

(d) *Major modifications.* Major modifications are changes not considered to be minor modifications. Major modifications may include, but are not limited to:

- (1) Increases in the quantity of water withdrawals, consumptive uses or diversions;
- (2) Increases to peak day consumptive water use;
- (3) Increases to the instantaneous withdrawal rate or changes from a single withdrawal rate to a varied withdrawal rate;
- (4) Changes affecting passby flow requirements; and
- (5) Changes that have the potential for adverse impacts to water resources or competing water users.

(e) *Notice and approval.* (1) Applications for modifications are subject to the notice requirements of § 806.15.

(2) The Commission or Executive Director may approve, approve with conditions or deny an application for minor modification, or direct that an application for major modification be made.

(3) The Commission may approve, approve with conditions or deny an application for major modification.

[80 FR 76859, Dec. 11, 2015, as amended at 86 FR 52969, Sept. 24, 2021]

Subpart C—Standards for Review and Approval

§ 806.20 Purpose of this subpart.

The purpose of this subpart is to set forth general standards that shall be used by the Commission to evaluate all projects subject to review and approval by the Commission pursuant to §§ 806.4, 806.5 and 806.6, and to establish special standards applicable to certain water withdrawals, consumptive uses and diversions. This subpart shall not be construed to limit the Commission's authority and scope of review. These standards are authorized under Sections 3.4(2), 3.4(8), 3.4(9), and 3.10 of the compact and are based upon, but not limited to, the goals, objectives, guidelines and criteria of the comprehensive plan.

§ 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.

(b) The Commission may modify and approve as modified, or may disapprove, a project if it determines that the project is not in the best interest of the conservation, development, management, or control of the basin's water resources, or is in conflict with the comprehensive plan.

(c) *Disapprovals—other governmental jurisdictions.* (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.

(2) The Commission may modify, suspend or revoke a previously granted approval if the project sponsor fails to obtain or maintain the approval of a member jurisdiction or political subdivision thereof having lawful jurisdiction over the project.

[71 FR 78579, Dec. 29, 2006, as amended at 82 FR 29392, June 29, 2017]

§ 806.22 Standards for consumptive uses of water.

(a) The project sponsors of all consumptive water uses subject to review

and approval under § 806.4, § 806.5 or § 806.6 of this part shall comply with this section.

(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:

(1) During low flow periods as may be designated by the Commission for consumptive use mitigation.

(i) Reduce withdrawal from the approved source(s), in an amount equal to the project's consumptive use, and withdraw water from alternative surface water storage or aquifers or other underground storage chambers or facilities approved by the Commission, from which water can be withdrawn for a period of 45 continuous days such that impacts to nearby surface waters will not likely be at a magnitude or in a timeframe that would exacerbate present low flow conditions.

(ii) Release water for flow augmentation, in an amount equal to the project's consumptive use, from surface water storage or aquifers, or other underground storage chambers or facilities approved by the Commission, from which water can be withdrawn for a period of 45 continuous days such that impacts to nearby surface waters will not likely be at a magnitude or in a timeframe that would exacerbate present low flow conditions.

(iii) Discontinue the project's consumptive use, which may include reduction of the project sponsor's consumptive use to less than 20,000 gpd during periods of low flow. In any case of failure to provide the specified discontinuance, such project shall provide mitigation in accordance with paragraph (b)(3) of this section, for the calendar year in which such failure occurs, after which the Commission will

reevaluate the continued acceptability of the discontinuance.

(2) Use, as a source of consumptive use water, surface storage that is subject to maintenance of a conservation release acceptable to the Commission. In any case of failure to provide the specified conservation release, such project shall provide mitigation in accordance with paragraph (3), below, for the calendar year in which such failure occurs, and the Commission will reevaluate the continued acceptability of the conservation release.

(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.

(4) Implement other alternatives approved by the Commission.

(c) *Determination of manner of mitigation.* The Commission will, in its sole discretion, determine the acceptable manner of mitigation to be provided by project sponsors whose consumptive use of water is subject to review and approval. Such a determination will be made after considering the project's location, source characteristics, anticipated amount of consumptive use, proposed method of mitigation and their effects on the purposes set forth in § 806.2 of this part, and any other pertinent factors. The Commission may modify, as appropriate, the manner of mitigation, including the magnitude and timing of any mitigating releases, required in a project approval.

(d) *Quality of water released for mitigation.* The physical, chemical and biological quality of water released for mitigation shall at all times meet the quality required for the purposes listed in § 806.2, as applicable.

(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 that is solely supplied water for consumptive use by public water supply, stormwater, wastewater, or other reused or recycled water, or any combination thereof, may be approved by the Executive Director under this paragraph (e) in accordance with

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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)(1)(iii) or (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. Use of small capacity sources or sources used only for supply of potable water may be appropriately included as a part of this approval by rule in the discretion of the Executive Director.

(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) *Approval by rule for consumptive use related to unconventional natural gas and other hydrocarbon development projects.*

(1) Any unconventional natural gas development project subject to review and approval under § 806.4(a)(8), or any other hydrocarbon development project subject to review and approval under § 806.4, § 806.5, or § 806.6, shall be subject to review and approval by the Executive Director under this paragraph (f) regardless of the source or sources of water being used consumptively.

(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) 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.

(4) The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in § 806.30, or as otherwise required by the approval by rule. The project sponsor shall submit a post-hydrofracture report in a form and manner as prescribed by the Commission.

(5) The project sponsor shall comply with the mitigation requirements set forth in § 806.22(b).

(6) Any flowback or production fluids utilized by the project sponsor for hydrofracture stimulation undertaken at the project shall be separately accounted for, but shall not be included in the daily consumptive use amount calculated for the project, or be subject to the mitigation requirements of § 806.22(b).

(7) 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 Executive Director reserves the right to modify, suspend or revoke any approval under this paragraph (f) if the project sponsor fails to obtain or maintain such approvals.

(8) The project sponsor shall certify to the Commission that all flowback and production fluids have been re-used or treated and disposed of in accordance with applicable state and federal law.

(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.

(10) Approval by rule shall be effective upon issuance by the Executive Director to the project sponsor, shall expire five years from the date of such issuance, and supersede any previous consumptive use approvals to the extent applicable to the project.

(11) In addition to water sources approved for use by the project sponsor pursuant to §806.4 or this section, for unconventional natural gas development or hydrocarbon development, whichever is applicable, a project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize any of the following water sources at the drilling pad site, subject to such monitoring and reporting requirements as the Commission may prescribe:

(i) Tophole water encountered during the drilling process, provided it is used only for drilling or hydrofracture stimulation.

(ii) Captured stormwater, provided it is used only for drilling or hydrofracture stimulation.

(iii) Drilling fluids, formation fluids, flowback or production fluids obtained from a drilling pad site, production well site or hydrocarbon water storage facility, provided it is used only for hydrofracture stimulation, and is handled, transported and stored in compli-

ance with all standards and requirements of the applicable member jurisdiction.

(12) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize a source of water, except a public water supply, approved by the Commission pursuant to §806.4(a) and issued to persons other than the project sponsor, provided any such source is approved for use in unconventional natural gas development, or hydrocarbon development, whichever is applicable, the project sponsor has an agreement for its use and the project sponsor registers such source with the Commission on a form and in the manner prescribed by the Commission. Use of the registered source shall not commence until the Commission acknowledges in writing that the registration is proper and complete.

(13) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may also utilize other sources of water, including but not limited to, water withdrawals or wastewater discharge not otherwise associated with an approval issued by the Commission pursuant to §806.4(a), public water supplies, or another approval by rule issued pursuant to paragraph (f)(9) of this section, provided such sources are first approved by the Executive Director. Any request for approval shall be submitted on a form and in the manner prescribed by the Commission, shall satisfy the notice requirements set forth in §806.15, and shall be subject to review pursuant to the standards set forth in subpart C of this part.

(14) [Reserved]

(15) The project sponsor shall provide a copy of any registration or source approval issued pursuant to this section to the appropriate agency of the applicable member jurisdiction. The project sponsor shall record on a daily basis, and report quarterly on a form and in a manner prescribed by the Commission, the quantity of water obtained from any source registered or approved hereunder. Any source approval issued hereunder shall also be subject to such monitoring and reporting requirements

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as may be contained in such approval or otherwise required by this part.

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§ 806.23 Standards for water withdrawals.

(a) The project sponsors of all withdrawals subject to review and approval under § 806.4, § 806.5 or § 806.6 of this part shall comply with the following standards, in addition to those required pursuant to § 806.21.

(b) *Limitations on and considerations for withdrawals.* (1) The Commission may limit withdrawals to the amount (quantity and rate) of water that is needed to meet the reasonably foreseeable needs of the project sponsor.

(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) The Commission may impose limitations or conditions to mitigate impacts, including without limitation:

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

(ii) Require the project sponsor to provide, at its own expense, an alternate water supply or other mitigating measures.

(iii) Require the project sponsor to implement and properly maintain special monitoring measures.

(iv) Require the project sponsor to implement and properly maintain stream flow protection measures.

(v) Require the project sponsor to develop and implement an operations plan acceptable to the Commission.

(4) The Commission may require the project sponsor to undertake the following, to ensure its ability to meet its present or reasonably foreseeable water needs from available groundwater or surface water without limitation:

(i) Investigate additional sources, interconnections or storage options to meet the demand of the project.

(ii) Submit a water resource development plan that shall include, without limitation, sufficient data to address any supply deficiencies, identify alternative water supply options, including interconnections, and support existing and proposed future withdrawals.

(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.

(6) Notwithstanding this paragraph, existing withdrawals that successfully complete the process in § 806.12(h) and (i) shall satisfy the standards in paragraph (b)(2) of this section. Further, evaluation of the withdrawal shall include reasonably foreseeable need and the need for total system limits, compliance with § 806.21, and any changes to the project or project location and setting.

(i) Approval of withdrawal limits on existing sources will not be set above the amount supported by the existing historical and current operating data or otherwise supported by the evaluation under § 806.12, and may be set at a different rate if supported by the evaluation required in this paragraph.

(ii) Any approvals shall include metering and measurement of parameters consistent with § 806.30, and may include conditions requiring monitoring of surface water features or other withdrawal sources.