



7040-01

## **SUSQUEHANNA RIVER BASIN COMMISSION**

### **18 CFR Parts 806 and 808**

#### **Review and Approval of Projects; Hearings and Enforcement Actions**

**AGENCY:** Susquehanna River Basin Commission.

**ACTION:** Final rule.

**SUMMARY:** This document contains rules that would amend the regulations of the Susquehanna River Basin Commission (Commission) to clarify application requirements and standards for review of projects, add a subpart to provide for registration of grandfathered projects, and revise requirements dealing with hearings and enforcement actions. These rules are designed to enhance the Commission's existing authorities to manage the water resources of the basin and add regulatory clarity.

**DATES:** This rule is effective July 1, 2017, except for the amendments to § 806.4(a)(1)(iii) and (a)(2)(iv) and the addition of subpart E to part 806 which are effective January 1, 2018.

**ADDRESSES:** Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110-1788.

**FOR FURTHER INFORMATION CONTACT:** Jason E. Oyler, Esq., General Counsel, telephone: 717-238-0423, ext. 1312; fax: 717-238-2436; e-mail: [joyler@srbc.net](mailto:joyler@srbc.net). Also, for further information on the final rulemaking, including the comment response document, visit the Commission's website at [www.srbc.net](http://www.srbc.net).

**SUPPLEMENTARY INFORMATION:** Notice of proposed rulemaking was published in the *Federal Register* on September 21, 2016 (81 FR 64812); *New York Register* on October 5, 2016; *Pennsylvania Bulletin* on October 8, 2016; and *Maryland Register* on

October 14, 2017. The Commission convened four public hearings: on November 3, 2016, in Harrisburg, Pennsylvania; on November 9, 2016, in Binghamton, New York; on November 10, 2016, in Williamsport, Pennsylvania; and on December 8, 2016, in Annapolis, Maryland. A written comment period was held open through January 30, 2017.

The Commission received 14 written public comments in addition to testimony received at the public hearings. The Commission has prepared a comment response document, which is available to the public at [www.srbc.net](http://www.srbc.net). Comments that led to a change to the proposed rulemaking and their responses are discussed below.

**Registration of Grandfathered Projects, Subpart E and § 806.4(a)(1)(iii) and (a)(2)(iv)**

*Comment:* The Commission should allow projects to register a grandfathered amount previously determined by the Commission if it is not seeking a higher amount through the registration process.

*Response:* The Commission agrees that previous grandfathering determinations should be honored if the project wishes to register that amount. A new paragraph (c) is added in § 806.44 allowing the Executive Director to use past grandfathering determinations, and revisions are made to § 806.42(b) allowing the Commission to waive certain registration information if a project is relying on a past grandfathering determination.

*Comment:* Ongoing reporting requirements need to be linked to member jurisdiction reporting to avoid duplication of effort and confusion.

*Response:* The Commission agrees with the commenter that it is important to avoid unnecessary duplication of effort with state law requirements. Section 806.43(c) notes

that if quantity reporting is required by the member jurisdiction where the project is located, the Commission may accept that reporting to satisfy the requirements of this paragraph. This evidences the Commission's intent to use its best efforts to accept state reporting requirements where appropriate. The Commission will add language to §§ 806.42(a)(6) and 806.43(c) to clarify its intention to rely on member jurisdiction reporting where it is able, and that any additional reporting required will be because it is not duplicated by the member jurisdiction. A new § 806.43(d) is added to emphasize the commitment of the Commission and its member jurisdiction to share all reporting data and to further the goal of creating a unified data set for all agencies involved.

*Comment:* The proposed rule at § 806.4(a)(1)(iii)(A) and (a)(2)(iv)(A) changes the current rule that allows a grandfathered consumptive use an additional increase of up to 20,000 gpd and a grandfathered withdrawal an additional increase of up to 100,000 gpd before review and approval of the grandfathered activity is triggered. This leeway should be restored for grandfathered projects.

*Response:* In most instances, the registration process will allow grandfathered projects sufficient margin for operational flexibility. However, the Commission agrees that the registration process should not put a project in jeopardy of needing review and approval subsequent to registration absent a change to the project. A new factor is added as § 806.44(b)(4) that allows the Executive Director to consider whether the grandfathered amount includes an operational margin of safety.

*Comment:* The proposed rule provides that the determination of the grandfathered quantity will be based on the most recent data. This may be too restrictive and projects should be allowed to submit more than the last five years of data and where such data is

submitted, the Executive Director should base the determination under § 806.44 on the peak 30-day average for withdrawals and consumptive uses shown by the data.

*Response:* The Commission agrees that the factor as written could be clarified and the final rule reflects a revision to § 806.44(b)(1) to allow more than a minimum of five years of data to be submitted and that the Executive Director will consider the withdrawal and use data and the peak consecutive 30-day average shown by all the data submitted.

### **Consumptive Use Mitigation, § 806.22**

*Comments:* The Commission should not adopt the Consumptive Use Mitigation Policy and the changes to the Consumptive Use Mitigation Rule.

The Commission should not shift the responsibility for physical consumptive use mitigation to project sponsors because project sponsor based mitigation will be more balkanized and less effective and the Commission has powerful tools to set up projects to provide such mitigation from the Compact.

The mitigation plan proposal should be removed or smaller projects should be able to have an abbreviated consumptive use mitigation alternative analysis.

New consumptive use mitigation requirements should not be applied retroactively to existing projects upon renewal.

The proposed rule should be revised to allow greater use of groundwater storage and quarries and be more flexible with respect to the “no impacts” to surface water requirements for such mitigation.

The Commission should focus its mitigation requirements to the low flow period.

All references to water critical planning areas should be removed. Article 11 of the Compact provides for designation of protected areas. This concept appears to circumvent those procedures.

Water critical areas should not be based on member jurisdiction planning areas and it should not be a mechanism to require mitigation for pre-compact consumptive use.

*Response:* The Commission has reviewed the detailed comments regarding how the Commission requires consumptive use mitigation and the options of projects to provide such mitigation. The Commission will further examine and reevaluate its policies and procedures for consumptive use and consumptive use mitigation in a more comprehensive fashion. As a result, the Commission will not move forward with the changes to the Consumptive Use Mitigation Policy and the consumptive use mitigation rule as follows. The definition of “water critical area” in § 806.3 is removed and all references to water critical areas are removed from §§ 806.22 and 808.1. The reference and changes associated with a mitigation plan in § 806.22(b) are removed. The changes associated with amending the 90 day mitigation requirement to 45 days in § 806.22(b)(1)(i) and (ii) are removed and reserved for the reevaluation process for consumptive use mitigation described above.

**Project Review Application Procedures and Standards for Review and Approval—  
18 CFR Part 806, Subparts B and C**

*Comment:* The Commission should clarify how the alternatives analysis under § 806.14(b)(2)(v) differs from the previous provision in the current rules at § 806.14(b)(1)(iii) and specify what is expected from applicants.

*Response:* The purpose for this requirement is to document the project sponsor's consideration of alternatives during planning of the proposed project to include, but not be limited to, identification of reasonable alternatives to the proposed water withdrawal project, the extent of the project sponsor's economic and technical investigation, the adequacy of the source to meet the demand, an assessment of the potential environmental impact, and measures for avoidance or minimization of adverse impact of each alternative. Specifically, the alternatives analysis should include identification of reasonable alternative water sources and locations, including opportunities for uses of lesser quality waters; project footprint and infrastructure; opportunities for water conservation or water saving technology; requirements of the uses of the water as related to the proposed locations; the economic feasibility of the alternative(s) and technical opportunities or limitations identified in the evaluation of reasonable alternate sites. The Commission is preparing a draft policy to outline how alternative analyses should be conducted and evaluated, and will release it for public comment prior to consideration for Commission adoption. In addition, on final rulemaking, the Commission will adjust the language of § 806.14(b)(1)(v) to make clear that the analysis is needed only for new projects and for major modifications that seek to increase the surface water withdrawal.

*Comment:* The Commission should reconcile the application requirements in § 806.14 to recognize that the potential for waiver of the aquifer testing requirements in § 806.12.

*Response:* The Commission agrees and has revised § 806.14(b)(2)(i) and (d)(2)(i).

*Comment:* The Commission should clarify whether renewals that involve a major modification should be handled under the new application and major modification standards in § 806.14(a) and (b) or in the renewal standards in § 806.14(c) and (d).

*Response:* The Commission agrees that the rule should be clarified and proposes changes to § 806.14(c) and 806.14(d)(2), (4) and (6) to establish that renewal applications, with either minor or major modifications, are subject to § 806.14(c) and (d).

*Comment:* The Commission should accept other types of certified mail proof of delivery beyond the US Postal Service under § 806.15(g).

*Response:* The Commission agrees and § 806.15(g) is revised to include the verified return delivery receipt from a comparable delivery service to the U.S. Postal Service.

*Comment:* The Commission should revise § 806.15(b)(3) to clarify which property is subject to the notice requirements and should read “where the property *of such property owner* is served by a public water supply.”

*Response:* The Commission agrees and the final rulemaking is revised accordingly.

*Comment:* The Commission should exempt AMD passive treatment systems from the requirements for mining and construction dewatering under §§ 806.14(b)(6) and (d)(6) and 806.23(b)(5).

*Response:* The Commission has not extended its review jurisdiction over *passive* AMD treatment facilities and nothing in the proposed rule was meant to alter that long standing determination. Accordingly, the final rule contains revisions to §§ 806.14(b)(6) and (d)(6) and 806.23(b)(5) to remove the word “gravity-drained” and clarify its application to “AMD facilities that qualify as a withdrawal.”

### **Miscellaneous Changes**

*Comment:* Including in § 808.2(a) that the 30 day appeal period can run from publication on the Commission’s website creates issues, including knowing whether the appeal

period runs from publication on the website or the *Federal Register* and the fact that it is not always clear when something is posted to a website or is easily found on the website.

*Response:* The final rule revises § 808.2(a) to remove this language. The 30-day appeal period for third party appeals will run from the date of publication in the *Federal Register*.

*Comment:* The addition of “or other fluids associated with the development of natural gas resources” to the definition of “production fluids” under § 806.3 is inaccurate and over-inclusive. The revised definition of production fluids would cause confusion with the member jurisdiction terminology. The commenter is supportive of the stated goal of this change and proposed additional language to be added in other parts of regulations.

*Response:* The final rule removes the change to the definition of “production fluid.” The revision proposed by the commenter will be evaluated for inclusion in a future rulemaking.

*Comment:* The addition of “consumptive use” to the definition of “facility” in § 806.3 is unwarranted as the definition of “facility” matches the definition in the Compact.

*Response:* The final rule will remove the amendment to the definition of “facility”. However, the definition of facility includes plants, structures, machinery and equipment acquired, constructed, operated or maintained for the beneficial use of water resources that includes the consumptive use of water.

The Commission also is making additional housekeeping changes on the final rulemaking:

- 1) § 806.6(b)(6) (related to transfers of approvals) was added to recognize registered grandfathered aspects of a project under subpart E.

- 2) The phrase “hydro report” in § 806.14(d)(2)(ii) was clarified to “hydrogeologic report”.
- 3) The word “Commission’s” is removed from § 806.41(c).

### **Transition Issues**

As noted in the DATES section, this rule will take effect on July 1, 2017, with the exception of the adoption of subpart E (related to registration of grandfathered projects) and the corresponding changes to § 806.4(a)(1)(iii) and (a)(2)(iv), which take effect on January 1, 2018.

Coincident with the authorization to adopt this final rulemaking, the Commission also adopted a Regulatory Program Fee Schedule that sets forth the fee for registration for grandfathered projects. This fee schedule is available on the Commission’s website at [www.srbc.net/policies/policies.htm](http://www.srbc.net/policies/policies.htm).

### **List of Subjects in 18 CFR Parts 806 and 808**

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission amends 18 CFR parts 806 and 808 as follows:

### **PART 806—REVIEW AND APPROVAL OF PROJECTS**

1. The authority citation for part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509, *et seq.*

2. Amend § 806.1 by revising paragraphs (a) and (f) to read as follows:

#### **§ 806.1 Scope.**

(a) This part establishes the scope and procedures for review and approval of projects under section 3.10 of the Susquehanna River Basin Compact, Pub. L. 91-575, 84

Stat. 1509, *et seq.*, (the compact) and establishes special standards under section 3.4(2) of the compact governing water withdrawals, the consumptive use of water, and diversions. The special standards established pursuant to section 3.4(2) shall be applicable to all water withdrawals and consumptive uses in accordance with the terms of those standards, irrespective of whether such withdrawals and uses are also subject to project review under section 3.10. This part, and every other part of 18 CFR chapter VIII, shall also be incorporated into and made a part of the comprehensive plan.

\* \* \* \* \*

(f) Any Commission forms or documents referenced in this part may be obtained from the Commission at 4423 North Front Street, Harrisburg, PA 17110, or from the Commission's website at [www.srbc.net](http://www.srbc.net).

3. In § 806.3, add, in alphabetical order, a definition for “Wetlands” to read as follows:

**§ 806.3 Definitions.**

\* \* \* \* \*

*Wetlands.* Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

\* \* \* \* \*

4. Amend § 806.4 by revising paragraphs (a) introductory text, (a)(1)(iii), (a)(2) introductory text, and (a)(2)(iv) and adding paragraph (a)(3)(vii) to read as follows:

**§ 806.4 Projects requiring review and approval.**

(a) Except for activities relating to site evaluation, to aquifer testing under § 806.12 or to those activities authorized under § 806.34, no person shall undertake any of the following projects without prior review and approval by the Commission. The project sponsor shall submit an application in accordance with subpart B of this part and shall be subject to the applicable standards in subpart C of this part.

(1) \* \* \*

(iii) With respect to projects that existed prior to January 23, 1971, any project:

(A) Registered in accordance with subpart E of this part that increases its consumptive use by any amount over the quantity determined under § 806.44;

(B) Increasing its consumptive use to an average of 20,000 gpd or more in any consecutive 30-day period; or

(C) That fails to register its consumptive use in accordance with subpart E of this part.

\* \* \* \* \*

(2) *Withdrawals.* Any project, including all of its sources, described below shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in §§ 806.21 and 806.23. Hydroelectric projects, except to the extent that such projects involve a withdrawal, shall be exempt from the requirements of this section regarding withdrawals; provided, however, that nothing in this paragraph (a)(2) shall be construed as exempting hydroelectric projects from review and approval under any other category of project requiring review and approval as set forth in this section, § 806.5, or part 801 of this chapter. The taking or removal of water by a public

water supplier indirectly through another public water supply system or another water user's facilities shall constitute a withdrawal hereunder.

\* \* \* \* \*

(iv) With respect to groundwater projects that existed prior to July 13, 1978, surface water projects that existed prior to November 11, 1995, or projects that existed prior to January 1, 2007, with multiple sources involving a withdrawal of a consecutive 30-day average of 100,000 gpd or more that did not require Commission review and approval, any project:

(A) Registered in accordance with subpart E of this part that increases its withdrawal by any amount over the quantity determined under § 806.44;

(B) Increasing its withdrawal individually or cumulatively from all sources to an average of 100,000 gpd or more in any consecutive 30-day period;  
or

(C) That fails to register its withdrawals in accordance with subpart E of this part.

\* \* \* \* \*

(3) \* \* \*

(vii) The diversion of any flowback or production fluids from hydrocarbon development projects located outside the basin to an in-basin treatment or disposal facility authorized under separate government approval to accept flowback or production fluids, shall not be subject to separate review and approval as a diversion under this paragraph (c)(3), provided the fluids are handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.

\* \* \* \* \*

5. Amend § 806.6 by adding paragraph (b)(6) to read as follows:

**§ 806.6 Transfer of approvals.**

\* \* \* \* \*

(b) \* \* \*

(6) The project is registered under subpart E of this part.

\* \* \* \* \*

6. Amend § 806.11 by revising paragraph (b) to read as follows:

**§ 806.11 Preliminary consultations.**

\* \* \* \* \*

(b) Except for project sponsors of electric power generation projects under § 801.12(c)(2) of this chapter, preliminary consultation is optional for the project sponsor (except with respect to aquifer test plans under § 806.12) but shall not relieve the sponsor from complying with the requirements of the compact or with this part.

7. Amend § 806.12 by revising paragraph (a) and adding paragraph (f) to read as follows:

**§ 806.12 Constant-rate aquifer testing.**

(a) Prior to submission of an application pursuant to § 806.13, a project sponsor seeking approval for a new groundwater withdrawal, a renewal of an expiring groundwater withdrawal, or an increase of a groundwater withdrawal shall perform a constant-rate aquifer test in accordance with this section.

\* \* \* \* \*

(f) Review of submittals under this section may be terminated by the Commission in accordance with the procedures set forth in § 806.16.

8. Revise § 806.14 to read as follows:

**§ 806.14 Contents of application.**

(a) Applications for a new project or a major modification to an existing approved project shall include, but not be limited to, the following information and, where applicable, shall be subject to the requirements in paragraph (b) of this section and submitted on forms and in the manner prescribed by the Commission.

(1) Identification of project sponsor including any and all proprietors, corporate officers or partners, the mailing address of the same, and the name of the individual authorized to act for the sponsor.

(2) Project location, including latitude and longitude coordinates in decimal degrees accurate to within 10 meters, the project location displayed on a map with a 7.5-minute USGS topographic base, and evidence of legal access to the property upon which the project is proposed.

(3) Project description, including: purpose, proposed quantity to be withdrawn or consumed, if applicable, and identification of all water sources related to the project including location and date of initiation of each source.

(4) Anticipated impact of the project, including impacts on existing water withdrawals, nearby surface waters, and threatened or endangered species and their habitats.

(5) The reasonably foreseeable need for the proposed quantity of water to be withdrawn or consumed, including supporting calculations, and the projected demand for the term of the approval.

(6) A metering plan that adheres to § 806.30.

(7) Evidence of coordination and compliance with member jurisdictions regarding all necessary permits or approvals required for the project from other federal, state or local government agencies having jurisdiction over the project.

(8) Project estimated completion date and estimated construction schedule.

(9) Draft notices required by § 806.15.

(10) The Commission may also require the following information as deemed necessary:

(i) Engineering feasibility.

(ii) Ability of the project sponsor to fund the project.

(b) Additional information is required for a new project or a major modification to an existing approved project as follows.

(1) *Surface water.* (i) Water use and availability.

(ii) Project setting, including surface water characteristics, identification of wetlands, and site development considerations.

(iii) Description and design of intake structure.

(iv) Anticipated impact of the proposed project on local flood risk, recreational uses, fish and wildlife, and natural environment features.

(v) For new projects and major modifications to increase a withdrawal, alternatives analysis for a withdrawal proposed in settings with a drainage area of

50 miles square or less, or in a waterway with exceptional water quality, or as required by the Commission.

(2) *Groundwater*—(i) With the exception of mining related withdrawals solely for the purpose of dewatering; construction dewatering withdrawals and withdrawals for the sole purpose of groundwater or below water table remediation generally which are addressed in paragraph (b)(6) of this section, the project sponsor shall provide an interpretative report that includes all monitoring and results of a constant-rate aquifer test consistent with § 806.12 and an updated groundwater availability estimate if changed from the aquifer test plan, unless a request for a waiver of the requirements of § 806.12 is granted. The project sponsor shall obtain Commission approval of the test procedures prior to initiation of the constant-rate aquifer test.

(ii) Water use and availability.

(iii) Project setting, including nearby surface water features.

(iv) Groundwater elevation monitoring plan for all production wells.

(v) Alternatives analysis as required by the Commission.

(3) *Consumptive use*. (i) Consumptive use calculations, and a mitigation plan consistent with § 806.22(b).

(ii) Water conservation methods, design or technology proposed or considered.

(iii) Alternatives analysis as required by the Commission.

(4) *Into basin diversions*. (i) Provide the necessary information to demonstrate that the proposed project will meet the standards in § 806.24(c).

(ii) Identification of the source and water quality characteristics of the water to be diverted.

(5) *Out of basin diversions.* (i) Provide the necessary information to demonstrate that the proposed project will meet the standards in § 806.24(b).

(ii) Project setting.

(6) *Other projects.* Other projects, including without limitation, mine dewatering, construction dewatering, water resources remediation projects, and AMD remediation facilities that qualify as a withdrawal.

(i) In lieu of aquifer testing, report(s) prepared for any other purpose or as required by other governmental regulatory agencies that provides a demonstration of the hydrogeologic and/or hydrologic effects and limits of said effects due to operation of the proposed project and effects on local water availability.

(ii) [Reserved]

(c) All applications for renewal of expiring approved projects, including those with minor or major modifications, shall include, but not be limited to, the following information, and, where applicable, shall be subject to the requirements in paragraph (d) of this section and submitted on forms and in the manner prescribed by the Commission.

(1) Identification of project sponsor including any and all proprietors, corporate officers or partners, the mailing address of the same, and the name of the individual authorized to act for the sponsor.

(2) Project location, including latitude and longitude coordinates in decimal degrees accurate to within 10 meters, the project location displayed on map with a 7.5-

minute USGS topographic base, and evidence of legal access to the property upon which the project is located.

(3) Project description, to include, but not be limited to: purpose, proposed quantity to be withdrawn or consumed if applicable, identification of all water sources related to the project including location and date of initiation of each source, and any proposed project modifications.

(4) The reasonably foreseeable need for the requested renewal of the quantity of water to be withdrawn or consumed, including supporting calculations, and the projected demand for the term of the approval.

(5) An as-built and approved metering plan.

(6) Copies of permits from member jurisdictions regarding all necessary permits or approvals obtained for the project from other federal, state, or local government agencies having jurisdiction over the project.

(7) Copy of any approved mitigation or monitoring plan and any related as-built for the expiring project.

(8) Demonstration of registration of all withdrawals or consumptive uses in accordance with the applicable state requirements.

(9) Draft notices required by § 806.15.

(d) Additional information is required for the following applications for renewal of expiring approved projects.

(1) *Surface water.* (i) Historic water use quantities and timing of use.

(ii) Changes to stream flow or quality during the term of the expiring approval.

(iii) Changes to the facility design.

(iv) Any proposed changes to the previously authorized purpose.

(2) *Groundwater*—(i) The project sponsor shall provide an interpretative report that includes all monitoring and results of any constant-rate aquifer testing previously completed or submitted to support the original approval. In lieu of a testing report, historic operational data pumping and elevation data may be considered, as a request for waiver of the requirements of § 806.12. Those projects that did not have constant-rate aquifer testing completed for the original approval that was consistent with § 806.12 or sufficient historic operational pumping and groundwater elevation data may be required to complete constant-rate aquifer testing consistent with § 806.12, prepare and submit an interpretative report that includes all monitoring and results of any constant-rate aquifer test.

(ii) An interpretative report providing analysis and comparison of current and historic water withdrawal and groundwater elevation data with previously completed hydrogeologic report.

(iii) Current groundwater availability analysis assessing the availability of water during a 1-in-10 year recurrence interval under the existing conditions within the recharge area and predicted for term of renewal (i.e., other users, discharges, and land development within the groundwater recharge area).

(iv) Groundwater elevation monitoring plan for all production wells.

(v) Changes to the facility design.

(vi) Any proposed changes to the previously authorized purpose.

(3) *Consumptive use.* (i) Consumptive use calculations, and a copy of the approved plan or method for mitigation consistent with § 806.22.

(ii) Changes to the facility design.

(iii) Any proposed changes to the previously authorized purpose.

(4) *Into basin diversion.* (i) Provide the necessary information to demonstrate that the proposed project will meet the standards in § 806.24(c).

(ii) Identification of the source and water quality characteristics of the water to be diverted.

(iii) Changes to the facility design.

(iv) Any proposed changes to the previously authorized purpose.

(5) *Out of basin diversion.* (i) Historic water use quantities and timing of use.

(ii) Changes to stream flow or quality during the term of the expiring approval.

(iii) Changes to the facility design.

(iv) Any proposed changes to the previously authorized purpose,

(6) *Other projects.* Other projects, including without limitation, mine dewatering, water resources remediation projects, and AMD facilities that qualify as a withdrawal.

(i) Copy of approved report(s) prepared for any other purpose or as required by other governmental regulatory agencies that provides a demonstration of the hydrogeologic and/or hydrologic effects and limits of said effects due to operation of the project and effects on local water availability.

(ii) Any data or reports that demonstrate effects of the project are consistent with those reports provided in paragraph (d)(6)(i) of this section.

(iii) Demonstration of continued need for expiring approved water source and quantity.

(iv) Changes to the facility design.

(v) Any proposed changes to the previously authorized purpose.

(e) A report about the project prepared for any other purpose, or an application for approval prepared for submission to a member jurisdiction, may be accepted by the Commission provided the said report or application addresses all necessary items on the Commission's form or listed in this section, as appropriate.

(f) Applications for minor modifications must be complete and will be on a form and in a manner prescribed by the Commission. Applications for minor modifications must contain the following:

(1) Description of the project;

(2) Description of all sources, consumptive uses and diversions related to the project;

(3) Description of the requested modification;

(4) Statement of the need for the requested modification; and

(5) Demonstration that the anticipated impact of the requested modification will not adversely impact the water resources of the basin.

(g) For any applications, the Executive Director or Commission may require other information not otherwise listed in this section.

9. Amend § 806.15 by revising paragraph (a), adding paragraph (b)(3), and revising paragraph (g) to read as follows:

**§ 806.15 Notice of application.**

(a) Except with respect to paragraphs (h) and (i) of this section, any project sponsor submitting an application to the Commission shall provide notice thereof to the appropriate agency of the member State, each municipality in which the project is located, and the county and the appropriate county agencies in which the project is located. The project sponsor shall also publish notice of submission of the application at least once in a newspaper of general circulation serving the area in which the project is located. The project sponsor shall also meet any of the notice requirements set forth in paragraphs (b) through (f) of this section, if applicable. All notices required under this section shall be provided or published no later than 20 days after submission of the application to the Commission and shall contain a description of the project, its purpose, the requested quantity of water to be withdrawn, obtained from sources other than withdrawals, or consumptively used, and the address, electronic mail address, and phone number of the project sponsor and the Commission. All such notices shall be in a form and manner as prescribed by the Commission.

(b) \* \* \*

(3) For groundwater withdrawal applications, the Commission or Executive Director may allow notification of property owners through alternate methods where the property of such property owner is served by a public water supply.

\* \* \* \* \*

(g) The project sponsor shall provide the Commission with a copy of the United States Postal Service return receipt or the verified return receipt from a comparable delivery service for the notifications to agencies of member States, municipalities and appropriate county agencies required under paragraph (a) of this section. The project

sponsor shall also provide certification on a form provided by the Commission that it has published the newspaper notice(s) required by this section and made the landowner notifications as required under paragraph (b) of this section, if applicable. Until these items are provided to the Commission, processing of the application will not proceed. The project sponsor shall maintain all proofs of publication and records of notices sent under this section for the duration of the approval related to such notices.

\* \* \* \* \*

10. Amend § 806.21 by revising paragraphs (a) and (c)(1) to read as follows:

**§ 806.21 General standards.**

(a) A project shall be feasible and not be detrimental to the proper conservation, development, management, or control of the water resources of the basin.

\* \* \* \* \*

(c) \* \* \*

(1) The Commission may suspend the review of any application under this part if the project is subject to the lawful jurisdiction of any member jurisdiction or any political subdivision thereof, and such member jurisdiction or political subdivision has disapproved or denied the project. Where such disapproval or denial is reversed on appeal, the appeal is final, and the project sponsor provides the Commission with a certified copy of the decision, the Commission shall resume its review of the application. Where, however, an application has been suspended hereunder for a period greater than three years, the Commission may terminate its review. Thereupon, the Commission shall notify the project sponsor of such termination and that the application fee paid by the project sponsor is forfeited. The project sponsor may reactivate the terminated application

by reapplying to the Commission, providing evidence of its receipt of all necessary governmental approvals and, at the discretion of the Commission, submitting new or updated information.

\* \* \* \* \*

11. Amend § 806.22 by revising paragraphs (b) introductory text, (b)(3), (e), and (f)(3) and (9) to read as follows:

**§ 806.22 Standards for consumptive use of water.**

\* \* \* \* \*

(b) *Mitigation.* All project sponsors whose consumptive use of water is subject to review and approval under § 806.4, § 806.5, § 806.6, or § 806.17 shall mitigate such consumptive use. Except to the extent that the project involves the diversion of the waters out of the basin, public water supplies shall be exempt from the requirements of this section regarding consumptive use; provided, however, that nothing in this section shall be construed to exempt individual consumptive users connected to any such public water supply from the requirements of this section. Mitigation may be provided by one or a combination of the following:

\* \* \* \* \*

(3) Provide monetary payment to the Commission, for all water consumptively used over the course of a year, in an amount and manner prescribed by the Commission.

\* \* \* \* \*

(e) *Approval by rule for consumptive uses.* (1) *General rule.* Except with respect to projects involving hydrocarbon development subject to the provisions of paragraph (f) of this section, any project who is solely supplied water for consumptive use by public

water supply may be approved by the Executive Director under this paragraph (e) in accordance with the following, unless the Executive Director determines that the project cannot be adequately regulated under this approval by rule.

(2) *Notification of intent.* Prior to undertaking a project or increasing a previously approved quantity of consumptive use, the project sponsor shall submit a notice of intent (NOI) on forms prescribed by the Commission, and the appropriate application fee, along with any required attachments.

(3) *Time of notice.* Within 20 days after submittal of an NOI under paragraph (e)(2) of this section, the project sponsor shall satisfy the notice requirements set forth in § 806.15.

(4) *Metering, daily use monitoring, and quarterly reporting.* The project sponsor shall comply with metering, daily use monitoring, and quarterly reporting as specified in § 806.30.

(5) *Standard conditions.* The standard conditions set forth in § 806.21 shall apply to projects approved by rule.

(6) *Mitigation.* The project sponsor shall comply with mitigation in accordance with paragraph (b)(2) or (3) of this section.

(7) *Compliance with other laws.* The project sponsor shall obtain all necessary permits or approvals required for the project from other federal, state or local government agencies having jurisdiction over the project. The Commission reserves the right to modify, suspend or revoke any approval under this paragraph (e) if the project sponsor fails to obtain or maintain such approvals.

(8) *Decision.* The Executive Director may grant, deny, suspend, revoke, modify or condition an approval to operate under this approval by rule, or renew an existing approval by rule previously granted hereunder, and will notify the project sponsor of such determination, including the quantity of consumptive use approved.

(9) *Term.* Approval by rule shall be effective upon written notification from the Executive Director to the project sponsor, shall expire 15 years from the date of such notification, and shall be deemed to rescind any previous consumptive use approvals.

(f) \* \* \*

(3) Within 20 days after submittal of an NOI under paragraph (f)(2) of this section, the project sponsor shall satisfy the notice requirements set forth in § 806.15.

\* \* \* \* \*

(9) The Executive Director may grant, deny, suspend, revoke, modify or condition an approval to operate under this approval by rule, or renew an existing approval by rule granted hereunder, and will notify the project sponsor of such determination, including the sources and quantity of consumptive use approved. The issuance of any approval hereunder shall not be construed to waive or exempt the project sponsor from obtaining Commission approval for any water withdrawals or diversions subject to review pursuant to § 806.4(a). Any sources of water approved pursuant to this section shall be further subject to any approval or authorization required by the member jurisdiction.

\* \* \* \* \*

12. Amend § 806.23 by revising paragraphs (b)(2) and (b)(3)(i) and adding paragraph (b)(5) to read as follows:

**§ 806.23 Standards for water withdrawals.**

\* \* \* \* \*

(b) \* \* \*

(2) The Commission may deny an application, limit or condition an approval to ensure that the withdrawal will not cause significant adverse impacts to the water resources of the basin. The Commission may consider, without limitation, the following in its consideration of adverse impacts: Lowering of groundwater or stream flow levels; groundwater and surface water availability, including cumulative uses; rendering competing supplies unreliable; affecting other water uses; causing water quality degradation that may be injurious to any existing or potential water use; affecting fish, wildlife or other living resources or their habitat; causing permanent loss of aquifer storage capacity; affecting wetlands; or affecting low flow of perennial or intermittent streams.

(3) \* \* \*

(i) Limit the quantity, timing or rate of withdrawal or level of drawdown, including requiring a total system limit.

\* \* \* \* \*

(5) For projects consisting of mine dewatering, water resources remediation, and AMD facilities that qualify as a withdrawal, review of adverse impacts will have limited consideration of groundwater availability, causing permanent loss of aquifer storage and lowering of groundwater levels provided these projects are operated in accordance with the laws and regulations of the member jurisdictions.

13. Amend § 806.30 by revising the introductory text and paragraph (a)(4) and adding paragraph (a)(8) to read as follows:

**§ 806.30 Monitoring.**

The Commission, as part of the project review, shall evaluate the proposed methodology for monitoring consumptive uses, water withdrawals and mitigating flows, including flow metering devices, stream gages, and other facilities used to measure the withdrawals or consumptive use of the project or the rate of stream flow. If the Commission determines that additional flow measuring, metering or monitoring devices are required, these shall be provided at the expense of the project sponsor, installed in accordance with a schedule set by the Commission, and installed per the specifications and recommendations of the manufacturer of the device, and shall be subject to inspection by the Commission at any time.

(a) \* \* \*

(4) Measure groundwater levels in all approved production and other wells, as specified by the Commission.

\* \* \* \* \*

(8) Perform other monitoring for impacts to water quantity, water quality and aquatic biological communities, as specified by the Commission.

\* \* \* \* \*

14. Amend § 806.31 by revising paragraphs (d) and (e) to read as follows:

**§ 806.31 Term of approvals.**

\* \* \* \* \*

(d) If the Commission determines that a project has been abandoned, by evidence of nonuse for a period of time and under such circumstances that an abandonment may be inferred, the Commission may revoke the approval for such withdrawal, diversion or consumptive use.

(e) If a project sponsor submits an application to the Commission no later than six months prior to the expiration of its existing Commission docket approval or no later than one month prior to the expiration of its existing ABR or NOI approval, the existing approval will be deemed extended until such time as the Commission renders a decision on the application, unless the existing approval or a notification in writing from the Commission provides otherwise.

15. Add subpart E to read as follows:

#### **Subpart E-Registration of Grandfathered Projects**

Sec.

806.40 Applicability.

806.41 Registration and eligibility.

806.42 Registration requirements.

806.43 Metering and monitoring requirements.

806.44 Determination of grandfathered quantities.

806.45 Appeal of determination.

#### **§ 806.40 Applicability.**

(a) This subpart is applicable to the following projects, which shall be known as grandfathered projects:

(1) The project has an associated average consumptive use of 20,000 gpd or more in any consecutive 30-day period all or part of which is a pre-compact consumptive use that has not been approved by the Commission pursuant to § 806.4.

(2) The project has an associated groundwater withdrawal average of 100,000 gpd or more in any consecutive 30-day period all or part of which was initiated prior to July 13, 1978, that has not been approved by the Commission pursuant to § 806.4.

(3) The project has an associated surface water withdrawal average of 100,000 gpd or more in any consecutive 30-day period all or part of which was initiated prior to November 11, 1995, that has not been approved by the Commission pursuant to § 806.4.

(4) The project (or an element of the project) has been approved by the Commission but has an associated consumptive use or water withdrawal that has not been approved by the Commission pursuant to § 806.4.

(5) Any project not included in paragraphs (a)(2) through (4) of this section that has a total withdrawal average of 100,000 gpd or more in any consecutive 30-day average from any combination of sources which was initiated prior to January 1, 2007, that has not been approved by the Commission pursuant to § 806.4.

(6) Any source associated with a project included in paragraphs (a)(2) through (5) of this section regardless of quantity.

(b) A project, including any source of the project, that can be determined to have been required to seek Commission review and approval under the pertinent regulations in place at the time is not eligible for registration as a grandfathered project.

**§ 806.41 Registration and eligibility.**

(a) Project sponsors of grandfathered projects identified in § 806.40 shall submit a registration to the Commission, on a form and in a manner prescribed by the Commission, by December 31, 2019.

(b) Any grandfathered project that fails to register under paragraph (a) of this section shall be subject to review and approval under § 806.4.

(c) Any project that is not eligible to register under paragraph (a) of this section shall be subject to review and approval under § 806.4.

(d) The Commission may establish fees for obtaining and maintaining registration in accordance with § 806.35.

(e) A registration under this subpart may be transferred pursuant to § 806.6.

**§ 806.42 Registration requirements.**

(a) Registrations shall include the following information:

(1) Identification of project sponsor including any and all proprietors, corporate officers or partners, the mailing address of the same, and the name of the individual authorized to act for the sponsor.

(2) Description of the project and site in terms of:

(i) Project location, including latitude and longitude coordinates in decimal degrees accurate to within 10 meters.

(ii) Project purpose.

(3) Identification of all sources of water, including the date the source was put into service, each source location (including latitude and longitude coordinates in decimal degrees accurate to within 10 meters), and if applicable, any approved docket numbers.

(4) Identification of current metering and monitoring methods for water withdrawal and consumptive use.

(5) Identification of current groundwater level or elevation monitoring methods at groundwater sources.

(6) All quantity data for water withdrawals and consumptive use for a minimum of the previous five calendar years. If the project sponsor registering submitted the water withdrawal and consumptive use data for the previous five calendar years to a member jurisdiction, that data will satisfy this requirement. A project sponsor registering may provide supplementary data related to water withdrawals and consumptive use quantities. If quantity data are not available, any information available upon which a determination of quantity could be made.

(7) For consumptive use, description of processes that use water, identification of water returned to the Basin, history of the use, including process changes, expansions and other actions that would have an impact on the amount of water consumptively used during the past five calendar years.

(8) Based on the data provided, the quantity of withdrawal for each individual source and consumptive use the project sponsor requests to be grandfathered by the Commission.

(9) Any ownership or name changes to the project since January 1, 2007.

(b) The Commission may require any other information it deems necessary for the registration process or waive any information required under paragraph (a) of this section for projects relying on a prior determination of the Commission.

**§ 806.43 Metering and monitoring requirements.**

(a) As a part of the registration process, the Commission shall review the current metering and monitoring for grandfathered withdrawals and consumptive uses.

(b) The Commission may require a metering and monitoring plan for the project sponsor to follow.

(c) Project sponsors, as an ongoing obligation of their registration, shall report to the Commission all information specified in the grandfathering determination under § 806.44 in a form and manner determined by the Commission. If water withdrawal and consumptive use quantity reporting is required by the member jurisdiction where the project is located, the Commission shall accept that reported quantity to satisfy the requirements of this paragraph (c), unless the Commission finds that additional data is needed that is not required by the member jurisdiction.

(d) Any data generated or collected under paragraph (c) of this section will be made available to the member jurisdictions in a manner and timeframe mutually agreeable to both the Commission and the jurisdiction.

**§ 806.44 Determination of grandfathered quantities.**

(a) For each registration submitted, the Executive Director shall determine the grandfathered quantity for each withdrawal source and consumptive use.

(b) In making a determination, the following factors should be considered:

(1) The withdrawal and use data and the peak consecutive 30-day average shown by the data;

(2) The reliability and accuracy of the data and/or the meters or measuring devices;

(3) Determination of reasonable and genuine usage of the project, including any anomalies in the usage;

(4) Whether the grandfathered amount includes an operational margin of safety; and

(5) Other relevant factors.

(c) The Executive Director, in lieu of a determination under paragraph (b) of this section, may accept a previous grandfathering determination by the Commission at the request of the project sponsor.

**§ 806.45 Appeal of determination.**

(a) A final determination of the grandfathered quantity by the Executive Director must be appealed to the Commission within 30 days from actual notice of the determination.

(b) The Commission shall appoint a hearing officer to preside over appeals under this section. Hearings shall be governed by the procedures set forth in part 808 of this chapter.

**PART 808—HEARINGS AND ENFORCEMENT ACTIONS**

16. The authority citation for part 808 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509, *et seq.*

17. Revise § 808.1 to read as follows:

**§ 808.1 Public hearings.**

(a) *Required hearings.* A public hearing shall be conducted in the following instances:

(1) Addition of projects or adoption of amendments to the comprehensive plan, except as otherwise provided by section 14.1 of the compact.

(2) Review and approval of diversions.

(3) Imposition or modification of rates and charges.

(4) Determination of protected areas.

(5) Drought emergency declarations.

(6) Hearing requested by a member jurisdiction.

(7) As otherwise required by sections 3.5(4), 4.4, 5.2(e), 6.2(a), 8.4, and 10.4 of the compact.

(b) *Optional hearings.* A public hearing may be conducted by the Commission or the Executive Director in any form or style chosen by the Commission or Executive Director in the following instances:

(1) Proposed rulemaking.

(2) Consideration of projects, except projects approved pursuant to memoranda of understanding with member jurisdictions.

(3) Adoption of policies and technical guidance documents.

(4) When it is determined that a hearing is necessary to give adequate consideration to issues related to public health, safety and welfare, or protection of the environment, or to gather additional information for the record or consider new information on a matter before the Commission.

(c) *Notice of public hearing.* At least 20 days before any public hearing required by the compact, notices stating the date, time, place and purpose of the hearing including issues of interest to the Commission shall be published at least once in a newspaper of general circulation in the area affected. In all other cases, at least 20 days prior to the hearing, notice shall be posted on the Commission Web site, sent to the parties who, to the Commission's knowledge, will participate in the hearing, and sent to persons, organizations and news media who have made requests to the Commission for notices of hearings or of a particular hearing. With regard to rulemaking, hearing notices need only

be forwarded to the directors of the *New York Register*, the *Pennsylvania Bulletin*, the *Maryland Register* and the *Federal Register*, and it is sufficient that this notice appear in the *Federal Register* at least 20 days prior to the hearing and in each individual state publication at least 10 days prior to any hearing scheduled in that state.

(d) *Standard public hearing procedure.* (1) Hearings shall be open to the public. Participants may be any person, including a project sponsor, wishing to appear at the hearing and make an oral or written statement. Statements shall be made a part of the record of the hearing, and written statements may be received up to and including the last day on which the hearing is held, or within 10 days or a reasonable time thereafter as may be specified by the presiding officer.

(2) Participants are encouraged to file with the Commission at its headquarters written notice of their intention to appear at the hearing. The notice should be filed at least three days prior to the opening of the hearing.

(e) *Representative capacity.* Participants wishing to be heard at a public hearing may appear in person or be represented by an attorney or other representative. A governmental authority may be represented by one of its officers, employees or by a designee of the governmental authority.

(f) *Description of project.* When notice of a public hearing is issued, there shall be available for inspection, consistent with the Commission's Access to Records Policy, all plans, summaries, maps, statements, orders or other supporting documents which explain, detail, amplify, or otherwise describe the project the Commission is considering. Instructions on where and how the documents may be obtained will be included in the notice.

(g) *Presiding officer.* A public hearing shall be presided over by the Commission chair, the Executive Director, or any member or designee of the Commission or Executive Director. The presiding officer shall have full authority to control the conduct of the hearing and make a record of the same.

(h) *Transcript.* Whenever a project involving a diversion of water is the subject of a public hearing, and at all other times deemed necessary by the Commission or the Executive Director, a written transcript of the hearing shall be made. A certified copy of the transcript and exhibits shall be available for review during business hours at the Commission's headquarters to anyone wishing to examine them. Persons wishing to obtain a copy of the transcript of any hearing shall make arrangements to obtain it directly from the recording stenographer at their expense.

(i) *Joint hearings.* The Commission may conduct any public hearings in concert with any other agency of a member jurisdiction.

18. Revise § 808.2 to read as follows:

**§ 808.2 Administrative appeals.**

(a) A project sponsor or other person aggrieved by a final action or decision of the Executive Director shall file a written appeal with the Commission within 30 days of the receipt of actual notice by the project sponsor or within 30 days of publication of the action in the *Federal Register*. Appeals shall be filed on a form and in a manner prescribed by the Commission and the petitioner shall have 20 days from the date of filing to amend the appeal. The following is a non-exclusive list of actions by the Executive Director that are subject to an appeal to the Commission:

(1) A determination that a project requires review and approval under § 806.5;

- (2) An approval or denial of an application for transfer under § 806.6;
- (3) An approval of a Notice of Intent under a general permit under § 806.17;
- (4) An approval of a minor modification under § 806.18;
- (5) A determination regarding an approval by rule under § 806.22(e) or (f);
- (6) A determination regarding an emergency certificate under § 806.34;
- (7) Enforcement orders issued under § 808.14;
- (8) A finding regarding a civil penalty under § 808.15(c);
- (9) A determination of grandfathered quantity under § 806.44;
- (10) A decision to modify, suspend or revoke a previously granted approval; and
- (11) A records access determination made pursuant to Commission policy.

(b) The appeal shall identify the specific action or decision being appealed, the date of the action or decision, the interest of the person requesting the hearing in the subject matter of the appeal, and a statement setting forth the basis for objecting to or seeking review of the action or decision.

(c) Any request not filed on or before the applicable deadline established in paragraph (a) of this section hereof will be deemed untimely and such request for a hearing shall be considered denied unless the Commission, upon written request and for good cause shown, grants leave to make such filing nunc pro tunc; the standard applicable to what constitutes good cause shown being the standard applicable in analogous cases under Federal law. Receipt of requests for hearings pursuant to this section, whether timely filed or not, shall be submitted by the Executive Director to the commissioners for their information.

(d) Petitioners shall be limited to a single filing that shall set forth all matters and arguments in support thereof, including any ancillary motions or requests for relief. Issues not raised in this single filing shall be considered waived for purposes of the instant proceeding. Where the petitioner is appealing a final determination on a project application and is not the project sponsor, the petitioner shall serve a copy of the appeal upon the project sponsor within five days of its filing.

(e) The Commission will determine the manner in which it will hear the appeal. If a hearing is granted, the Commission shall serve notice thereof upon the petitioner and project sponsor and shall publish such notice in the *Federal Register*. The hearing shall not be held less than 20 days after publication of such notice. Hearings may be conducted by one or more members of the Commission, or by such other hearing officer as the Commission may designate.

(1) The petitioner may also request a stay of the action or decision giving rise to the appeal pending final disposition of the appeal, which stay may be granted or denied by the Executive Director after consultation with the Commission chair and the member from the affected member State. The decision of the Executive Director on the request for stay shall not be appealable to the Commission under this section and shall remain in full force and effect until the Commission acts on the appeal.

(2) In addition to the contents of the request itself, the Executive Director, in granting or denying the request for stay, will consider the following factors:

- (i) Irreparable harm to the petitioner.
- (ii) The likelihood that the petitioner will prevail.

(f) The Commission shall grant the hearing request pursuant to this section if it determines that an adequate record with regard to the action or decision is not available, or that the Commission has found that an administrative review is necessary or desirable. If the Commission denies any request for a hearing, the party seeking such hearing shall be limited to such remedies as may be provided by the compact or other applicable law or court rule. If a hearing is granted, the Commission shall refer the matter for hearing to be held in accordance with § 808.3, and appoint a hearing officer.

(g) If a hearing is not granted, the Commission may set a briefing schedule and decide the appeal based on the record before it. The Commission may, in its discretion, schedule and hear oral argument on an appeal.

(h)(1) A request for intervention may be filed with the Commission by persons other than the petitioner within 20 days of the publication of a notice of the granting of such hearing in the *Federal Register*. The request for intervention shall state the interest of the person filing such notice, and the specific grounds of objection to the action or decision or other grounds for appearance. The hearing officer(s) shall determine whether the person requesting intervention has standing in the matter that would justify their admission as an intervener to the proceedings in accordance with Federal case law.

(2) Intervenors shall have the right to be represented by counsel, to present evidence and to examine and cross-examine witnesses.

(i) Where a request for an appeal is made, the 90-day appeal period set forth in section 3.10 (6) and Federal reservation (o) of the compact shall not commence until the Commission has either denied the request for or taken final action on an administrative appeal.

19. Revise § 808.11 to read as follows:

**§ 808.11 Duty to comply.**

It shall be the duty of any person to comply with any provision of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, staff directives or any other requirement of the Commission.

20. Revise § 808.14 to read as follows:

**§ 808.14 Orders.**

(a) Whether or not an NOV has been issued, the Executive Director may issue an order directing an alleged violator to cease and desist any action or activity to the extent such action or activity constitutes an alleged violation, or may issue any other order related to the prevention of further violations, or the abatement or remediation of harm caused by the action or activity.

(b) If the project sponsor fails to comply with any term or condition of a docket or other approval, the commissioners or Executive Director may issue an order suspending, modifying or revoking approval of the docket. The commissioners may also, in their discretion, suspend, modify or revoke a docket approval if the project sponsor fails to obtain or maintain other federal, state or local approvals.

(c) The commissioners or Executive Director may issue such other orders as may be necessary to enforce any provision of the compact, the Commission's rules or regulations, orders, approvals, docket conditions, or any other requirements of the Commission.

(d) It shall be the duty of any person to proceed diligently to comply with any order issued pursuant to this section.

(e) The Commission or Executive Director may enter into a Consent Order and Agreement with an alleged violator to resolve non-compliant operations and enforcement proceedings in conjunction with or separately from settlement agreements under § 808.18.

21. Revise § 808.15 to read as follows:

**§ 808.15 Show cause proceeding.**

(a) The Executive Director may issue an order requiring an alleged violator to show cause why a penalty should not be assessed in accordance with the provisions of this chapter and section 15.17 of the compact. The order to the alleged violator shall:

(1) Specify the nature and duration of violation(s) that is alleged to have occurred.

(2) Set forth the date by which the alleged violator must provide a written response to the order.

(3) Identify the civil penalty recommended by Commission staff.

(b) The written response by the project sponsor should include the following:

(1) A statement whether the project sponsor contests that the violations outlined in the Order occurred;

(2) If the project sponsor contests the violations, then a statement of the relevant facts and/or law providing the basis for the project sponsor's position;

(3) Any mitigating factors or explanation regarding the violations outlined in the Order; and

(4) A statement explaining what the appropriate civil penalty, if any, should be utilizing the factors at § 808.16.

(c) Based on the information presented and any relevant policies, guidelines or law, the Executive Director shall make a written finding affirming or modifying the civil penalty recommended by Commission staff.

22. Amend § 808.16 by revising paragraphs (a) introductory text and (a)(7), adding paragraph (a)(8), and revising paragraph (b) to read as follows:

**§ 808.16 Civil penalty criteria.**

(a) In determining the amount of any civil penalty or any settlement of a violation, the Commission and Executive Director shall consider:

\* \* \* \* \*

(7) The length of time over which the violation occurred and the amount of water used, diverted or withdrawn during that time period.

(8) The punitive effect of a civil penalty.

(b) The Commission and/or Executive Director retains the right to waive any penalty or reduce the amount of the penalty recommended by the Commission staff under § 808.15(a)(3) should it be determined, after consideration of the factors in paragraph (a) of this section, that extenuating circumstances justify such action.

23. Revise § 808.17 to read as follows:

**§ 808.17 Enforcement of penalties, abatement or remedial orders.**

Any penalty imposed or abatement or remedial action ordered by the Commission or the Executive Director shall be paid or completed within such time period as shall be specified in the civil penalty assessment or order. The Executive Director and Commission counsel are authorized to take such additional action as may be necessary to assure compliance with this subpart. If a proceeding before a court becomes necessary,

the penalty amount determined in accordance with this part shall constitute the penalty amount recommended by the Commission to be fixed by the court pursuant to section 15.17 of the compact.

24. Revise § 808.18 to read as follows:

**§ 808.18 Settlement by agreement.**

(a) An alleged violator may offer to settle an enforcement action by agreement.

The Executive Director may enter into settlement agreements to resolve an enforcement action. The Commission may, by Resolution, require certain types of enforcement actions or settlements to be submitted to the Commission for action or approval.

(b) In the event the violator fails to carry out any of the terms of the settlement agreement, the Commission or Executive Director may reinstitute a civil penalty action and any other applicable enforcement action against the alleged violator.

Dated: June 21, 2017.

Stephanie L. Richardson,  
Secretary to the Commission.

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