

## RESOLUTION FOR THE MINUTES

A RESOLUTION directing the Executive Director to publish for comment proposed amendments to the Comprehensive Plan and implementing regulations with respect to transfers of water and wastewater from and to the Delaware River Basin.

WHEREAS, by Resolution No. 1991-9 on June 19, 1991, the Commission amended the Comprehensive Plan by the addition of policies and regulations codified at Section 2.30 of the [Commission's Water Code](#), relating to transfers of water and wastewater from and to the Delaware River Basin; and

WHEREAS, on November 30, 2017 the Commission proposed new rules, including new Part 440 of Title 18, Chapter III, Subchapter B of the Code of Federal Regulations, which in part concerned inter-basin transfers of water and wastewater, to protect the water resources of the Basin from adverse impacts associated with water withdrawals and wastewater treatment and disposal to support hydraulic fracturing; and

WHEREAS, after carefully considering the public comments received on the November 2017 draft rules, the Commission by Resolution No. 2021 - 01 on February 25, 2021 withdrew from consideration the provisions of such draft rules relating to the exportation of water and the importation, treatment, and discharge of "produced water" as defined therein; and

WHEREAS, the Commission's current policies on the transfer of water and wastewater from and into the Delaware River Basin as set forth at Section 2.30.2 of the Water Code, provide:

The waters of the Delaware River Basin are limited in quantity and the Basin is frequently subject to drought warnings and drought declarations due to limited water supply storage and streamflow during dry periods. Therefore, it shall be the policy of the Commission to discourage the exportation of water from the Delaware River Basin.

...[T]he Basin waters have limited assimilative capacity and limited capacity to accept conservative substances without significant impacts. Accordingly, it also shall be the policy of the Commission to discourage the importation of wastewater into the Delaware River Basin....

and

WHEREAS, the Commission's Comprehensive Plan currently includes the following classes of transfers of water from the Basin:

- Out-of-basin diversions by New York City and the State of New Jersey authorized by the [1954 United States Supreme Court Decree in \*New Jersey v. New York\*, 347 U.S. 995 \("Decree"\)](#), as subsequently modified by the Commission with the unanimous consent of the parties to the Decree, in accordance with Section 3.3 of the Delaware River Basin Compact;

- Out-of-Basin transfers approved on a long-term basis pursuant to Section 3.8 of the Compact to meet the needs of public water systems with service areas straddling or adjacent to a Delaware River Basin boundary;
- Out-of-Basin transfers approved on a temporary and/or emergency basis pursuant to Section 3.8 of the Compact to ensure the public health and safety of communities adjacent to or straddling a Delaware River Basin boundary;

and

WHEREAS, to date the Commission has approved no transfers of water and/or wastewater from or into the Delaware River Basin to support hydraulic fracturing for the extraction of oil or natural gas, and no applications for such transfers are currently under consideration; and

WHEREAS, since 2009, the Commission has in many instances conditioned its approvals of wastewater discharge projects on a requirement that no importation, treatment and/or discharge of hydraulic fracturing wastewater may be undertaken by the docket holder without the Commission's prior review and approval; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

1. No later than September 30, 2021 the Executive Director shall prepare and publish for public comment a set of amendments to the Comprehensive Plan and implementing regulations to update its policies and provisions concerning inter-basin transfers of water and wastewater from and to the Delaware River Basin.
2. The proposed rule amendments directed by this Resolution shall include and the public notice shall solicit comment on:
  - a. Conditions under which an exportation of water from the Basin may be approved or prohibited;
  - b. Conditions under which an importation of wastewater into the Basin may be prohibited;
  - c. Any other provisions concerning inter-basin transfers of water and wastewater that commenters believe are necessary and appropriate to protect the public health or to preserve the waters of the Basin for uses in accordance with the Comprehensive Plan.
3. The Executive Director, in consultation with the Commissioners, may include in the draft regulations such other proposed amendments of DRBC's rules and regulations as they deem necessary or appropriate.
4. To ensure that all public comments on the proposed amendments are captured and included in the Commission's official rulemaking record, public comments on the proposed amendments will be included in such record only when submitted in accordance with the procedures set forth in the notice of proposed rulemaking to be issued by the DRBC.

APPROVED: February 25, 2021