required for, but not limited to, the following *

14. There are no specific provisions in the proposed rules pertaining to wetlands.

Response: While there are no specific references to wetlands in the proposed regulations, § 803.41—General Standards for Review of Projects, stipulates that: (a) A project shall not be detrimental to the proper conservation, development, management or control of the water resources of the basin; and (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. The comprehensive plan does call for the avoidance of dredging and other human alterations of wetlands. All applicants must also obtain applicable federal and state approvals, in addition to SRBC approvals. Thus, the Commission is adequately equipped to deal with threats to wetlands within the project review process.

15. In proposed § 803.5, projects which may require review and approval, there are no objective standards or methodologies to determine whether a project falls into one of the categories that "may" need approval and thus a request for determination. An example is the reference to "projects that have a significant effect upon the comprehensive plan." Such specific standards might allow an applicant to by-pass the "request for determination" procedure outlined in § 803.22 and apply directly to the Commission for

Response: The compact itself uses this language and does not attempt to define it, leaving it to the discretion and judgment of the Commission. As long as the Commission does not act arbitrarily or abuse its discretion, it seems appropriate for the Commission to make this judgment on a case-by-case basis. Hard and fast definitions of what constitutes a significant effect on the comprehensive plan would detract from the flexibility and discretion accorded the Commission by the compact.

16. Under § 803.22, a project sponsor cannot rely on the Executive Director's determination on whether a project requires commission approval.

Response: The commission feels that there ought to be some method of appeal of the Director's determination to the full commission. This is not unlike the appeal that is always available to the town council or zoning hearing board on a decision made by the local zoning

officer. This proposed procedure is patterned after a similar and very successful regulation of the Delaware River Basin Commission.

17. The form of certification of the giving of notice of an application under § 803.25 is not clear. The Commission should provide the form of certification.

Response: Agreed. Wording is added providing that notice shall be given on a form provided by the Commission.

18. § 803.26(5) states that the staff will determine the appropriate application fee. The regulations should state how and on what basis the application fee will be determined.

Response: Agreed. Wording is added indicating that the fee will be determined in accordance with SRBC's project review fee schedule, which has been adopted under separate resolution.

19. Under § 803.32—Reopening/ Modifications, it is not prudent to allow any "interested party" to reopen a project docket at any time. Once a project docket is reopened by any "interested party," it may set an undesirable precedent. If any party can request a reopening, it undermines the reliance that a project sponsor can place on an approval granted by the Commission. Considerable resources may have already been expended by the project sponsor in reliance on such an

approvaĺ.

Response: Since it is the Commission which ultimately decides whether a reopening of a docket has merit, we are not alarmed at the use of the term "interested party." We feel that broad public participation in the project review process is to be encouraged, not discouraged by stringent limits placed on those who can and cannot come before the Commission. The Commission is an administrative forum where projects affecting the public interest are evaluated, not a judicial forum where there is a specific controversy involving defined parties who must have standing to participate. We have further concerns about trying to differentiate between those persons who are "interested parties" under § 803.21(e) and those persons who would, under the utilities' proposal, be "affected parties." Nevertheless, we do understand the need for a project sponsor to be able to rely on an approval given by the Commission. We are therefore adding language to § 803.32 requiring an interested party to show by a preponderance of the evidence that an impact or a threat to public health, safety and welfare exists and giving the executive director the authority to determine whether an interested party has made out a prime facie case favoring reeopening of the docket.

20. The Commission should clarify whether a project subject to renewed approval under § 803.30(c) is to be considered a "proposed project" for purposes of the approval standards set forth in subpart D of Part 803.

Response: Agreed. Wording is added to §803.30(c) clarifying this point.

21. In § 805.2, it is unfair to assess all of the adjudicatory hearing costs to the

project sponsor.

Response: The regulation states that the hearing officer shall assess these costs to the project sponsors or others, as deemed equitable. The hearing officer will be able to weigh the equities and then assess costs accordingly. Costs will not necessarily be wholly assessed against a sponsor in each and every case. There is room for the officer to use his/her discretion to be fair to all parties. This regulation is based on procedures successfully implemented by the Delaware River Basin Commission.

22. A joint permitting process with the signatory agencies should be developed as part of or concurrent with

this rulemaking process.

Response: § 803.6 of the proposed regulation allows for such cooperation with the signatory parties. Staff will attempt to work out such cooperative arrangement once the rulemaking package is in place.

23. Definition of "diversion" should be broadened to include transfers

between subbasins.

Response: The definition of "diversion" comes from the compact. The Commission cannot broaden its scope, though certainly the effects of a trans-subbasin withdrawal can be considered as part of the project review evaluation process.

24. The costs of an adjudicatory hearing should not be assessed against

a signatory party.

Response: This should be left to the discretion of the hearing officer as he/

she deems equitable.

25. § 803.24(b)(4) should include the word "estimated" before the words "completion date" and "construction schedule.'

Response: Agreed.

26. Water is not owned by any single person. It may be used by individuals, but it is a resource belonging to all the people of the basin. Water must be managed comprehensively by the SRBC. All users must contribute in some fashion to wise management of the basin's waters.

Response: Agreed, though in managing the basin's waters, the Commission understands the need to consider the special needs and challenges facing various users.