Dated: May 23, 2016.
Kevin J. Wolf,
Assistant Secretary for Export Administration.

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DELAWARE RIVER BASIN COMMISSION

18 CFR Part 420

Clarifying Language in the Basin Regulations—Water Supply Charges Relating to Certificates of Entitlement

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: The Delaware River Basin Commission is codifying revisions to its Basin Regulations—Water Supply Charges. The revisions involve no changes in the substance or administration of the rule. They were made in order to clarify the language of the rule to conform to the Commission’s decisions and practices so as to provide better notice to users regarding how the Commission implements its entitlements program and to avoid future controversy.

DATES: This final rule is effective July 5, 2016.


SUPPLEMENTARY INFORMATION:

Background

The Delaware River Basin Commission (“DRBC” or “Commission”) is a federal-interstate compact agency charged with managing the water resources of the Delaware River Basin on a regional basis without regard to political boundaries. Its members are the governors of the four basin states—Delaware, New Jersey, New York and Pennsylvania—and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the federal government.

By Resolution No. 2006–2 on March 1, 2006, the Commission approved revisions to its Basin Regulations—Water Supply Charges, 18 CFR part 420, to clarify the language of the rule to conform to the Commission’s decisions and practices, in order to provide better notice to users regarding how the Commission implements its entitlements program and to avoid future controversy. The revisions involved no changes in the substance or administration of the rule. Although the adopted revisions were incorporated into the Commission’s Administrative Manual Part III—Basin Regulations—Water Supply Charges, which uses a unique numbering system, the corresponding sections of the Code of Federal Regulations were never updated to include them. This final rule adds the approved changes to the federal code.

Notice of the proposed revisions was published in the Federal Register at 70 FR 60496, October 18, 2005. Notice also appeared in the Delaware Register of Regulations, 9 DE Reg. 674, November 1, 2005; New Jersey Register, 37 N.J.R. 4206, November 7, 2005; New York State Register, November 2, 2005 (page 4); and Pennsylvania Bulletin, 35 Pa.B. 6094, Nov. 5, 2005. The Commission held a public hearing on the proposed revisions on December 7, 2005 and accepted written comments on them through January 10, 2006. The changes were adopted by unanimous vote approving Resolution No. 2006–2 at the Commission’s public business meeting on March 1, 2006.

Additional Materials


With adoption of this final rule, the Commission will reference the CFR version of the Basin Regulations—Water Supply Charges for most purposes. For the foreseeable future, however, both versions will remain posted on the Commission’s Web site, at http://www.nj.gov/drbc/about/regulations/.

List of Subjects in 18 CFR Part 420

Water supply.

For the reasons set forth in the preamble, the Delaware River Basin Commission amends part 420 of title 18 of the Code of Federal Regulations as follows:

PART 420—BASIN REGULATIONS—WATER SUPPLY CHARGES

1. The authority citation for part 420 continues to read as follows:

Authority: Delaware River Basin Compact, 75 Stat. 688.

2. Revise §420.31(d) through (f) to read as follows:

§420.31 Certificate of entitlement.

* * * * *

(d) Limitations. (1) A certificate of entitlement is granted to a specific user for water withdrawals or diversions at a specific facility in the amount of the Legal Entitlement as defined in §420.23(b).

(2) A certificate of entitlement shall not be applied, transferred or modified to apply to a facility other than the facility initially specified in the certificate.

(3) A certificate of entitlement may not be transferred from the certificate holder to another user, except as provided in the exceptions set forth in paragraph (f) of this section.

(4) A certificate of entitlement does not exempt the certificate holder from paying water supply charges for any portion of water withdrawals or diversions used outside the facility specified in the certificate and any additional service area to which the facility supplied water as of October 27, 1961 or at the facility specified in the certificate by a user other than the certificate holder. For purposes of this paragraph (d)(4), a certificate holder claiming an exemption from charges for water supplied within a service area shall submit proof satisfactory to the Commission identifying the facility’s service area as of October 27, 1961. In the absence of proof of the service area as of October 27, 1961, the service area defined in the Commission docket, if any, for the facility in effect at the time the certificate was issued shall be deemed to be the facility’s service area. In the absence of proof of a service area, the certificate shall only exempt the certificate holder from paying water supply charges for water used at the facility.

(e) Termination of certificate. (1) A certificate of entitlement terminates pursuant to this section and without the need for Commission action if at least one of the following occurs:

(i) The certificate holder dissolves or otherwise ceases to exist;

(ii) The certificate holder ceases the withdrawals or diversions at the facility to which the certificate of entitlement...
applies, or abandons the intake, provided that a shutdown of the facility for maintenance or improvement, or a replacement of the intake, that is performed at the earliest practicable commercially reasonable time following commencement of the shutdown or replacement, shall not be deemed to be a cessation of withdrawal or diversion;
(ii) A transfer of title to the facility;
(iii) A change of ownership or control within the meaning of paragraphs (e)(2) through (5) does not effectuate a change of ownership or control within the meaning of paragraph (f)(1)(i) of this section on the basis that the reorganization does not affect the certificate holder’s corporate family of companies within the meaning of paragraphs (e)(2) through (5) of this section and does not alter the ultimate corporate parent’s 100% ownership interest.

(iv) A series of transactions undertaken pursuant to a plan or that are otherwise related shall be considered a single transaction for purposes of this section. For purposes of calculating the twenty percent threshold in paragraph (e)(2)(ii) of this section, the securities, shares or other interests held immediately prior to the transaction shall be added to the securities, shares or other interests acquired in the transaction.

(f) Exceptions-(1) Agricultural exception. (i) Whenever ownership or possession of land in agricultural use is transferred, any certificate of entitlement with respect to such land shall be deemed to run with the land, if but only if within sixty days following the land transfer the new user demonstrates to the Executive Director that it will continue to use the water in agricultural irrigation. Following any such timely demonstration, the Executive Director shall transfer the certificate of entitlement to the new user. The Executive Director may extend the sixty day period for good cause shown.

(ii) A certificate of entitlement that has been transferred pursuant to paragraph (f)(1)(i) of this section relieves the user of the obligation to pay water supply charges only with respect to the quantity of water in fact used by the new certificate holder for agricultural irrigation up to the Legal Entitlement specified in the certificate, and not with respect to the quantity of water used for any other purposes. The provisions of §420.43 shall apply to water uses outside the scope of the certificate of entitlement.

(iii) A certificate of entitlement that has been transferred pursuant to paragraph (f)(1)(i) of this section terminates pursuant to this paragraph (f)(1) and without the need for Commission action if and when the certificate holder ceases using the water for agricultural irrigation, provided that if the cessation occurs in conjunction with a transfer of ownership or possession of the land in agricultural use, the certificate of entitlement may be transferred to a new user pursuant to paragraph (f)(1)(i). Once terminated, a certificate of entitlement may not be reinstated or reissued.

(ii) Appoint or remove at least 50% of the members of the Board of Directors or Trustees of a corporation, general partner of a partnership, or a similar member of the governing body of an entity;

(ii) Amend or change the by-laws, constitution, or other operating or management direction of the entity;

(ii) Control the sale of use of or access to any or all of the entity’s assets;