

Special Protection Waters Is No Excuse for a DRBC Fracking Ban

Legal Issues:

1. The DRBC Compact gives authority to classify **waters, not activities or land uses**.

“The commission, after such public hearing may classify **the waters of the basin** and **establish standards of treatment** of sewage, industrial or other waste ... and to **require such treatment** of sewage, industrial or other waste.”
2. The DRBC “Special Protection Waters” program is an anti-degradation policy, not a set of rules regarding industrial processes or land uses, which are sovereign interests of the states that have not been surrendered.
3. Authority to classify waters, establish standards and require treatment of wastes doesn’t give the DRBC police power over Pennsylvanians.
4. The DRBC can’t extend its own authority , which was granted by the U.S. Congress.
5. Disparate treatment of citizens is not legally sustainable and the proposed ban would target one group of citizens. Pennsylvania can’t discriminate against one county to prohibit some otherwise legitimate land uses and the DRBC can’t create authority to do what Pennsylvania itself cannot.
6. The DRBC justification is based largely on unproven speculation of future harm from accidents, spills and releases that could be extended to anything whatsoever if allowed to stand.

Practical Issues:

1. DEP is already permitting natural gas development in EV and HQ watersheds in the SRBC region.
2. DEP already has good standards (endorsed by STRONGER) that protect the Delaware River Basin as well as the Susquehanna River Basin (where there are also EV/HQ waters).
3. SRBC data in DEP possession indicates “no discernible impact to the quality of water resources from natural gas development.”
4. If the DRBC is permitted to get away with this, than the SRBC will be next on the fractivist hit list. A DRBC fracking ban will put Pennsylvania in an impossible political situation and guarantee battles, both legal and political, for many years to come and threaten the Commonwealth’s entire oil and gads industry.

Special protection waters policies of the DRBC cannot be used to deny certain Pennsylvanians equal justice under the law. There is no legal basis for such abuse of authority and no practical evidence to support the proposed dRBC fracking ban.

Article V Comparison

Section	DRBC	SRBC
General Powers	The commission may undertake investigations and surveys, and acquire, construct, operate and maintain projects and facilities to control potential pollution and abate or dilute existing pollution of the water resources of the basin. It may invoke as complainant the power and jurisdiction of water pollution abatement agencies of the signatory parties.	<p>(a) The commission may undertake or contract for investigations, studies, and surveys pertaining to existing water quality, effects of varied actual or projected operations on water quality, new compounds and materials and probable future water quality in the basin. The commission may receive, expend, and administer funds, Federal, state, local or private as may be available to carry out these functions relating to water quality investigations.</p> <p>(b) The commission may acquire, construct, operate, and maintain projects, and facilities for the management and control of water quality in the basin whenever the commission deems necessary to activate or effectuate any of the provisions of this compact.</p>
Policy and Standards	The commission may assume jurisdiction to control future pollution and abate existing pollution in the waters of the basin, whenever it determines after investigation and public hearing upon due notice that the effectuation of the comprehensive plan so requires. The standard of such control shall be that pollution by sewage or industrial or other waste originating within a signatory state shall not injuriously affect waters of the basin as contemplated by the comprehensive plan. The commission, after such public hearing may classify the waters of the basin and establish standards of treatment of sewage, industrial or other waste, according to such classes including allowance for the variable factors of surface and ground waters, such as size of the stream, flow, movement, location, character, self-purification, and usage of the waters affected. After such investigation, notice and hearing the commission may adopt and from time to time amend and repeal rules, regulations and standards to control such future pollution and abate existing pollution, and to require such treatment of sewage, industrial or other waste within a time reasonable for the construction of the necessary works, as may be required to protect the public health or to preserve the waters of the basin for uses in accordance with the comprehensive plan.	<p>(a) In order to conserve, protect, and utilize the water quality of the basin in accordance with the best interests of the people of the basin and the states, it shall be the policy of the commission to encourage and coordinate the efforts of the signatory parties to prevent, reduce, control, and eliminate water pollution and to maintain water quality as required by the comprehensive plan.</p> <p>(b) The legislative intent in enacting this article is to give specific emphasis to the primary role of the states in water quality management and control.</p> <p>(c) The commission shall recommend to the signatory parties the establishment, modification, or amendment of standards of quality for any waters of the basin in relation to their reasonable and necessary use as the commission shall deem to be in the public interest.</p> <p>(d) The commission shall encourage cooperation and uniform enforcement programs and policies by the water quality control agencies of the signatory parties in meeting, the water quality standards established in the comprehensive plan.</p> <p>(e) The commission may assume jurisdiction whenever it determines after investigation and public hearing upon due notice given that the effectuation of the comprehensive plan so requires. After such investigation, notice, and hearing, the commission may adopt such rules, regulations, and water quality standards as may be required to preserve, protect, improve, and develop the quality of the waters of the basin in accordance with the comprehensive plan.</p>
Cooperative Legislation and Administration	Each of the signatory parties covenants and agrees to prohibit and control pollution of the waters of the basin according to the requirements of this compact and to cooperate faithfully in the control of future pollution in and abatement of existing pollution from the rivers, streams, and waters in the basin which flow through, under, into or border upon any of such signatory states, and in order to effect such object, agrees to enact any necessary legislation to enable each such party to place and maintain the waters of said basin in a satisfactory condition, available for safe and satisfactory use as public and industrial water supplies after reasonable treatment, suitable for recreational usage, capable of maintaining fish and other aquatic life, free from unsightly or malodorous nuisances due to floating solids or sludge deposits and adaptable to such other uses as may be provided by the comprehensive plan.	Each of the signatory parties agrees to prohibit and control pollution of the waters of the basin according to the requirements of this compact and to cooperate faithfully in the control of future pollution in and abatement of existing pollution from the waters of the basin.
Enforcement	The commission may, after investigation and hearing, issue an order or orders upon any person or public or private corporation, or other entity, to cease the discharge of sewage, industrial or other waste into waters of the basin which it determines to be in violation of such rules and regulations as it shall have adopted for the prevention and abatement of pollution. Any such order or orders may prescribe the date, including a reasonable time for the construction of any necessary works, on or before which such discharge shall be wholly or partially discontinued, modified or treated, or otherwise conformed to the requirements of such rules and regulations. Such order shall be reviewable in any court of competent jurisdiction. The courts of the signatory parties shall have jurisdiction to enforce against any person, public or private corporation, or other entity, any and all provisions of this article or of any such order. The commission may bring an action in its own name in any such court of competent jurisdiction to compel compliance with any provision of this article, or any rule or regulation issued pursuant thereto or of any such order, according to the practice and procedure of the court.	The commission shall have the authority to investigate and determine if the requirements of the compact or the rules, regulations, and water quality standards of the commission are complied with and if satisfactory progress has not been made, may institute an action or actions in its own name in the proper court or courts of competent jurisdiction to compel compliance with any and all of the provisions of this compact or any of the rules, regulations, and water quality standards of the commission adopted pursuant thereto.
Further Jurisdiction	Nothing in this compact shall be construed to repeal, modify or qualify the authority of any signatory party to enact any legislation or enforce any additional conditions and restrictions to lessen or prevent the pollution of waters within its jurisdiction.	Nothing in this compact shall be construed to repeal, modify, or qualify the authority of any signatory party to enact any legislation or enforce any additional conditions and restrictions to lessen or prevent the pollution of waters within its jurisdiction.