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Delaware River Basin Restoration

Background

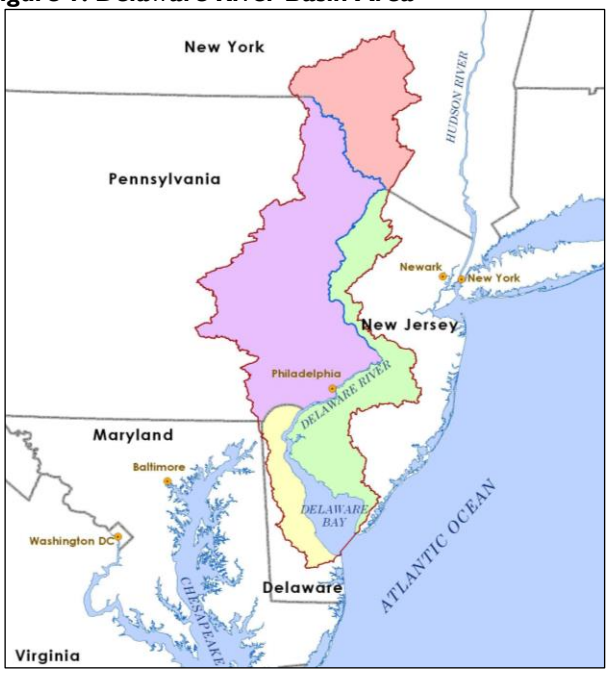
The Delaware River Basin drains the lands surrounding the Delaware River and its tributaries, which stretch from the Catskill Mountains in New York to the Delaware Estuary (see **Figure 1**). The river is fed by 216 tributaries, drains 13,539 square miles of land within four states—Delaware, New York, New Jersey, and Pennsylvania—and eventually flows into the Atlantic Ocean. The water resources within the Delaware River Basin are managed in part by the Delaware River Basin Commission (DRBC) under the authority of the Delaware River Basin Compact (P.L. 87-328). The compact was signed by states in the Basin and ratified by Congress in 1961. Ecosystem restoration in the Basin is addressed, in part, by the Delaware River Basin Restoration Program (Basin Restoration Program), established through the passage of the Water Infrastructure Improvements for the Nation Act (WIIN Act; P.L. 114-322) in 2016 and administered by the U.S. Fish and Wildlife Service (FWS).

The Delaware River Basin provides economic, environmental, and recreational assets for an estimated 15 million people on the East Coast who rely on water supplies from the Delaware River for municipal, industrial, and agricultural use. The river also is home to one of the largest shipping areas in the United States, the Delaware River Port Complex. The Basin contains more than 1 million acres of wetlands that are habitats for numerous species. Approximately three-fourths of the nontidal portion of the river (150 miles) is part of the National Wild and Scenic Rivers System, and the Delaware Estuary is identified as a priority estuary for the National Estuary Program under the Water Quality Act of 1987 (P.L. 100-4, 33 U.S.C. §1330).

The Basin was one of the first river basins in the nation to adopt comprehensive water quality standards, and the river is often cited as a success story for its water quality achievements. Water quality conditions in the Delaware River Basin have improved over the last decade, including higher levels of dissolved oxygen, lower overall nutrient concentrations, and improved water clarity. Due in part to these improvements, many fish populations have returned or rebounded in the Basin. However, certain stretches of the river contain elevated concentrations of toxic substances, high water temperatures, and excess nutrients. Also, some species populations, such as oysters, appear to be declining.

Some experts insist that greater conservation efforts and better coordination among stakeholders are needed for the Basin. Others contend that the status quo should be maintained, considering previous success. Many in Congress are interested in the restoration and development of the Basin because it drains into the Delaware Estuary, a priority estuary for the National Estuary Program and its economic and environmental value.

Figure 1. Delaware River Basin Area



Source: Delaware River Basin Commission.

Note: The area of the Basin in each state is marked by a different color.

Delaware River Basin Commission

The DRBC has a five-member board comprised of the four Basin state governors and a federal representative from the U.S. Army Corps of Engineers (USACE). The DRBC created a Comprehensive Plan (most recently adopted in July 2001) to manage the river to meet the goals specified in the compact, including, among others, to effectively reduce flood damage; conserve and develop groundwater and surface water supplies; develop recreational facilities; promote related forestry, soil conservation, and watershed projects; protect and aid fisheries; improve navigation; and abate and control stream pollution.

To accomplish these goals, the DRBC has the authority to approve, construct, operate, and regulate projects and facilities that use the Basin's water resources. The DRBC also can address issues outside the Basin if they have a substantial effect on the Basin's water supply and water quality or conflict with the DRBC's comprehensive plan.

The DRBC is funded by the signatory parties, project review fees, fines, and grants. In 1988, the DRBC agreed that each representing entity would apportion contributions to fund annual expenses. The apportionments are Delaware

(12.5%), New York (17.5%), New Jersey (25%), Pennsylvania (25%), and the federal government (20%). The federal share has been paid once by USACE since 1996 (in 2009), thus making a cumulative federal shortfall from 1996 through June 2021 of $16.4 million. Other federal conservation and management activities in the Basin are conducted by FWS, the National Oceanic and Atmospheric Administration (NOAA), USACE, the Environmental Protection Agency (EPA), and the U.S. Department of Agriculture (USDA). The U.S. Geological Survey (USGS) is actively involved in research and monitoring activities that support the Basin, including the pilot of its Next-Generation Water Observing System.

Delaware River Basin Restoration Program

The purposes of this program are to conserve and restore fish and wildlife populations and habitats and to improve water quality in the Basin. The program also aims to improve flood damage mitigation and water management, to provide opportunities for public access and recreation in the Basin, and to support environmentally sensitive development. The WIIN Act authorizes a basin-wide strategy in which FWS, in coordination with federal and nonfederal entities (including the DRBC), prioritizes conservation projects. The WIIN Act establishes a grant program under the Basin Restoration Program, which is authorized to implement the strategy through grants that have a federal cost share of no more than 50%.

The grant program is administered by the National Fish and Wildlife Federation. The authorization for the Basin Restoration Program is set to sunset after September 30, 2023. The Basin Restoration Program receives annual appropriations through FWS in addition to supplemental funding provided by the Infrastructure Investment and Jobs Act (IIJA; P.L. 117-58), which appropriates $5.2 million annually from FY2022 through FY2026. Note that these are separate appropriations from those provided to the DRBC.

Since 2018, the program has provided $26.6 million to 123 projects, generating matching funds of $46.0 million, according to FWS. Appropriations from FY2020 to FY2022 are provided in **Table 1**.

Table 1. Delaware River Basin Restoration Program Appropriations (FY2020-FY2022) and Request (FY2023)

(in $millions)

FY2020	FY2021	FY2022	FY2023 Request
$9.7	$10.0	$10.5 in addition to $5.2 from IIJA	Not specified $5.2 from IIJA will supplement appropriations

Source: Fish and Wildlife Service Budget Justifications and annual appropriations laws.

Note: IIJA = Infrastructure Investment and Jobs Act (P.L. 117-58).

Legislation in the 117th Congress

In the 117th Congress, H.R. 6949 and S. 3767, the Delaware River Basin Conservation Reauthorization Act of 2022, would amend Section 3504 of the WIIN Act by increasing the federal cost share for grants to 90% for small, rural, or disadvantaged communities and would allow the Secretary of the Interior to waive the nonfederal cost share under certain circumstances. The WIIN Act currently restricts the federal share to no more than 50% for all grant-funded projects. The bills would also repeal Section 3506 of the WIIN Act, which prohibits use of funds for federal acquisition of interests in land and would extend the sunset for the Basin Restoration Program to September 30, 2030. Pending bills do not address the authorization for appropriations.

Issues for Congress

Congress may consider certain issues when considering pending legislation on the Basin Restoration Program, including the duration of the program, use and amount of federal appropriations for the program, and administration of the program.

Some stakeholders supporting H.R. 6949 and S. 3767 assert that reauthorizing the program would help address effects of climate change on the ecosystem and better support disadvantaged communities by lowering their cost share for receiving funds. Further, these stakeholders assert that extending the sunset for authorizing the Basin Restoration Program would allow it to receive all appropriations from the IIJA and additional federal appropriations. The use of federal funds to acquire lands could increase federal control over conservation lands and lower the tax base.

Some stakeholders support additional federal funding for conservation. Other stakeholders contend that the recent influx of appropriations from the IIJA renders additional conservation funding unnecessary without justification for additional funding. Including supplemental appropriations from the IIJA, annual federal contributions for restoration in the Delaware River Basin since FY2020 are below federal spending levels for other comparable river basins and aquatic ecosystems, such as the Long Island Sound and Puget Sound.

Restoration and conservation activities in the Basin focus on projects and activities that improve plant and wildlife habitats, soil conservation, water quality, water supply, and watershed management. Congress may question if FWS is the appropriate agency to administer the Basin Restoration Program. An alternative might be the EPA due to its expertise with aquatic restoration initiatives and water issues. EPA administers several large aquatic ecosystem restoration initiatives under its Geographic Programs activity, such as the Chesapeake Bay and Long Island Sound restoration initiatives. Further, EPA staff members serve on several of the DRBC's advisory committees. In contrast, Congress may continue to support the status quo for continuity with FWS and expertise that NFWF has in administering grant programs for ecosystem restoration.

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