

Section 2.30 of the Delaware River Basin Water Code, as amended, is shown below.

2.30 IMPORTATIONS AND EXPORTATIONS OF WATER, INCLUDING WASTEWATER

2.30.1 Definitions (*Resolutions Nos. 91-9 and 2022-04*). For purposes of this section 2.30:

- A. “Adjacent public water system” means a public water system (as defined herein) located outside the Delaware River Basin that has a service area directly bordering the service area of a public water system located in whole or in part within the Basin.
- B. “Adjacent public wastewater collection system” means a public wastewater collection system (as defined herein) located outside the Delaware River Basin that has a service area directly bordering the service area of a public wastewater collection system located in whole or in part within the Basin.
- C. “Basin water” (also, “waters of the Basin”) means water in, on, under or above the ground within the Delaware River Basin. “Basin water” includes wastewater.
- D. “Delaware River Basin” (or “Basin”) has the meaning assigned to it by Section 1.2(a) of the *Delaware River Basin Compact* – the area of drainage into the Delaware River and its tributaries, including Delaware Bay.
- E. “Exportation” means the conveyance, transfer, or diversion of Basin water from a source within the Delaware River Basin to a location outside the Basin without return of such water to the Basin. Exportations from the Basin of consumer goods or foods that have been manufactured, bottled, packaged, or processed using Basin water are not considered “exportations” for purposes of this rule.
- F. “Importation” means the conveyance, transfer, or diversion of water, including wastewater, into the Delaware River Basin from a source outside the Basin, resulting in a discharge of the imported water to land or water within the Basin, with or without prior treatment.
- G. “Public water system” means a system primarily for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. A “public water system” may be publicly or privately owned.
- H. “Public wastewater collection system” means a system with all required state and federal approvals that serves more than 250 people or conveys more than 25,000 gallons of wastewater per day and is primarily for the collection and conveyance of domestic sewage from private, commercial, institutional, or industrial sources, to a treatment system with all necessary state and federal approvals. A “public wastewater collection system” may be publicly or privately owned.
- I. “Straddled public water system” means a public water system that serves an area partially within and partially outside of the Delaware River Basin.

- J. “Straddled public wastewater collection system” means a public wastewater collection system that serves an area partially within and partially outside of the Delaware River Basin.
- K. “Wastewater” means water that is stored, transported or discharged after use, including, but not limited to, any water for which a National Pollutant Discharge Elimination System (NPDES) permit under the federal Clean Water Act or any state or DRBC approval is required before the water can lawfully be discharged to waters or land within the Basin.

2.30.2 **Protection and Preservation**

- A. The waters of the Delaware River Basin are limited in quantity, and the Basin is frequently subject to drought warnings, drought declarations, and drought operations due to limited water supply storage and streamflow during dry periods. In addition, portions of the Basin have been delineated by the Commission as groundwater protected areas due to water shortages. Therefore, it is the policy of the Commission to promote the conservation and preservation of water and related natural resources, including aquatic ecosystems, and effectuate the Comprehensive Plan and the uses of the water resources of the Basin identified therein, by discouraging, limiting, or placing conditions on the exportation of Basin water as may be required to protect the health and safety of Basin residents, aquatic ecosystems and the uses of water identified in the Compact and Comprehensive Plan.
- B. The Commission shall review a proposed new exportation of Basin water, including any proposed increase in the rate or volume of an existing exportation, and may impose conditions, obligations and release requirements related thereto, pursuant to Sections 3.3, 3.8, 5.2, 10.3, 10.4 and Article 11 of the Compact and the regulations and docket approvals implementing these provisions.
- C. A proposed new exportation of Basin water that is subject to review under the Compact and implementing regulations, including any proposed increase in the rate or volume of an existing exportation, may be approved by the Commission after consideration of the factors set forth at Section 2.30.3 below, if:
 - 1. the sponsor demonstrates that the exportation of Basin water is required to serve a straddled or adjacent public water system;
 - 2. the sponsor demonstrates that the exportation of Basin water is required to meet public health and safety needs on a temporary, short-term, or emergency basis; or
 - 3. the sponsor is proposing an exportation of wastewater and demonstrates either (i) that the wastewater is being conveyed to a straddled or adjacent public wastewater collection system; or (ii) that the wastewater may not lawfully be discharged to a public wastewater collection system and is being exported for treatment, disposal or both at a waste management facility that has all required state and federal approvals to lawfully receive it.
- D. Basin waters have limited capacity to assimilate pollutants without significant impacts to the health and safety of Basin residents, the health and functioning of aquatic ecosystems in the Basin, and the effectuation of the Comprehensive Plan. Accordingly, it is the policy of the Commission to discourage, limit, or condition the importation of wastewater into

the Delaware River Basin as necessary to avoid impairment of Basin waters. A proposed new importation of water, including any proposed increase in the rate or volume of an existing importation, shall be reviewed by the Commission consistent with the factors set forth at Section 2.30.3 below.

- E. This Section 2.30 shall not apply to importations and exportations of water, including wastewater, that existed prior to enactment of the Compact or that were approved by the DRBC prior to December 7, 2022.

2.30.3 **Commission Considerations** (*Resolutions Nos. 91-9 and 2022-04*). In evaluating importations and exportations, the Commission's review will include consideration of the following factors:

- A. For exportations of Basin water (including wastewater):
 1. the effect of the exportation on the health and safety of the Basin community;
 2. the effect of the exportation on existing or future water availability or shortages, including, but not limited to, sources within areas designated by the Commission as protected areas pursuant to Section 10.2 of the Compact, sources within Delaware River reaches with flows that are frequently augmented by reservoir releases due to low flows, and sources in areas subject to DRBC drought operations or state drought declarations within the past five years;
 3. the effect of the exportation on aquatic ecosystems;
 4. the effect of the exportation on water quality and waste assimilation;
 5. the effect of the exportation on salinity concentrations;
 6. the effect of the exportation on the water uses protected by the Comprehensive Plan, DRBC regulations or DRBC docket approvals, or on the ability of DRBC to effectuate the Comprehensive Plan;
 7. the effect of the exportation, including its volume, rate, timing and duration, on passby or instream flow requirements contained in DRBC regulations or project approvals;
 8. the sponsor's planned use for the water and any resulting public benefits;
 9. the availability to the sponsor of alternatives to the exportation of Basin water and whether these alternatives have been diligently pursued, including without limitation a review of the sponsor's uses of water outside the sponsor's service area, if any; conservation measures undertaken by the sponsor or a public water system in the service area where the sponsor is located to forestall the need for a transfer of Basin water; and the results of a water audit (or audits) performed by the sponsor in accordance with Section 2.1.8 of the Delaware River Basin Water Code; and
 10. whether the exportation would contravene sections 3.3 and 3.5(a) of the Compact by impeding or interfering with the rights, powers, privileges, conditions or obligations contained in the Supreme Court Decree in *New Jersey v. New York*, 347 U.S. 995

(1954), as modified by the Commission with the unanimous consent of the parties to the Decree.

- B. For importations of water (including wastewater):
1. the effect of the importation on the health and safety of the Basin community with due consideration of the available alternatives to the importation;
 2. the characterization and treatability of the water, if it consists of wastewater;
 3. the potential impacts on water resources of the Delaware River Basin of the proposed importation and of each available alternative, including alternatives that avoid an importation of water, including wastewater. The potential impacts considered will include the effects of the quality, volume, flow rate, timing and duration of the proposed importation in relation to:
 - a. flow objectives or passing or instream flow requirements contained in DRBC regulations or project approvals;
 - b. the record of hydrologic conditions in the proposed receiving region and the larger Delaware River Basin;
 - c. water uses as established by the Comprehensive Plan, including the DRBC Water Code;
 - d. the effect of the importation on aquatic ecosystems;
 - e. water quality and waste assimilation capacity in the affected receiving streams; and
 - f. prior regulations or orders of the Commission which may be identified during the course of the Commission's review.

2.30.4 **Analyses by Applicant for Section 3.8 Approval.** When an importation or exportation of water or wastewater is subject to review by the Commission, the applicant shall furnish the Commission with such analyses of the factors set forth in Sections 2.30.2 and 2.30.3 above and as the Commission may direct.

2.30.5 **Water Charges** (*Resolutions Nos. 91-9 and 2022-04*). Exportation of Basin water constitutes consumptive water use and will be subject to the water charges in effect at the time of transfer in accordance with the Commission's Water Supply Charges regulations (18 CFR Part 420), as amended.

2.30.6 **Wastewater Treatment Requirements** (*Resolution No. 91-9*). It is the policy of the Commission to give no credit toward meeting wastewater treatment requirements for importations of wastewater. An effluent loading or concentration authorized in accordance with a water-quality-based effluent limit such as a wasteload allocation may not include loadings attributable to an importation of wastewater.

- 2.30.7 **Existing Allocations** (*Resolution No. 91-9*). It is the policy of the Commission to charge all exportations of Basin water against any special regional allocation or any depletive use allocation as may exist at the time of receipt of a completed application for exportation.
- 2.30.8 **1954 Supreme Court Decree**. This Section 2.30 is intended to preserve the diversions, compensating releases, rights, conditions, and obligations of the parties to the U.S. Supreme Court Decree of 1954 in *New Jersey v. New York*, 347 U.S. 995 (1954), as modified by the Commission with the unanimous consent of the parties to the Decree.