. SRBC urged the townships to reconsider their actions because of the splintering affect it would have of the management of the basin's water resources.

One of the purposes of SRBC's compact is to apply the principle of uniform treatment to all users of water, without regard to political boundaries. Uniform treatment would be impossible if each local government adopted its own rules for ground water use.

Did SCBWA challenge the townships' rules?

Yes. In 1992 and 1993, the authority filed court appeals against the townships' actions on the grounds that SRBC's ground water regulations pre-empted local rules, and that the local rules only added another layer to the regulatory process. After different trial court judges handed down opposing opinions, the cases went before the Pennsylvania Commonwealth Court, an intermediate appellate court that hears appeals of government actions.

How did the Commonwealth Court rule?

On May 22, 1995, the court ruled that SRBC's ground water regulations do pre-empt local ground water regulations. The court pointed specifically to the preamble language in SRBC's compact.

The Commonwealth Court pointed out that the intent of the compact was to correct the very "evil" represented by this splintering of authority. The court felt that to allow local municipalities to establish their own regulations on ground water would be to allow for the splintering of authority between SRBC and the townships. This would be in conflict with the clear intent of the compact.

What does this Commonwealth Court ruling mean?

The court decision upholds SRBC's authority as the single agency responsible for regulating ground water withdrawals in the basin. With this, ground water users in Pennsylvania still only need to deal with one government agency and one set of rules in obtaining approvals to withdraw ground water.

Did the townships appeal the Commonwealth Court's ruling?

Yes. Benner and Half Moon Townships appealed the Commonwealth Court's decision to the Pennsylvania Supreme Court. The Supreme Court refused to hear Half Moon Township's appeal, but did accept Benner Township's appeal on the issue of pre-emption.

In late-January 1997, Benner Township argued its case before the Pennsylvania Supreme Court. In mid-February 1997, the Supreme Court ruled against Benner Township by affirming the Commonwealth Court's prior ruling that SRBC's ground water regulations pre-empt local ground water regulations.