

MEMORANDUM OF UNDERSTANDING

IMPLEMENTING THE DESIGNATION OF THE LOWER DELAWARE RIVER AND SELECTED TRIBUTARIES AS A COMPONENT OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

Between

The Commonwealth of Pennsylvania and the State of New Jersey

and

*Bucks and Northampton Counties, Pennsylvania and Mercer, Hunterdon and
Warren Counties, New Jersey*

and

*The Municipalities in Pennsylvania and New Jersey that have endorsed
designation of the Lower Delaware River as part of the National Wild
and Scenic Rivers System*

and

Delaware River Basin Commission

and

*The United States Department of Interior, National Park Service,
Philadelphia Support Office*

and

The Delaware River Greenway Partnership

and

The Delaware & Lehigh Corridor Commission

and

*Other Governmental and non-Governmental organizations with an Interest in
the Lower Delaware River Wild & Scenic River*

Article I. Introduction

On October 23, 1992 Congress authorized the National Park Service to study the Lower Delaware River and three tributaries, Paunacussing, Tinicum and Tohickon Creeks in Bucks County, Pennsylvania for possible inclusion into the National Wild and Scenic Rivers System. This study, in conjunction with the local planning process, spanned more than seven years. Local communities drafted and agreed upon management strategies prior to recommending any level of National Wild and Scenic designation. The communities in the watersheds of the Wickecheoke and Lockatong Creeks, in New Jersey, further recommended that those streams be considered for inclusion in the designation and a study is underway to determine their eligibility. The Plan, prepared by the Lower Delaware River Management Plan Committee with assistance from the National Park Service, established the framework for an intergovernmental agreement for the future management of the Lower Delaware River and its tributaries. Based on this agreement legislation was introduced in Congress by Congressmen James Greenwood (PA), Patrick Tommey(PA), Rush Holt(NJ) and Marge Roukema(NJ); and by Senators Robert Torricelli (NJ), Frank Lautenberg (NJ), Rick Santorum (PA), and Arlen Specter (PA) to designate the Lower Delaware River and its tributaries into the National Wild and Scenic Rivers System. This legislation was passed by both houses of Congress and signed into law by President Clinton, on November 1, 2000.

Article II. Background and Objectives

WHEREAS, Public Law 102-460 amended the National Wild and Scenic Rivers Act by authorizing the National Park Service to conduct a study of the Lower Delaware River and its tributaries for potential addition into the National Wild and Scenic River System; and

WHEREAS, the National Wild and Scenic River System is intended to permanently protect America's outstanding rivers and streams for the benefit of present and future generations; and

WHEREAS, the Philadelphia Support Office of the National Park Service coordinated with the affected counties and municipalities, the States of New Jersey and Pennsylvania, interested residents, and local property owners on the study and in the development of the Lower Delaware River Management Plan and

WHEREAS, the Lower Delaware River Management Plan is a reasonable approach to cooperative management of the Lower Delaware River as a component of the National Wild and Scenic River System that recognizes the importance of the various roles of landowners, government, business and industry, and other citizens in the protection of the river corridor's important values; and

WHEREAS, the Lower Delaware River Management Plan calls for the formation of a Lower Delaware River Management Committee to stimulate cooperation of the diverse watershed interests, provide a forum for discussing and resolving issues, and promote and facilitate the implementation of the management plan; and

WHEREAS, The Commonwealth of Pennsylvania, the State of New Jersey, Bucks County, Northampton County, Mercer County, Hunterdon County, Warren County, and the municipalities that supported designation of the Lower Delaware as part of the National Wild & Scenic Rivers System expressed support for the Lower Delaware River Management Plan and National Wild and Scenic designation; and

WHEREAS, on November 1, 2000 Public Law 106-357 was passed by the United States Congress and signed by the President of the United States designating the Lower Delaware River and its tributaries as a component of the National Wild and Scenic Rivers System; and

WHEREAS, Public Law 106-357, Section 5 a), requires the Secretary of the Interior to administer the designated river segments in cooperation with the Lower Delaware River Management Committee as provided for in the Lower Delaware River Management Plan; and

WHEREAS, Section 11 of the National Wild and Scenic Rivers Act (P.L. 90-542, as amended) authorizes the Department of Interior to assist, advise, and cooperate with other public and private organizations to plan, protect, and manage river resources and to provide limited financial assistance for this purpose; and

WHEREAS, Section 10 (e) of the National Wild and Scenic Rivers Act (P.L. 90-542, as amended) authorizes the National Park Service to enter into written cooperative agreements with a state, or appropriate political subdivisions of a state, to protect and enhance the values which have caused a river to be included in the National Wild and Scenic River System;

NOW, THEREFORE, IT IS AGREED THAT, the above referenced parties hereby enter into this Memorandum of Understanding to participate in the cooperative implementation of the Lower Delaware River Management Plan, and to protect and enhance the values that have caused the Lower Delaware River and its tributaries to be designated by the United States Congress as a component of the National Wild and Scenic Rivers System.

Article III. Roles and Responsibilities

A. State, County, and Municipal Governments, Non-profit Organizations, The Delaware River Basin Commission, and the Delaware & Lehigh Heritage Corridor Commission

- 1) Agree to cooperatively implement the Lower Delaware River Management Plan, (hereinafter referred to as the Plan), along with the other signatories to this agreement, to conserve the special natural resources of the area and enhance the cultural, recreational and economic opportunities of the watershed.
- 2) Agree to appoint one representative to participate on the Lower Delaware River Management Committee, (hereinafter referred to as the Committee).
- 3) May at their discretion contribute staff, in-kind, or financial assistance to the Committee.

- 4) Agree to take into consideration the objectives and recommendations of the Plan in land use or water use decision-making which could impact the health and conservation of the resources of the Lower Delaware River and its tributaries.
- 5) Agree to work together through the Committee to address funding and regulatory issues related to implementation of the national wild and scenic river designation and the Plan.
- 6) Agree to enforce all applicable land use, water use, or zoning regulations in such a manner to ensure that the Lower Delaware River and its tributaries are protected and that actions are consistent with the goals, objectives, and recommendations of the Plan.
- 7) Agree to work with the Committee as appropriate to identify and address issues related to the management of the Lower Delaware River and its tributaries as a national wild and scenic river, as detailed in the Plan.
- 8) Agree to control land and waters under their jurisdiction within the Lower Delaware River in a manner consistent with the goals, objectives, and recommendations within the Plan.
- 9) Agree that the Management Committee can write letters of support and take other actions to help members receive grants for projects that will further the goals and objectives of the Plan.
- 10) The States and the Delaware River Basin Commission agree to carry out a water quality monitoring program to implement the water quality goal of the Plan

B. National Park Service

- 1) To serve as the federal agency charged with administrative responsibility for the designated segments of the Lower Delaware River and its tributaries.
- 2) To serve as coordinator and liaison among participants of the Committee.
- 3) To implement Section 7(a) of the National Wild and Scenic Rivers Act by reviewing any proposed water resources project that requires federal assistance through permits, licenses, funding, or other action, encroaching on or directly affecting any designated segment of the lower Delaware River, Tohickon Creek, Tinicum Creek, or Paunacussing Creek. During its review the National Park Service will evaluate each proposed project in terms of its potential impact upon the Plan's goals and on the designated area's outstandingly remarkable values and resources and will take into consideration any recommendations made by the Committee. Upon receipt of a project proposal the National Park Service will notify and consult with the Committee representative of the affected municipality and relevant non-profit organizations. At each Committee meeting the National Park Service will report to the Committee on any permit reviewed during that quarter.

Section 7(a) of the Wild and Scenic Rivers Act states that "...no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established ..." Section 7 requires consultation between the National Park Service and the

federal agency assisting or approving water resources projects. Project proponents are encouraged to consult informally with the National Park Service early in the siting and project design process.

Water resources projects are defined as any dam, water diversion projects, reservoirs, powerhouses, transmission lines, fisheries habitat and watershed restoration/enhancement projects, bridges, other roadway construction/reconstruction projects, bank stabilization projects, channelization projects, levee construction, recreation facilities, other construction of developments which would affect the free-flowing characteristics of a wild and scenic river, and activities that require a 404 permit from the Army corps of Engineers. Section 404 of the Clean Water Act requires the Army Corps of Engineers to regulate, through permits, the discharge of dredged or fill material into waters of the united States, including wetlands.

- 4) To bring matters which the National Park Service deems significant to the administration of the designation or implementation of Section 7(a) before the Committee for discussion, and to respect the intent and specific provisions of the Plan in exercising its responsibilities.
- 5) To review and make recommendations on projects that do not qualify for review under Section 7(a) but are referred for comment.
- 6) Enter into cooperative agreements with Committee members and other parties as appropriate to undertake projects to implement the Plan and the wild and scenic river designation.
- 7) To identify, where possible, additional programs, grants, authorities and other resources of the National Park Service that could benefit the Committee, its members, and the conservation and enhancement of river resources.
- 8) To prepare an outline statistical report annually that reports on its actions relating to the Wild& Scenic program.

EFFECTIVE DATE OF AGREEMENT

This Memorandum of Understanding will become effective for each signatory as of the date of its signature.

SIGNATORIES

The following signatories agree to fulfill the provisions of this Memorandum of Understanding and agree to participate on a cooperative basis toward achieving the goals and objectives of the *Lower Delaware River Management Plan*, and the national wild and scenic river designation as set forth herein:

Entity

Date