

## MEMORANDUM OF UNDERSTANDING

### ***Regarding Regulatory Program Coordination Between The Susquehanna River Basin Commission & The New York State Department of Environmental Conservation***

This MEMORANDUM OF UNDERSTANDING (MOU) is made by and between the Susquehanna River Basin Commission (Commission), a federal-interstate compact commission, and the New York State Department of Environmental Conservation (NYSDEC), for the purpose of facilitating coordinated review of water withdrawal projects, avoiding duplication of effort, and assuring the overall protection of water resources in the New York State portion of the Susquehanna River Basin.

The Commission and NYSDEC hereby agree as follows:

1. The Susquehanna River Basin Compact (Compact), P.L. 91-575, Section 3.7, Coordination and Cooperation, authorizes the Commission to enter into cooperative arrangements with its member states to avoid duplication and enhance the efficiency of water resources management in the basin.
2. Commission Regulation 18 CFR §806.7(b), which implements Section 3.7 of the Compact, provides, in part, as follows:

*To avoid duplication of work and to cooperate with other government agencies, the Commission may develop administrative agreements or other cooperative arrangements with appropriate agencies of the member jurisdictions regarding joint review of projects. These agreements or arrangements may provide for joint efforts by staff, delegation of authority by an agency or the Commission, or any other matter to support cooperative review activities.*

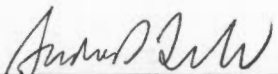
3. NYSDEC statutory authorities related to water withdrawal permitting, reporting and registration are contained in the Environmental Conservation Law, §3-0301(2)(m), Article 15, Titles 15, 16 and 33, and Article 21, Title 10. Its regulations implementing that authority are contained in 6 NYCCR Part 601.
4. Commission statutory authority to regulate projects affecting the water resources of the basin, including but not limited to withdrawals, consumptive use and diversions, is set forth in Article 3 of the Compact. The classes of projects subject to regulatory review, and the standards and procedures applicable thereto, are set forth in the Commission's regulations, published at 18 CFR Parts 801 and 806 – 808.
5. The parties to this MOU recognize and acknowledge that both the statutory authorities and respective regulations of the two agencies are not identical in terms of scope, standards or procedure. As a result, projects utilizing the water resources in the New York State portion of the basin fall into one of the following categories:

- a. Projects subject to regulation by both agencies.
  - b. Projects subject to regulation by NYSDEC, but not by the Commission.
  - c. Projects subject to regulation by the Commission, but not by NYSDEC.
  - d. Projects not subject to regulation by either agency.
6. The ***Coordination Process For Regulatory Program Activity*** document attached hereto as Attachment A and incorporated herein by reference outlines a process that is intended to facilitate communication and coordination on projects in any of the categories identified in Section 5 above, but will primarily be used for water withdrawal and consumptive use projects under review by the Commission. Many of these projects would otherwise be subject to regulation by NYSDEC, except that its statute, §15-1501(7)(b), and its implementing regulations, 6 NYCRR §601.9(b), exempt from NYSDEC permitting requirements any withdrawals for which an approval has been issued by the Commission. In addition, this coordination process will also be used to facilitate data sharing, including but not limited to water use registration and withdrawal/use data. The parties agree to evaluate and, if appropriate, update the coordination process from time to time.
7. With regard to projects under review by the Commission, the parties to this MOU recognize and acknowledge that a primary objective of the coordination contemplated hereunder is to obtain consensus on all issues and conditions prior to the Commission's approval of any withdrawal projects in the New York State portion of the basin.
8. In conjunction with the Commission's adoption of its Low Flow Protection Policy (Policy No. 2012-01) on December 14, 2012, the Commission and NYSDEC executed an agreement concerning the implementation of the policy in conjunction with water withdrawal approvals. Pursuant to the agreement, the parties agreed and do hereby affirm, among other things, to the following:
  - a. Consistent with the Policy No. 2012-01, in the event consensus is not reached, the Commission agrees to incorporate into its approval any provision of NYSDEC's adopted regulatory requirements or technical guidance regarding low flow protection that are more stringent than those contained in Policy No. 2012-01 and its Technical Guidance, upon the written request of NYSDEC.
  - b. NYSDEC agrees to support any determination based on its regulatory requirements or technical guidance.
9. In the event the Commission or NYSDEC adopt new regulations, policy or guidance that change the review criteria for water withdrawal projects, the parties agree that this MOU and/or Attachment A thereto, may be amended, as necessary, to address said changes.
10. The parties to this MOU agree that nothing contained herein shall be construed as a waiver of any other authority possessed by either the Commission or NYSDEC, including the right to regulate withdrawals, consumptive water uses or diversions of water, or the right to reopen dockets or permits, or make additional orders or conditions that may be necessary to protect the public health, safety and welfare or the environment. Prior to taking such

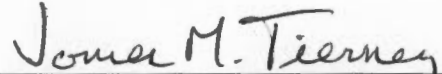
actions, each agency shall notify the other, and to the extent practicable or necessary, shall coordinate such actions.

11. This MOU may be amended by mutual consent of the parties. It shall be effective upon its execution and shall be terminable by either party upon 30 days written notice. It does not create any rights in any person or entity not a party hereto; nor is it intended to and does not create any contractual or other rights or obligations with respect to the parties themselves.

IN WITNESS WHEREOF, the Commission and NYSDEC, by and through the duly authorized representatives of each, have executed this Memorandum of Understanding by affixing their respective signatures hereunder:

  
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Andrew Dehoff, Executive Director  
Susquehanna River Basin Commission

April 27, 2015 (Date)

  
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James M. Tierney, Assistant Commissioner  
for Water Resources  
New York State Department of  
Environmental Conservation

April 20, 2015 (Date)