

November 6, 2018



**GREAT LAKES—ST. LAWRENCE RIVER BASIN WATER RESOURCES  
COUNCIL**

**RESOLUTION #40—ADOPTION OF COUNCIL GUIDANCE AND RULES OF  
PRACTICE AND PROCEDURE**

WHEREAS, Section 2.1 of the Great Lakes-St. Lawrence River Basin Water Resources Compact (Compact) created the Great Lakes-St. Lawrence River Basin Water Resources Council (Council) as a body politic and corporate as an agency and instrumentality of the governments of the respective parties to the Compact; and,

WHEREAS, Section 2.5 of the Compact states in part that “[t]he Council shall provide for its own organization and procedure and may adopt rules and regulations governing its meetings and transactions, as well as the procedures and timeline for submission, review and consideration of Proposals that come before the Council for its review and action.”; and,

WHEREAS, on September 1, 2017, the Council jointly created with the Great Lakes St. Lawrence Water Resources Regional Body a Procedures Update Team charged with, among other things, creating Council Guidance and Rules of Practice and Procedure for the Council’s consideration; and,

WHEREAS, on September 10, 2018, the Council issued draft Council Guidance and Rules of Practice and Procedure, and thereafter conducted a 30-day public comment period, and has considered those comments received when developing Council Guidance and Rules of Practice and Procedure for adoption.

NOW THEREFORE BE IT RESOLVED THAT the Council approves and adopts as guidance the Council Guidance dated December 6, 2018, and attached to this Resolution as Attachment “A,”

BE IT FURTHER RESOLVED THAT the Regional Body approves and adopts as guidance the Sequence of Events for Consideration of Proposals for Exceptions to the Prohibition on Diversions that are subject to Regional Review dated December 6, 2018, and attached to this Resolution as Attachment “B.”

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BE IT FURTHER RESOLVED THAT the Council approves and adopts the Rules of Practice and Procedure dated December 6, 2018 and attached to this resolution as Attachment “C.”

BE IT FINALLY RESOLVED THAT this Council Guidance and Rules of Practice and Procedure replace and supersede in their entirety the interim guidance adopted by the Council on June 10, 2010.

## **Great Lakes—St. Lawrence River Basin Water Resources Compact**

### **Guidance**

The definitions in Part I and the policies and procedures outlined in Part II herein are Guidance and intended to supplement existing requirements in the Great Lakes—St. Lawrence River Basin Water Resources Compact (Compact). Nothing in Parts I or II shall affect regulatory requirements. The Guidance in Parts I and II are not an adjudication or a regulation. There is no intent on the part of the Council to give these Parts that weight or deference. Parts I and II herein establish the framework within which the Council will exercise its administrative discretion in the future. The Council reserves the discretion to deviate from the Guidance set forth in Parts I and II herein if circumstances warrant.

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**Part I. DEFINITIONS.**

**Section 100. Definitions.**

1. The standard definitions set forth in Section 1.2 of the Compact shall apply to this Guidance. All references to sections of the Compact are to the version of the Compact enacted as U.S. Public Law No: 110-342, October 3, 2008.
2. “Agreement” means the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement.
3. “Application” or “Application to approve a Proposal” means the full Application package seeking approval of the Proposal for which Regional Review is undertaken.
4. “Compact” means the Great Lakes – St. Lawrence River Basin Water Resources Compact, Pub. L. 110-342, 122 Stat. 3739 (2008).
5. “Compact Council” or “Council” means the Great Lakes – St. Lawrence River Basin Water Resources Council.
6. “Council Decision” means an action by the Council that, subject to the outcome of any Appeal Hearing under the Council’s Rules of Practice, terminates its decision-making process and affects legal rights. A final decision by the Council on a Proposal that approves, approves with conditions or disapproves the Proposal is an example of a Council Decision.
7. “Executive Director” means the Executive Director of the Council unless otherwise indicated.
8. “Member” means the Governor of a Party to the Compact or the Governor’s duly appointed alternate.
9. “Regional Body” means the Great Lakes – St. Lawrence River Water Resources Regional Body.
10. “Secretariat” means the Executive Director and other administrative staff hired or contracted by the Council.

**Part II. Review and Approval of Exceptions to the Prohibition of Diversions.**

**Section 200. Application.**

**Section 200.1. Purpose.**

The purpose of this Part is to set forth Guidance for Applications required by Section 4.9 of the Compact, as well as for Regional Review of regionally significant or potentially precedent setting Proposals as set forth in Section 4.5.1.f of the Compact.

**Section 200.2. Preliminary Actions Prior to the Submission of an Application**

An Originating Party may, prior to submission of an Application for Council approval or Regional Review, request a preliminary consultation with the Secretariat or the representatives of the Parties' agencies regarding preliminary plans for any Proposal that is or may be subject to Regional Review and the Council's review and approval. The Originating Party may include the Applicant in any such preliminary consultations.

**Section 200.3. Originating Party Powers and Duties; Applicant's Submission to Originating Party.**

1. The Applicant initiates the review process by submitting to the Originating Party an Application to approve a Diversion in such manner and with such accompanying information as the Originating Party may require.
2. Upon receipt of an Application to approve a Diversion, the Originating Party notifies the other Parties and determines whether the Diversion addressed in the Application is a Proposal subject to Regional Review or Council approval. If it determines that the Diversion is subject to Regional Review under Section 4.9.1.c of the Compact, or subject to Regional Review and approval of the Council under Section 4.9.2.c or Section 4.9.3 of the Compact, the Originating Party notifies the public and federally recognized Tribes in accordance with relevant State law that it received the Application and that the Application is subject to Regional Review, or Regional Review and Council approval.
3. If the Application is subject to Regional Review, or Regional Review and Council approval, the Originating Party examines whether the Application contains sufficient information to determine whether the Proposal does or does not meet the relevant criteria in the Compact. If the Application does not contain the information requested from the Applicant in Section 200.6 of this Guidance and any additional information that the Originating Party concludes is required to evaluate the Application, the Originating Party obtains the missing information from the Applicant.

**Section 200.4. Submission of Application to Council and Regional Body.**

1. If it concludes that an Application to approve a Proposal is subject to the review of the Regional Body or Council under the Compact, the Originating Party submits the Application as appropriate to the Council in accordance with Section 4.7 of the Compact, and to the Regional Body, for review. The Applicant may not submit an Application directly to the Regional Body or Council for their review. Regardless, the original Applicant (and not the Originating Party) remains the Applicant throughout the process.
2. No Application should be submitted to the Council or Regional Body unless it is administratively complete, *i.e.* all information and documents, including information to be included as part of the Application pursuant to Section 200.6 of this Guidance, are included in such Application, and unless the Originating Party's Technical Review needed to evaluate whether the Proposal meets the Standard of Review and Decision is complete and attached to the Application.
3. The Originating Party submits 1 copy of the Application to the Executive Director of the Council and the Executive Director of the Regional Body. The Originating Party

also submits the Application to the Executive Director(s) in a common electronic format that allows public accessibility (e.g. Adobe Acrobat PDF format), which electronic version will be forwarded to the Council and Regional Body members by the Executive Director(s).

**Section 200.5 Consideration of regionally significant or potentially precedent setting Proposals. RESERVED**

**Section 200.6. Contents of Application.**

**Section 200.6.1. Contents of Application for Regional Review for a “Straddling Communities” Exception to the Prohibition against Diversions.**

This section applies to Applications for an exception to the general prohibition against Diversions (*see* Section 4.8 of the Compact) where the underlying Proposal is to transfer Water to a Straddling Community<sup>1</sup> and such Proposal will result in a New or Increased Consumptive Use of 5 million gallons per day or greater average over any 90-day period (*see* Section 4.9.1 of the Compact).

Only Proposals for Diversion of Water where the water so transferred shall be used solely for Public Water Supply Purposes within a Straddling Community will be considered under this Section (*see* Section 4.9.1 of the Compact).

Only the Originating Party may forward Applications to the Council and Regional Body. Applications may not be submitted directly to the Council and Regional Body by the Applicant, but rather must be submitted to the Originating Party.

Any information requested by this Guidance that was not included in the original Application to the Originating Party should be added as an attachment to the original Application as appropriate.

If applicable or necessary, the Applicant should provide a table of contents or index indicating where in the Application the information in response to Sections B and C below is provided. Responses to Section A, and brief descriptions of the information requested in B and C, should be provided as a cover memo.

A. **Basic Information.** All Applications should include, but not be limited to, the following information:

1. *Information about the Applicant.*
  - a. Name of Applicant;
  - b. Mailing address of Applicant;
  - c. Name of contact person for Application;

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<sup>1</sup> “Straddling Community” means any incorporated city, town or the equivalent thereof, wholly within any County that lies partly or completely within the Basin, whose corporate boundary existing as of the effective date of this Compact, is partly within the Basin or partly within two Great Lakes watersheds. (Section 1.2 of the Compact).

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- d. Applicant contact's phone number; and,
- e. Applicant contact's email address.
- f. The entity or entities that are participants or otherwise involved in implementing any component of the Proposal, including but not limited to any entity or entities other than the Applicant that will Withdraw the Water, return Water to the Great Lakes – St. Lawrence River Watershed, etc. Information on these entities should include:
  - i. Name of entity;
  - ii. Mailing address of entity;
  - iii. Name of contact person;
  - iv. Entity contact's phone number; and
  - v. Entity contact's email address.

[Ref: Section 1.2 of the Compact ("Applicant" definition)]

2. *Identification of the Originating Party, including any and all government offices or partners, the mailing address of the same, the name of the individual authorized to act for the Originating Party, and any other points of contact on behalf of the Originating Party.*

3. *Identification of the specific Exception to the Prohibition of Diversions being applied for.*

Please note in the Application that the Applicant is seeking an Exception to the Prohibition Against Diversions pursuant to Section 4.9.1 of the Compact, entitled "Straddling Communities." In addition, please indicate whether the Straddling Community:

- a. Straddles the Basin divide; or,
- b. Straddles the divide of two watersheds of the Basin.

[Ref: Section 4.9 of the Compact]

4. *Timing of Additional Applications.*

Provide the date of any previous Applications for the Straddling Community made to the Originating Party within the past 10 years and the daily volume of the Water Withdrawal, Consumptive Use or Diversion approved, as applicable. Diversions, Consumptive Uses and Withdrawals that constitute a baseline pursuant to Section 4.12.2 of the Compact should not be included in response to this section.

[Ref: Section 4.12.3 of the Compact]

5. *Source of the Withdrawal and location of the Diversion.*

Provide the following:

- a. Description of the location and source of the Withdrawal. Alternative locations may also be identified, with the preferred location indicated. If multiple wells or pump sites are to be used, provide information for them all.
- b. To the extent that the local entity that will be making the Withdrawal is not the Applicant, a demonstration that the local entity has sufficient withdrawal

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capacity to service the Applicant's needs and is willing to negotiate a purchase contract with the Applicant.

- c. A map or photo of the area identifying the Source Watershed<sup>2</sup> and proposed location of the Diversion, together with a description of the area that is proposed to receive the Diverted Water, location of the return flow and water supply service area.
  - d. An identification of the Source Watershed. Specify if the source is a groundwater source (and if so, indicate if confined or unconfined), or surface water source (if so, indicate the name of the lake, river, or stream).
6. *Total volume of the New or Increased Diversion and associated Consumptive Use*<sup>3</sup>. Identify:
- a. The total maximum volume of the Diversion and associated Consumptive Use over the next 25 years (or the time period required by the Originating Party) as expressed in millions of gallons per day averaged over a calendar year as well as over the peak 90 day period during a calendar year.
  - b. Information regarding whether the proposed use of water transferred across the basin or watershed boundary solely for Public Water Supply Purposes would be continuous, seasonal or temporary.
  - c. The location of the point of measurement of the Diversion, and the technical method to be used for measuring the rate of the Diversion.
  - d. The total volume of any existing Diversion and Consumptive Use listed pursuant to Section 4.12.2 of the Compact that this Proposal will increase; or, the total volume of any previously approved Diversion that this Proposal will increase, as applicable.

Unless otherwise noted, all rates and volumes should be expressed in millions of gallons per day.

7. *Originating Party Technical Assessments.*

Any technical assessments, including the Technical Review, made by the Originating Party should be included in the Application package.  
[Ref: Section 4.5.4.a of the Compact]

8. *Additional materials from the Originating Party's Administrative Record as appropriate.* The Originating Party should also forward with the Application any other documents or materials used or developed during the Originating Party's

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<sup>2</sup> "Source Watershed" as defined in the Compact means the watershed from which a Withdrawal originates. If Water is Withdrawn directly from a Great Lake or from the St. Lawrence River, then the Source Watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively. If Water is Withdrawn from the watershed of a stream that is a direct tributary to a Great Lake or a direct tributary to the St. Lawrence River, then the Source Watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively, with a preference to the direct tributary stream watershed from which it was Withdrawn.

<sup>3</sup> "Consumptive Use" as defined in the Compact means that portion of the Water Withdrawn or withheld from the Basin that is lost or otherwise not returned to the Basin due to evaporation, incorporation into Products, or other processes.

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review of the Proposal that the Originating Party determines may assist the Compact Council during its review, including any transcript or summary of any consultation that has occurred with federally recognized Tribes.  
[Ref: Section 5.1.1 of the Compact]

- B. Exception Standard Criteria. Applications that are required to meet the Exception Standard criteria should include information to show that the Proposal meets the following Exception Standard criteria contained in Section 4.9.4 of the Compact.
1. *The need for all or part of the Exception [Diversion] cannot be reasonably avoided through the efficient use and conservation of existing water supplies.*  
Applications should include a narrative describing the need for the New or Increased Diversion. This description should include an analysis of the efficiency of current water uses, including the application of Environmentally Sound and Economically Feasible Water Conservation Measures. Such analysis may either be one that the Applicant previously submitted to the Originating Party or creates and submits to the Originating Party for forwarding to the Council or Regional Body.  
[Ref: Section 4.9.4.a of the Compact]
  2. *The Exception [Diversion] will be limited to quantities that are considered reasonable for the purposes for which it is proposed.*  
Applications should include a narrative explaining why the quantities requested in Section A.6.a above are considered reasonable for the purposes for which the Exception is proposed (for example, population projections). To that end, the Application should also include a Water use plan. The plan should include: water use and population projections to support the term and daily volumes requested for the time period required by the Originating Party for water use plans, or up to 25 years if no time period is set by the Originating Party; a description of the capacity of the withdrawal, treatment and distribution portions of the system; an assessment of the water use savings of current and proposed water conservation and efficiency programs.  
[Ref: Section 4.9.4.b of the Compact]
  3. *All Water Withdrawn shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use. No surface water or groundwater from outside the Basin may be used to satisfy any portion of this criterion except if it:*
    - a. *Is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin;*
    - b. *Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin;*The Application should include a description of how the Water will be returned. This description should include:
    - a. An explanation of how and when the Water will be returned. To the extent the local entity that will be discharging the return flow is not the Applicant, agreements for return of the water to the Basin should be presented;

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- b. An estimate of total return flow by volume in millions of gallons per day averaged over a calendar year and as a percentage of Water Diverted including proposed measurement methods;
- c. A description of the discharge location(s) of the return flow;
- d. A description of the anticipated Water quality of the return flow including proposed methods for determining the Water quality;
- e. A description of the return flow as identified in Section A.5.c above, including what Water will be returned, where it will be returned, and how it will minimize the portion of Water from outside the Basin.
- f. An estimate of Consumptive Use proposed by water use sector, including historical information, where applicable. These estimates may be presented in the form of project engineering design plans or utilizing United States Geological Survey's (USGS) compilation of Consumptive Use estimates or other Consumptive Use coefficients. To the extent the Consumptive Use estimates are different than "generally accepted Consumptive Use coefficients," the Application should include a detailed explanation and justification for projected Consumptive Use.

[Ref: Section 4.9.4.c of the Compact]

- 4. *The Exception [Diversion] shall be implemented so as to ensure that it shall result in no significant individual or cumulative adverse impacts to the quantity or quality of the Waters and Water Dependent Natural Resources of the Basin with consideration given to the potential Cumulative Impacts of any precedent-setting consequences associated with the Proposal.*
  - a. With regard to the Withdrawal, Diversion and return flow identified pursuant to Section A.5 above, provide the following additional information:
    - i. Current conditions regarding hydrologic setting for both groundwater and surface water as well as the connection between the two, water quality and habitat;
    - ii. Statistics on the stream flow, if applicable and available;
    - iii. The relevant aquifer(s);
    - iv. Anticipated individual impacts to the quantity or quality of the Waters and Water Dependent Natural Resources;
    - v. Mitigation measures that will be implemented to prevent or eliminate significant adverse impacts; and
    - vi. An environmental impact assessment or other environmental review of the Proposal, if already prepared under State or federal law.
  - b. The Parties to the Compact will have the responsibility of conducting Cumulative Impact assessments pursuant to the Compact. To assist with the development of this analysis, provide information about the potential Cumulative Impacts of the Proposal to the quantity-and quality of the Waters and Water Dependent Natural Resources of the Basin. Information may also be included on how the Proposal relates to other existing Withdrawals, Diversions and Consumptive Uses for purposes of enabling the Parties to collectively evaluate Cumulative Impacts from this Proposal during Regional Review. The Application should include data and analyses on Cumulative

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Impacts that are available from the Originating Party. To that end, all Originating Party Cumulative Impact assessments should be included in the Application, including but not limited to Cumulative Impact assessments performed pursuant to the Compact and based on commonly used water management analysis techniques, protocols or modeling tools. The Application should also document any mitigation measures required by the Originating Party to address Cumulative Impacts.  
[Ref: Section 4.9.4.d and Section 4.15.3 of the Compact]

5. *The Exception [Diversion] shall be implemented so as to incorporate Environmentally Sound and Economically Feasible Water Conservation Measures to minimize Water Withdrawals or Consumptive Use.*

The Application should provide a detailed description of the Environmentally Sound and Economically Feasible Water Conservation Measures that have been and will be implemented to ensure that both existing and the proposed water use will result in efficient water use and reduce water loss or waste. Where a conservation and efficiency plan has been developed it should be provided. The description should outline how such measures are:

- a. Environmentally Sound;
- b. Reflect best practices applicable to the water use sector;
- c. Technically feasible and readily available; and
- d. Economically Feasible and Cost Effective in comparison to other measures that are technically feasible and available or are best practices applicable to the water use sector, based on an analysis that considers direct and avoided economic and environmental costs. Factors about the particular facilities and processes that will be considered include:
  - i. Potential environmental impact(s);
  - ii. Age of equipment and facilities;
  - iii. Processes employed; and,
  - iv. Potential energy impacts.

[Ref: Section 1.2 and Section 4.9.4.e of the Compact]

6. *The Exception [Diversion] shall be implemented so as to ensure that it is in compliance with all applicable municipal, State, and federal laws as well as regional interstate, and international agreements, including the Boundary Waters Treaty of 1909.*

Any approval of a Diversion pursuant to the terms of the Compact or relevant State law does not relieve the Applicant or the Originating Party of the responsibility to obtain additional authorizations required for the activity approved by the Council or the relevant State; and, if the Applicant is required by law to obtain approvals from any federal or other State agency to do the work, any approval given pursuant to Section 4.9.3 of the Compact is not effective until the federal and State approvals are obtained. If any environmental permits have already been issued, they should be included in the Application.

[Ref: Section 4.9.4.f of the Compact]

7. *Additional Information.*

Provide any other additional information that the Applicant or Originating Party deems relevant for the Council's and Regional Body's consideration.

C. Additional Information Straddling Community Exception [Diversion] Applications.

1. All Applications should include information to show that the Proposal meets the following additional criteria contained in Section 4.9.1 of the Compact.
  - a. *Regardless of the volume of Water transferred, all the Water so transferred shall be used solely for Public Water Supply Purposes within the Straddling Community.*

The Application should include a statement and demonstration that all the Water diverted will be used solely for Public Water Supply Purposes within the community seeking the Water. It must also be demonstrated that the community meets the definition of a Straddling Community [Ref: Section 4.9.1 of the Compact];

2. The Application should contain an analysis showing that the return flow maximizes the Basin Water portion returned to the Source Watershed while water from outside the Basin is minimized. This analysis may be incorporated and addressed as part of the Applicant's response to section B.3. above. [Ref: Section 4.9.1 a (iii) of the Compact]; and
3. The Application should contain all reports about the Proposal prepared for any other purpose that provide substantive information material to an evaluation of the Proposal.

**Section 200.6.2. Contents of Application for Regional Review and Council Approval for an "Intra-Basin Transfer" Exception to the Prohibition against Diversions.**

This section applies to Applications for an exception to the general prohibition against Diversions (*see* Section 4.8 of the Compact) where the underlying Proposal is to transfer Water from the watershed of one of the Great Lakes into the watershed of another Great Lake, and such Proposal will result in a New or Increased Consumptive Use of 5 million gallons per day or greater average over any 90-day period (See Section 4.9.2.c of the Compact).

Only the Originating Party may forward Applications to the Council and Regional Body. Applications may not be submitted directly to the Council and Regional Body by the Applicant, but rather must be submitted to the Originating Party.

Any information requested by this Guidance that was not included in the original Application to the Originating Party should be added as an attachment to the original Application as appropriate.

If applicable or necessary, the Applicant should provide a table of contents or index indicating where in the Application the information in response to Sections B and C below

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is provided. Responses to Section A, and brief descriptions of the information requested in B and C, may be provided as a cover memo.

A. Basic Information. All Applications should include, but not be limited to, the following information:

1. *Information about the Applicant.*

- a. Name of Applicant;
- b. Mailing address of Applicant;
- c. Name of contact person for Application;
- d. Applicant contact's phone number; and,
- e. Applicant contact's email address.
- f. The entity or entities that are participants or otherwise involved in implementing any component of the Proposal, including but not limited to any entity or entities other than the Applicant that will Withdraw the Water, return Water to the Great Lakes – St. Lawrence River Watershed, etc... Information on these entities should include:
  - i. Name of entity;
  - ii. Mailing address of entity;
  - iii. Name of contact person;
  - iv. Entity contact's phone number; and
  - v. Entity contact's email address.

[Ref: Section 1.2 of the Compact (“Applicant” definition)]

2. *Identification of the Originating Party, including any and all government offices or partners, the mailing address of the same, the name of the individual authorized to act for the Originating Party, and any other points of contact on behalf of the Originating Party.*

3. *Identification of the specific Exception to the Prohibition of Diversions being applied for.*

Please note in the Application that the Applicant is seeking an Exception to the Prohibition Against Diversions pursuant to Section 4.9.2.c of the Compact, entitled “Intra-Basin Transfer.”

[Ref: Section 4.9 of the Compact]

4. *Timing of Additional Applications.*

Provide the date of any previous Applications made to the Originating Party within the past 10 years and the daily volume averaged over a 90 day period of the water Withdrawal, Consumptive Use or Diversion approved, as applicable. Diversions, Consumptive Uses and Withdrawals that constitute a baseline pursuant to Section 4.12.2 of the Compact should not be included in response to this section.

[Ref: Section 4.12.3 of the Compact]

5. *Source of the Withdrawal and location of the Diversion.*

Provide the following:

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- a. Description of the location and source of the Withdrawal. Alternative locations may also be identified, with the preferred location indicated. If multiple wells or pump sites are to be used, provide information for them all.
  - b. To the extent that the local entity that will be making the Withdrawal is not the Applicant, a demonstration that the local entity has sufficient withdrawal capacity to service the Applicant's needs and is willing to negotiate a purchase contract with the Applicant.
  - c. A map or photo of the area identifying the Source Watershed<sup>4</sup> and proposed location of the Diversion, together with a description of the area that is proposed to receive the Diverted Water and location of the return flow and water supply service area.
  - d. An identification of the Source Watershed. Specify if the source is a groundwater source (and if so, indicate if confined or unconfined), or surface water source (if so, indicate the name of the lake, river, or stream).
6. *Total volume of the New or Increased Diversion and associated Consumptive Use*<sup>5</sup>. Identify:
- a. The total maximum volume of the Diversion and associated Consumptive Use over the next 25 years (or the time period required by the Originating Party) as expressed in millions of gallons per day averaged over a calendar year as well as over the peak 90-day period during a calendar year.
  - b. Information regarding whether the proposed use would be continuous, seasonal or temporary.
  - c. The location of the point of measurement of the Diversion, and the technical method to be used for measuring the rate of the Diversion.
  - d. The total volume of any existing Diversion and Consumptive Use listed pursuant to Section 4.12.2 of the Compact that this Proposal will increase; or, the total volume of any previously approved Diversion that this Proposal will increase, as applicable.

Unless otherwise noted, all rates and volumes should be expressed in millions of gallons per day.

7. *Originating Party Technical Assessments.*

Any technical assessments, including the Technical Review, made by the Originating Party should be included in the Application package.

[Ref: Section 4.5.4.a of the Compact]

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<sup>4</sup> "Source Watershed" as defined in the Compact means the watershed from which a Withdrawal originates. If Water is Withdrawn directly from a Great Lake or from the St. Lawrence River, then the Source Watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively. If Water is Withdrawn from the watershed of a stream that is a direct tributary to a Great Lake or a direct tributary to the St. Lawrence River, then the Source Watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively, with a preference to the direct tributary stream watershed from which it was Withdrawn.

<sup>5</sup> "Consumptive Use" as defined in the Compact means that the portion of Water Withdrawn or withheld from the Basin that is lost or otherwise not returned to the Basin due to evaporation, incorporation into Products, or other processes."

8. *Purpose of the intra-basin Transfer.*  
Provide detailed written explanation of what the Water will be used for. Uses could include Public Water Supply Purposes, or other purposes. If the Water is to be used for multiple purposes, estimate percent usage by sector.
9. *Additional materials from the Originating Party's Administrative Record as appropriate.* The Originating Party should also forward with the Application any other documents or materials used or developed during the Originating Party's review of the Proposal that the Originating Party determines may assist the Compact Council during its review, including any transcript or summary of any consultation that has occurred with federally recognized Tribes.

[Ref: Section 5.1.1 of the Compact]

B. Exception Standard Criteria. All Applications should include information to show that the Proposal meets the following Exception Standard criteria contained in Section 4.9.4 of the Compact.

1. *The need for all or part of the Exception [Diversion] cannot be reasonably avoided through the efficient use and conservation of existing water supplies.*  
Applications should include a narrative describing the need for the New or Increased Diversion. This description should include an analysis of the efficiency of current water uses, including the application of Environmentally Sound and Economically Feasible Water Conservation Measures. Such analysis may either be one that the Applicant previously submitted to the Originating Party or creates and submits to Originating Party for forwarding to the Council or Regional Body.
2. *The Exception [Diversion] will be limited to quantities that are considered reasonable for the purposes for which it is proposed.*  
Applications should include a narrative explaining why the quantities requested in Section A.6.a above are considered reasonable for the purposes for which the Exception is proposed (for example, population projections). To that end, the Application should also include a Water use plan. For public water supply systems the plan should include: water use and population projections to support the term and daily volumes requested for the time period required by the Originating Party for water use plans, or up to 25 years if no time period is set by the Originating Party; a description of the capacity of the withdrawal, treatment and distribution portions of the system; an assessment of the water use savings of current and proposed water conservation and efficiency programs. Applications for other uses, such as industrial or agricultural, must include a plan that projects water use at the time of Application and projected for up to 25 years or the time period required by the Originating Party.

[Ref: Section 4.9.4.b of the Compact]

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3. *All Water Withdrawn shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use. No surface water or groundwater from outside the Basin may be used to satisfy any portion of this criterion except if it:*
- a. *Is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin;*
  - b. *Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin;*

The Application should include a description of how the Water will be returned. This description should include:

- a. An explanation of how and when the Water will be returned. To the extent the local entity that will be discharging the return flow is not the Applicant, agreements for return of the water to the Basin should be presented;
- b. An estimate of total return flow by volume in gallons per day averaged over a calendar year and as a percentage of Water Diverted including proposed measurement methods;
- c. A description of the discharge location(s) of the return flow;
- d. A description of the anticipated Water quality of the return flow including proposed methods for determining the Water quality;
- e. A description of the Return Flow as identified in Section A.5.c above, including what Water will be returned, where it will be returned, and how it will minimize the portion of Water from outside the Basin.
- f. An estimate of Consumptive Use, including historical information, where applicable. These estimates may be presented in the form of project engineering design plans or utilizing United States Geological Survey's (USGS) compilation of Consumptive Use estimates or other Consumptive Use coefficients. To the extent the Consumptive Use estimates are different than "generally accepted Consumptive Use coefficients," the Application should include a detailed explanation and justification for projected Consumptive Use.  
[Ref: Section 4.9.4.c of the Compact]

4. *The Exception [Diversion] shall be implemented so as to ensure that it shall result in no significant individual or cumulative adverse impacts to the quantity or quality of the Waters and Water Dependent Natural Resources of the Basin with consideration given to the potential Cumulative Impacts of any precedent-setting consequences associated with the Proposal.*
- a. With regard to the Withdrawal, Diversion and return flow identified pursuant to Section A.5 above, provide the following additional information:
    - i. Current conditions regarding hydrologic setting for both groundwater and surface water as well as the connection between the two, water quality and habitat;
    - ii. Statistics on the stream flow, if applicable and available;
    - iii. The relevant aquifer(s);
    - iv. Anticipated individual impacts to the quantity or quality of the Waters and Water Dependent Natural Resources;

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- v. Mitigation measures that will be implemented to prevent or eliminate significant adverse impacts; and
  - vi. An environmental impact assessment or other environmental review of the Proposal, if already prepared under State or federal law.
- b. The Parties to the Compact will have the responsibility of conducting Cumulative Impact assessments pursuant to the Compact. To assist with the development of this analysis, provide information about the potential Cumulative Impacts of the Proposal to the quantity-and quality of the Waters and Water Dependent Natural Resources of the Basin. Information may also be included on how the Proposal relates to other existing Withdrawals, Diversions and Consumptive Uses for purposes of enabling the Parties to collectively evaluate Cumulative Impacts from this Proposal during Regional Review. The Application should include data and analyses on Cumulative Impacts that are available from the Originating Party. To that end, all Originating Party Cumulative Impact assessments should be included in the Application, including but not limited to Cumulative Impact assessments performed pursuant to the Compact and based on commonly used water management analysis techniques, protocols or modeling tools. The Application should also document any mitigation measures required by the Originating Party to address Cumulative Impacts.

[Ref: Section 4.9.4.d and Section 4.15.3 of the Compact]

5. *The Exception [Diversion] shall be implemented so as to incorporate Environmentally Sound and Economically Feasible Water Conservation Measures to minimize Water Withdrawals or Consumptive Use.*

The Application should provide a detailed description of the Environmentally Sound and Economically Feasible Water Conservation Measures that have been and will be implemented to ensure that both existing and the proposed water use will result in efficient water use and reduce water loss or waste. Where a conservation and efficiency plan has been developed it should be provided. The description should outline how such measures are:

- a. Environmentally Sound;
- b. Reflect best practices applicable to the water use sector;
- c. Technically feasible and readily available; and
- d. Economically Feasible and Cost Effective in comparison to other measures that are technically feasible and available or are best practices applicable to the water use sector, based on an analysis that considers direct and avoided economic and environmental costs. Factors about the particular facilities and processes that will be considered include:
  - i. Potential environmental impact(s);
  - ii. Age of equipment and facilities;
  - iii. Processes employed; and,
  - iv. Potential energy impacts.

[Ref: Section 1.2 and Section 4.9.4.e of the Compact]

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6. *The Exception [Diversion] shall be implemented so as to ensure that it is in compliance with all applicable municipal, State, and federal laws as well as regional interstate, and international agreements, including the Boundary Waters Treaty of 1909.*

Any approval of a Diversion pursuant to the terms of the Compact or relevant State law does not relieve the Applicant or the Originating Party of the responsibility to obtain additional authorizations required for the activity approved by the Council or the relevant State; and, if the Applicant is required by law to obtain approvals from any federal or other State agency to do the work, any approval given pursuant to Section 4.9.3 of the Compact is not effective until the federal and State approvals are obtained. If any environmental permits have already been issued, they should be included in the Application.

[Ref: Section 4.9.4.f of the Compact]

7. *Additional Information.*

Provide any other additional information that the Applicant or Originating Party deems relevant for the Council's and Regional Body's consideration.

C. Additional Information—Intra-Basin Transfers Exception Applications.

All Applications should include information to show that the Proposal meets the following additional criteria contained in Section 4.9.2.c of the Compact.

1. *The Proposal shall be subject to management and regulation by the Originating Party and shall meet the Exception Standard, ensuring that Water Withdrawn shall be returned to the Source Watershed;*  
As part of its Application addressing Section B.3. above, the Applicant should show how water will be returned to the Source Watershed  
[Ref: Section 4.9.2.c.i of the Compact]
2. *The Applicant shall demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the Water will be transferred, including conservation of existing water supplies.*  
The Application should include an analysis showing that there is no feasible, cost effective, and environmentally sound water supply alternative, including conservation and efficient use of existing water supplies, within the Great Lake watershed to which the Water will be transferred. Such analysis should address quantity and quality (including treatability) of alternative sources and should describe the rationale for not using the other considered water supply alternatives.  
[Ref: Section 4.9.2.c.ii of the Compact]
3. The Application should contain all reports about the Proposal prepared for any other purpose that provide information material to an evaluation of the Proposal.

**Section 200.6.3. Contents of Application for Regional Review and Council Approval for a “Straddling County” Exception to the Prohibition against Diversions.**

This section applies to Applications for an exception to the general prohibition against Diversions (see Section 4.8 of the Compact) where the underlying Proposal is to transfer Water to a Community within a Straddling County<sup>6</sup> (see Section 4.9.3 of the Compact).

Only Proposals to Divert Water solely for Public Water Supply Purposes of a Community within a Straddling County that is without adequate supplies of potable water will be considered under this Section (see Section 4.9.3.a of the Compact).

Only the Originating Party may forward Applications to the Council and Regional Body. Applications may not be submitted directly to the Council and Regional Body by the Applicant, but rather must be submitted to the Originating Party.

Any information requested by this Guidance that was not included in the original Application to the Originating Party should be added as an attachment to the original Application as appropriate.

If applicable or necessary, the Applicant should provide a table of contents or index indicating where in the Application the information in response to Sections B and C below is provided. Responses to Section A, and brief descriptions of the information requested in B and C, may be provided as a cover memo.

A. Basic Information. All Applications should include, but not be limited to, the following information:

1. *Information about the Applicant.*
  - a. Name of Applicant;
  - b. Mailing address of Applicant;
  - c. Name of contact person for Application;
  - d. Applicant contact’s phone number; and,
  - e. Applicant contact’s email address.
  - f. The entity or entities that are participants or otherwise involved in implementing any component of the Proposal, including but not limited to any entity or entities other than the Applicant that will Withdraw the Water, return Water to the Great Lakes – St. Lawrence River Watershed, etc... Information on these entities should include:
    - i. Name of entity;
    - ii. Mailing address of entity;
    - iii. Name of contact person;
    - iv. Entity contact’s phone number; and
    - v. Entity contact’s email address.

[Ref: Section 1.2 of the Compact (“Applicant” definition)]

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<sup>6</sup> “Community within a Straddling County” means any incorporated city, town or the equivalent thereof, that is located outside the Basin but wholly within a County that lies partly within the Basin and that is not a Straddling Community. (Section 1.2 of the Compact.

2. *Identification of the Originating Party, including any and all government offices or partners, the mailing address of the same, the name of the individual authorized to act for the Originating Party, and any other points of contact on behalf of the Originating Party.*

3. *Identification of the specific Exception to the Prohibition of Diversions being applied for.*

Please note in the Application that the Applicant is seeking an Exception to the Prohibition Against Diversions pursuant to Section 4.9.3 of the Compact, entitled “Straddling Counties.”

[Ref: Section 4.9 of the Compact]

4. *Timing of Additional Applications.*

Provide the date of any previous Applications made to the Originating Party within the past 10 years and the daily volume of the water Withdrawal, Consumptive Use or Diversion approved, as applicable. Diversions, Consumptive Uses and Withdrawals that constitute a baseline pursuant to Section 4.12.2 of the Compact should not be included in response to this section.

[Ref: Section 4.12.3 of the Compact]

5. *Source of the Withdrawal and location of the Diversion.*

Provide the following:

- a. Description of the location and source of the Withdrawal. Alternative locations may also be identified, with the preferred location indicated. If multiple wells or pump sites are to be used, provide information for them all.
- b. To the extent that the local entity that will be making the Withdrawal is not the Applicant, a demonstration that the local entity has sufficient withdrawal capacity to service the Applicant’s needs and is willing to negotiate a purchase contract with the Applicant.
- c. A map or photo of the area identifying the Source Watershed<sup>7</sup> and proposed location of the Diversion, together with a description of the area that is proposed to receive the Diverted Water and location of the return flow and water supply service area.
- d. An identification of the Source Watershed. Specify if the source is a groundwater source (and if so, indicate if confined or unconfined), or surface water source (if so, indicate the name of the lake, river, or stream).

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<sup>7</sup> “Source Watershed” as defined in the Compact means the watershed from which a Withdrawal originates. If Water is Withdrawn directly from a Great Lake or from the St. Lawrence River, then the Source Watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively. If Water is Withdrawn from the watershed of a stream that is a direct tributary to a Great Lake or a direct tributary to the St. Lawrence River, then the Source Watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively, with a preference to the direct tributary stream watershed from which it was Withdrawn.

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6. *Total volume of the new or increased Diversion.*

Identify:

- a. The total maximum volume of the Diversion over the next 25 years (or the time period required by the Originating Party) as expressed in millions of gallons per day averaged over a calendar year as well as over the peak 90 day period during a calendar year.
- b. Information regarding whether the proposed use would be continuous, seasonal or temporary.
- c. The location of the point of measurement of the Diversion, and the technical method to be used for measuring the rate of the Diversion.
- d. The total volume of any existing Diversion listed pursuant to Section 4.12.2 of the Compact that this Proposal will increase; or, the total volume of any previously approved Diversion that this Proposal will increase, as applicable.

Unless otherwise noted, all rates and volumes should be expressed in millions of gallons per day.

7. *Originating Party Technical Assessments.*

Any technical assessments, including the Technical Review, made by the Originating Party should be included in the Application package.

[Ref: Section 4.5.4.a of the Compact]

8. *Additional materials from the Originating Party's Administrative Record as appropriate.* The Originating Party should also forward with the Application any other documents or materials used or developed during the Originating Party's review of the Proposal that the Originating Party determines may assist the Compact Council during its review, including any transcript or summary of any consultation that has occurred with federally recognized Tribes.

[Ref: Section 5.1.1 of the Compact]

B. Exception Standard Criteria. All Applications should include information to show that the Proposal meets the following Exception Standard criteria contained in Section 4.9.4 of the Compact.

1. *The need for all or part of the Exception [Diversion] cannot be reasonably avoided through the efficient use and conservation of existing water supplies.*

Applications should include a narrative describing the need for the New or Increased Diversion. This description should include an analysis of the efficiency of current water uses, including the application of Environmentally Sound and Economically Feasible Water Conservation Measures. Such analysis may either be one that the Applicant previously submitted to the Originating Party or creates and submits to the Originating Party for forwarding to the Council or Regional Body.

[Ref: Section 4.9.4.a of the Compact]

2. *The Exception [Diversion] will be limited to quantities that are considered reasonable for the purposes for which it is proposed.*

Applications should include a narrative explaining why the quantities requested in Section A.6.a above are considered reasonable for the purposes for which the

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Exception is proposed (for example, population projections). To that end, the Application should also include a Water use plan. The plan should include: water use and population projections to support the term and daily volumes requested for the time period required by the Originating Party for water use plans, or up to 25 years if no time period is set by the Originating Party; a description of the capacity of the withdrawal, treatment and distribution portions of the system; an assessment of the water use savings of current and proposed water conservation and efficiency programs.

[Ref: Section 4.9.4.b of the Compact]

3. *All Water Withdrawn shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use. No surface water or groundwater from outside the Basin may be used to satisfy any portion of this criterion except if it:*
  - a. *Is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin;*
  - b. *Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin;*

The Application should include a description of how the Water will be returned.

This description should include:

- a. An explanation of how and when the Water will be returned. To the extent the local entity that will be discharging the return flow is not the Applicant, agreements for return of the water to the Basin should be presented;
- b. An estimate of total return flow by volume in millions of gallons per day averaged over a calendar year and as a percentage of Water Diverted including proposed measurement methods;
- c. A description of the discharge location(s) of the return flow;
- d. A description of the anticipated Water quality of the return flow including proposed methods for determining the Water quality;
- e. A description of the Return Flow as identified in Section A.5.c above and Section C.2. below, including what Water will be returned, where it will be returned, and how it will minimize the portion of Water from outside the Basin.
- f. An estimate of Consumptive Use, including historical information, where applicable. These estimates may be presented in the form of project engineering design plans or utilizing United States Geological Survey's (USGS) compilation of Consumptive Use estimates or other Consumptive Use coefficients. To the extent the Consumptive Use estimates are different than "generally accepted Consumptive Use coefficients," the Application should include a detailed explanation and justification for projected Consumptive Use.

[Ref: Section 4.9.4.c of the Compact]

4. *The Exception [Diversion] shall be implemented so as to ensure that it shall result in no significant individual or cumulative adverse impacts to the quantity or quality of the Waters and Water Dependent Natural Resources of the Basin with*

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*consideration given to the potential Cumulative Impacts of any precedent-setting consequences associated with the Proposal.*

- a. With regard to the Withdrawal, Diversion and return flow identified pursuant to Section A.5 above, provide the following additional information:
  - i. Current conditions regarding hydrologic setting for both groundwater and surface water as well as the connection between the two, water quality and habitat;
  - ii. Statistics on the stream flow, if applicable and available;
  - iii. The relevant aquifer(s);
  - iv. Anticipated individual impacts to the quantity or quality of the Waters and Water Dependent Natural Resources;
  - v. Mitigation measures that will be implemented to prevent or eliminate significant adverse impacts; and
  - vi. An environmental impact assessment or other environmental review of the Proposal, if already prepared under State or federal law.
- b. The Parties to the Compact will have the responsibility of conducting Cumulative Impact assessments pursuant to the Compact. To assist with the development of this analysis, provide information about the potential Cumulative Impacts of the Proposal to the quantity-and quality of the Waters and Water Dependent Natural Resources of the Basin. Information may also be included on how the Proposal relates to other existing Withdrawals, Diversions and Consumptive Uses for purposes of enabling the Parties to collectively evaluate Cumulative Impacts from this Proposal during Regional Review. The Application should include data and analyses on Cumulative Impacts that are available from the Originating Party. To that end, all Originating Party Cumulative Impact assessments should be included in the Application, including but not limited to Cumulative Impact assessments performed pursuant to the Compact and based on commonly used water management analysis techniques, protocols or modeling tools. The Application should also document any mitigation measures required by the Originating Party to address Cumulative Impacts.

[Ref: Section 4.9.4.d and Section 4.15.3 of the Compact]

5. *The Exception [Diversion] shall be implemented so as to incorporate Environmentally Sound and Economically Feasible Water Conservation Measures to minimize Water Withdrawals or Consumptive Use.*

The Application should provide a detailed description of the Environmentally Sound and Economically Feasible Water Conservation measures that have been and will be implemented to ensure that both existing and the proposed water use will result in efficient water use and reduce water loss or waste. Where a conservation and efficiency plan has been developed it should be provided. The description should outline how such measures are:

  - a. Environmentally Sound;
  - b. Reflect best practices applicable to the water use sector;
  - c. Technically feasible and readily available; and

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- d. Economically Feasible and Cost Effective in comparison to other measures that are technically feasible and available and/or are best practices applicable to the water use sector, based on an analysis that considers direct and avoided economic and environmental costs. Factors about the particular facilities and processes that will be considered include:
  - i. Potential environmental impact(s);
  - ii. Age of equipment and facilities;
  - iii. Processes employed; and,
  - iv. Potential energy impacts.

[Ref: Section 1.2 and Section 4.9.4.e of the Compact]

- 6. *The Exception [Diversion] shall be implemented so as to ensure that it is in compliance with all applicable municipal, State, and federal laws as well as regional interstate, and international agreements, including the Boundary Waters Treaty of 1909.*

Any approval of a Diversion pursuant to the terms of the Compact or relevant State law does not relieve the Applicant or the Originating Party of the responsibility to obtain additional authorizations required for the activity approved by the Council or the relevant State; and, if the Applicant is required by law to obtain approvals from any federal or other State agency to do the work, any approval given pursuant to Section 4.9.3 of the Compact is not effective until the federal and State approvals are obtained. If any environmental permits or assessments have already been issued, they should be included in the Application.

[Ref: Section 4.9.4.f of the Compact]

- 7. *Additional Information.*

Provide any other additional information that the Applicant or Originating Party deems relevant for the Council's and Regional Body's consideration.

- C. Additional Information – Straddling County Exception [Diversion] Applications. All Applications should include information to show that the Proposal meets the following additional criteria contained in Section 4.9.3 of the Compact.

- 1. *The Water shall be used solely for Public Water Supply Purposes of the Community within a Straddling County that is without adequate supplies of potable water.*

The Application should include:

- a. A statement and demonstration that all the Water diverted will be used solely for Public Water Supply Purposes within the community seeking the Water. It must also be demonstrated that the community is a Community in a Straddling County.
- b. An analysis showing that there are inadequate supplies of potable water available to the community. This analysis may be incorporated and addressed as part of the Applicant's response to Section B.1 above.

[Ref: Section 4.9.3.a of the Compact]

2. *The Proposal meets the Exception [Diversion] Standard, maximizing the portion of water returned to the Source Watershed as Basin Water and minimizing the surface water or groundwater from outside the Basin.*

The Application should include an analysis showing that the return flow maximizes the Basin Water portion returned to the Source Watershed and minimizes water from outside the Basin. This analysis may be incorporated and addressed as part of the Applicant's response to Section B.3 above.

[Ref: Section 4.9.3.b of the Compact]

3. *There is no reasonable water supply alternative within the basin in which the community is located, including conservation of existing water supplies.*

The Application should include an analysis of the alternatives must demonstrate that there is no reasonable water supply alternative within the basin in which the community is located, including through the conservation and efficient use of existing water supplies. Such analysis should address quantity and quality (including treatability) of alternative sources and should describe the rationale for not using the other considered water supply alternatives.

4. *Caution shall be used in determining whether or not the Proposal meets the conditions for this Exception [Diversion]. This Exception [Diversion] should not be authorized unless it can be shown that it will not endanger the integrity of the Basin Ecosystem.*

The Application should include an analysis indicating that the Proposal will not endanger the integrity of the Basin Ecosystem. This analysis may be incorporated and addressed as part of the Applicant's response to Section B.4 above.

5. *Substantive consideration will also be given to whether or not the Proposal can provide sufficient scientifically based evidence that the existing water supply is derived from groundwater that is hydrologically interconnected to Waters of the Basin.*

If applicable, the Application should include evidence that the existing water supply is derived from groundwater that is hydrologically interconnected to waters of the Basin.

6. The Application should include all reports about the Proposal prepared for any other purpose that provide substantive information material to the evaluation of the Proposal.

**Section 200.7. Notice of Receipt of Application; Technical Reviews.**

1. Within 5 days of receiving an Application from the Originating Party, the Executive Director will give notice of receipt to the other Members and provide each of them with a copy of the Application, including all materials submitted by the Originating Party to the Council pursuant to Section 200.4. Such notice and distribution of materials may be made electronically, including via website.
2. The Executive Director and the Parties will review the Application, and if necessary, request that the Originating Party provide any additional information that any of them

believes would be useful for the purpose of evaluating whether the Proposal meets the criteria in the Compact. The Originating Party has a duty to provide information reasonably necessary for the Council's review of the Proposal.

3. If the Council concludes that the Application contains insufficient information to determine whether the criteria for the relevant Exception has been met by the Applicant, the Executive Director may request the Originating Party to cure the deficiencies within the time specified in the request. At the end of such period, the Council's review may continue unless the Originating Party requests additional time and the Council grants such extension. Such a request may come at any point during the Regional Review or Council review period.
4. The Council or any Member may perform its own Technical Review of the Proposal. Unless the Applicant or the Originating Party otherwise requests, all technical reviews shall be completed no later than 60 days after the Secretariat determines and notifies the Regional Body that the Originating Party's Application to the Regional Body and Council is complete and includes all necessary information for the review. This 60-day period, as well as any corresponding public comment period, may be extended at the discretion of the Council upon request of the Applicant or the Originating Party.
5. Any extension of time granted for the purposes of curing deficiencies in an Application results in a corresponding extension of all relevant timelines for all steps of the Regional Review and Council review process, including such timelines as are contained in this Guidance.

**Section 200.8. Tribes Notice and Involvement.**

1. In accordance with Section 4.5.3.b of the Compact, the Executive Director on behalf of the Council, will provide notice to the federally recognized Tribes within the Basin of the opportunity to comment, pursuant to Section 200.9 of this Guidance, in writing to the Council on whether the Proposal meets the relevant criteria in the Compact. The Executive Director will provide such notice within 10 days after receiving an Application from the Originating Party. In accordance with Section 4.5.2.b of the Compact, such notice will not be given unless and until the Executive Director concludes that all information, documents and the Originating Party's Technical Review needed to evaluate whether the Proposal meets the Exception Standard have been provided.
2. Such notice to federally recognized Tribes will be provided separate from the notice provided to the general public. The principal purpose of the notice will be to provide federally recognized Tribes the opportunity to comment with respect to whether the Proposal meets the requirements of the Compact's Standard of Review and Decision.
3. The notice to federally recognized Tribes will include, to the extent available, the following:
  - a. Designation of a time reserved for federally recognized Tribes to exercise the participatory rights described in Sections 201.3, 201.4.f, and 201.6.
  - b. The date and time as well as the logistics for attending any public briefing, public meeting and/or public hearing set pursuant to Sections 201.1 or 201.2 of this Guidance and an invitation to attend.
  - c. A description of the Proposal and its purpose; the requested Water Withdrawal, Diversion and Consumptive Use amounts; the location(s) where copies of the

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Application and all other relevant documents, including the Originating Party's Proposed Declaration of Finding, are available for review; the time periods in which these documents will be available for review, the deadline for submitting any comments regarding the Proposal and the manner of submitting comments; the address, electronic mail address, and phone number of Regional Body and Compact Council Members; and how a copy of the Application and other documents submitted by the Originating Party may be obtained.

4. The Executive Director, on behalf of the Council, also will inform the federally recognized Tribes of public hearings or meetings set pursuant to Sections 201.1 and 201.2 of this Guidance and invite them to attend.
5. The Council will reserve a separate time for federally recognized Tribes, before or after any public briefing or meeting, to discuss the Proposal with the Council. (*See* Section 201.1.3 of this Guidance).
6. The Executive Director will forward the comments that it receives from the federally recognized Tribes under this Section to the Members including the Originating Party for their consideration before the Council makes a decision on the Proposal.
7. The Council will consider the comments that it receives from the federally recognized Tribes under this Section before issuing its decision and, where applicable, respond to such comments in the Council Decision (*see* Section 201.4.4 of this Guidance).

**Section 200.9. General Notice and Opportunity to Comment.**

1. In accordance with Section 4.5.3.b of the Compact, the Executive Director, on behalf of the Council, will provide notice to the public of all Proposals submitted to the Council for Regional Review and Council approval. Such notice will state that the public has an opportunity to comment in writing to the Council on whether the Proposal meets the relevant criteria in the Compact. Notice will be provided through the Council website and sent to interested Persons in accordance with a list of such Persons compiled by the Council. Any interested Person may have his or her name added to the list by informing the Executive Director. The Executive Director will provide such notice within 10 days after receiving the Application from the Originating Party. In accordance with Section 4.5.2.b of the Compact, such notice will not be given unless and until the Executive Director concludes that all information, documents and the Originating Party's Technical Review needed to evaluate whether the Proposal meets the Exception Standard have been provided.
2. In accordance with Section 4.5.3.c of the Compact, the Council shall hold a public hearing or public meeting pursuant to Section 201.2 within the jurisdiction of the Originating Party and may additionally hold a public meeting pursuant to Section 201.1 within the jurisdiction of the Originating Party.
3. Each Party will also take actions to ensure that the public within their jurisdiction has an opportunity to comment during the public comment period. Such actions may include providing direction to the members of that jurisdiction's public on how to submit comments to the Council, or hosting a public meeting or public hearing pursuant to this Guidance. Therefore, each member of the Council may determine if there is sufficient public interest to hold an additional public meeting or public hearing within its jurisdiction. Based on such determination, at the request of a member the Council may also hold either a public meeting or public hearing (the format of which will be at

the host jurisdiction's discretion) within the jurisdiction. If such a meeting or hearing is organized, only a representative of the host jurisdiction will be required to participate in such event. A transcript or summary of oral comments received should be created by the host jurisdiction. Any transcript created or, in the absence of a transcript, a written summary of comments received from the public, including oral comments or summaries drafted by Members of the Council, will be forwarded by the Secretariat to the Members of the Council and will be incorporated into the administrative record. All notices issued under this Section will contain a description of the Proposal, its purpose, requested Water Withdrawal, Diversion and Consumptive Use amounts, location(s) and time periods for review of the Application and all other relevant documents available for review, as well as the time period during which written comments will be accepted, the manner of submitting such comments, person to which they will be addressed and the street address, post office box office and the electronic mail address and phone number of the Executive Director.

4. All documents relevant to the Proposal, including all materials submitted to the Council pursuant to Section 200.4, all completed Technical Reviews, and the Originating Party's proposed Declaration of Finding will be made available to the public by posting the documents on the Council's website whenever feasible, offering the documents for inspection at the offices of the Secretariat and, where feasible, designated offices of the Parties, and providing copies of the documents upon request at a reasonable fee.
5. The Council will consider the comments received before taking any action on a Proposal.
6. The Secretariat will forward the comments it receives to the Members of the Council. The comments will also be made publicly available in the manner provided in Section 200.9.1.

## **Section 201. Process for Review of and Meetings/Hearings on Proposals.**

### **Section 201.1. Public Meetings on Proposals.**

1. A public meeting as referenced in Section 200.9.5 may take a variety of formats, including, as appropriate, providing informational presentations and opportunities for both written and oral comment. The format and procedures for the public meeting will be developed in conjunction with the host jurisdiction Party.
2. Any transcript created or, in the absence of a transcript, a written summary of comments received from the public, including oral comments or summaries drafted by Members of the Council, will be forwarded by the Secretariat to the Members of the Council and will be incorporated into the administrative record.
3. The Council will reserve a separate time for federally recognized Tribes, before or after any public briefing or meeting, to discuss the Proposal with the Council.

### **Section 201.2. Hearings on Proposals.**

1. The Council will host at least one hearing on a Proposal subject to Regional Review within the jurisdiction of the Originating Party. Where appropriate, including to accommodate the number of persons registering in advance pursuant to Section 201.2.4.c or to ensure that representatives of federally recognized Tribes have the opportunity to submit oral comments, at the discretion of the Council more than 1

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hearing day may be scheduled. The location of the hearing within the jurisdiction of the Originating Party will be determined by the Presiding Officer. Any other hearing will be organized by the relevant Party. At least a quorum of Council Members will attend the hearing within the jurisdiction of the Originating Party, but a quorum will not necessarily attend hearings outside of the Originating Party's jurisdiction.

2. At least 20 days before the Council hearing to be held within the Originating Party's jurisdiction, notices stating the date, time, place and purpose, including issues of interest to the Council, will be posted on the Council's website and sent to interested Persons in accordance with a list of such Persons compiled by the Council. Any interested Person will have his name added to the list by informing the Executive Director.
3. The notice of the hearing will include instructions on where and how federally recognized Tribes and the public may review all of the documents relevant to the Proposal, including all materials submitted to the Council pursuant to this Guidance, as well as all completed Technical Reviews.
4. Standard Hearing Procedure.
  - a. Presiding Officer. A hearing will be presided over by a Presiding Officer, who will be the Council Chair, or individual appointed by the Council Chair. The Presiding Officer will have full authority to control the conduct of the hearing and make a record of the same. If the Council Chair is the Member representing the Originating Party, the Presiding Officer will be the Council Vice Chair, or an individual appointed by the Council Vice Chair.
  - b. Open to federally recognized Tribes and the Public. Hearings will be open to federally recognized Tribes and the public. The Secretariat will endeavor to broadcast via webinar or other means any such hearing and post an electronic link to the Council's website prior to the hearing.
  - c. Participants. Hearing Participants will include the Originating Party, the Applicant, the Secretariat, any Person wishing to appear at the hearing and make an oral or written statement. Persons (except the Applicant, the Originating Party and the Secretariat) may file with the Secretariat at the Council offices written notice of their intention to appear at the hearing as Participants. The Secretariat may establish a system for persons to register as Participants and may determine the order of oral presentation by Participants.
  - d. Statements. Statements may favor or oppose the Proposal or may simply express a position without specifically favoring or opposing the Proposal. Statements will be transcribed or summarized in writing and made a part of the hearing record, and written statements may be received up to and including the last day on which the hearing is held. All statements will be considered part of the hearing and may be included in the administrative record. Notwithstanding the conclusion of a hearing, written comments may still be submitted to the Secretariat any time during the public comment period.
  - e. Representative Capacity. Participants wishing to be heard at a hearing may appear in person or be represented by an attorney or other representative. A governmental authority may be represented by one of its officers or employees or by a designee of the governmental authority. Any individual intending to appear before the hearing in a representative capacity on behalf of a Participant may inform the Council in the

- written notice specified in Section 201.2.4.c of the nature and extent of his or her authorization to represent the Person on whose behalf he or she intends to appear.
- f. **Federally Recognized Tribes.** Representatives of federally recognized Tribes will be afforded the opportunity to make statements on the record before or after statements made by the public.
  - g. **Informational Meeting.** The hearing may be preceded by an informational meeting at which the Originating Party, the Applicant and the Secretariat may be present to explain the Proposal and the governing requirements. At an informational meeting, members of federally recognized Tribes and the public may have the opportunity to ask questions about the Proposal. The Secretariat will endeavor to broadcast via webinar or other means any such meeting and post an electronic link to the Council's website prior to the meeting.
5. A certified copy of the transcript or audio recording and exhibits will be made available for review during business hours at the Council's offices to anyone wishing to examine them. Copies will be provided on request at a reasonable fee. Any transcript, audio recording file and exhibits will also be made available whenever possible on the Council's website. Persons wishing to obtain a certified copy of the transcript of any hearing should make arrangements to obtain it directly from the recording stenographer at their expense.
  6. The Council will reserve a separate time for federally recognized Tribes, before or after any Hearing, to discuss the Proposal with the Council.

**Section 201.3. Optional Joint Hearing or Public Meeting.**

1. Any public meeting or hearing held pursuant to Sections 201.1 or 201.2 may be held concurrently with any similar public meeting held by the Regional Body or a Party to the Agreement or the Compact. *See* Compact, Section 6.2
2. The Council may order any two or more hearings or public meetings, including meetings held by the Regional Body, to be consolidated where they involve a common or related question of law or fact.
3. Whenever designated by a department, agency or instrumentality of the Originating Party, and within any limitations prescribed by the designation, a Presiding Officer designated pursuant to Section 201.2.4.a of this Guidance may also serve as a Presiding Officer pursuant to such additional designation and may conduct joint hearings on the Proposal for the Council and for such other department, agency or instrumentality. Pursuant to the additional designation, a Presiding Officer may cause to be filed with the department, agency, or instrumentality making the designation, a certified copy of the transcript of the evidence or presentation taken before him or her and any exhibits. The Council will not have nor exercise any power or duty as a result of such additional designation.

**Section 201.4. Process for Review of Proposals; Decisions on Proposals.**

1. No decision will be made by the Council before the Regional Review process is completed and all final Declarations of Finding are received from the Regional Body, as described in Section 4.5 of the Compact. The Council will consider the Regional Body's Declaration(s) of Finding before making a decision on a Proposal.

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2. The Council shall hold a public hearing pursuant to Section 201.2 and a public meeting pursuant to Section 201.1 before a decision is made on a Proposal.
3. Unless the Originating Party otherwise requests, the Council will endeavor to meet and act upon all Proposals within 60 days after receiving all final Declarations of Finding from the Regional Body, provided that adequate time will be given for any legally-required written public comment on any provisions or conditions of draft Council Decisions.
4. The Council Chair should issue a draft Council Decision with any conditions at least 14 days prior to the meeting of the Council to issue a Council Decision. If the Chair's draft contains provisions or conditions not previously published for public comment and that are not a logical outgrowth of the subjects previously published for public comment, then the Council will hold at least a 30-day public comment period on such provisions or conditions included in the Chair's draft. Comments may only be submitted in writing, electronically or in hard copy.
5. The Council Decision will be based on consideration of the Proposal and all supporting information, the Originating Party's Technical Review and any other Technical Reviews that are performed by the Council, Regional Body or a Party, any comments received during the comment process, including the comments made by the public and federally recognized Tribes, Declarations of Finding issued by the Regional Body, and any other information provided to the Council or any Member under the Compact that Council considers. Where appropriate, the Council Decision will include findings of fact, conclusions of law and a "comment and response" section that provides a summary of comments received from federally recognized Tribes and the public, as well as any response to such comments. In addition, all documents upon which the Council relied or which the Council otherwise considered in reaching the Council Decision, including without limitation any relevant public comments timely submitted on the Proposal, should be included in an administrative record.
6. After the Council has approved, approved with conditions, or disapproved a Proposal, the Secretariat will provide notice to the Applicant and Members of such action. The Secretariat will also give notice to the public and federally recognized Tribes in the same manner in which notice of opportunity to comment in writing was provided. All such notices will include the text of the disapproval or the terms and conditions of the approval as relevant. In addition, the Secretariat will post the notice and text of the decision on the Council's website.
7. The Council may suspend the review of any Proposal under this Part if the Proposal is subject to the lawful jurisdiction of any Party or any political subdivision thereof, and such Party or political subdivision has disapproved or denied the Proposal. Where such disapproval or denial is reversed on appeal, the appeal is final, and the Originating Party provides the Council with a certified copy of the decision, the Council will resume its review of the Proposal. Where, however, a Proposal has been suspended hereunder for a period greater than three years, the Council may terminate its review and notify the Originating Party of such termination. The Originating Party may reactivate the terminated Proposal by reapplying to the Council, providing evidence of its receipt of all necessary governmental approvals (subject to Section 202.1) and, at the discretion of the Council, submitting new or updated information.

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8. The Council may extend the review of a Proposal under this Part by unanimous consent of the Members, after consultation with the Applicant.

**Section 202. Conditions and Term of Council Approval.**

1. The Originating Party may not issue its approval of a Proposal subject to Council review unless and until Council has approved the Proposal with or without conditions (“Council’s Approval”). *See* Compact § 4.3.5.
2. If the Originating Party also approves the Proposal, any such approval shall expressly incorporate the terms and conditions of the Council’s Approval.
3. If the Originating Party also approves the Proposal, nothing in the Council’s approval shall be construed to prohibit the Originating Party from including terms and conditions that are more restrictive than or in addition to the terms and conditions included in the Council’s Approval.
4. The Originating Party shall monitor and enforce the implementation of any approved Proposal to ensure consistency with the terms and conditions of the Council’s Approval.
5. Any Party may request information from the Originating Party regarding compliance with the terms of the Council’s Approval.

**Sequence of Events for Consideration of Proposals for  
Exceptions to the Prohibition on Diversions that are subject to Regional Review.**

Before the Pre-Application Period, Proposal undergoes review by Originating Party to determine if the Proposal is subject to Regional Review by the Regional Body and/or review by the Council and to determine if it is administratively complete. The Originating Party also performs the technical review of the Proposal and provides an evaluation of the Proposal sufficient for a determination of whether the Proposal meets the relevant standards of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement and/or the Great Lakes-St. Lawrence River Water Resources Compact. During this time, the Originating Party, within their jurisdiction, also undertakes consultations with representatives of federally recognized Tribes in the U.S. as well as First Nations and provincially recognized Métis communities in Canada in the manner suitable to the individual Proposal and the laws and policies of the Originating Party, and includes any transcripts or meeting summaries of such meetings in any Application forwarded to the Regional Body and/or Council.

Pre-Application Period

1. Pre-application conference call meeting with Secretariat, Chairs of the Regional Body and Compact Council (as applicable)<sup>1</sup>, Originating Party and Applicant to discuss decision making process, budget and administrative arrangements including deadlines.
2. Originating Party communicates in writing to States, Provinces and Secretariat regarding impending submission of Application to approve a Proposal. (Minimum 30 calendar days—60 days preferred—before formal submission of Application to Regional Body and Compact Council<sup>2</sup>.)
3. Secretariat staff at the direction of the Chair(s) sets tentative schedules of official notices, briefings and meetings.
4. State/Provincial staff conference call meeting/web presentation with Applicant and Originating Party to review tentative schedules of official notices, briefings and meetings, and to receive technical briefing on the Application.
5. Regional Body and Compact Council provide notice of public meeting to approve budget for Application to approve a Proposal review process. (30 calendar days before meeting.)
6. Meeting<sup>3</sup> of Regional Body and Compact Council held to approve budget for a Proposal review process.<sup>4</sup>

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<sup>1</sup> If an Application is from the chair's State or Province, the Vice Chair or another member should fill the role of Chair. [Agreement, Art. 401.5; Compact Guidance, Sec. 201.2.4.a]

<sup>2</sup> In the event that the Originating Party is a Province, all references to the Compact Council, Compact Council Review or the Compact Council Chair should be deemed removed from this process.

<sup>3</sup> Like all other meetings of the Compact Council and Regional Body, meetings may be held in person, by conference call, or other means that is open to the public. [Agreement, Art. 401.11; Compact, Sec. 6.1.1 and Bylaws, Art. IV, Sec. 2]

<sup>4</sup> This step and preceding step to be skipped if budget previously approved.

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7. Regional Body and Compact Council provide notice to representatives of federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada and public of briefing (see Step 13) that will be open to the public. (Ideally 30 calendar days before the briefing.)

Filing of Application

8. Originating Party provides notice to the Regional Body, Compact Council, federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada and public that it has determined that an Application to approve a Proposal is subject to Regional Review. [Agreement, Art. 501 and 504; Compact, Sec. 4.5.2 and 5.1.2]
9. Originating Party submits Application to approve a Proposal, accompanied by the Technical Review and the “Originating Party’s Proposed Declaration of Finding”<sup>5</sup> to Regional Body and Compact Council, by submitting to the Executive Director one original, and one copy for distribution to the Regional Body and Compact Council in electronic form in a common format that allows public accessibility (e.g. Adobe Acrobat PDF format).

Application Review Period

10. Regional Body and Compact Council provide the following notices of receipt of the complete Application to approve a Proposal (may be in electronic format, or noting where electronic documents may be accessed):
  - a. to federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada, including a copy of the Application to approve a Proposal and “Originating Party’s Proposed Declaration of Finding”; and
  - b. to the public, including posting by the Secretariat of the Application to approve a Proposal to Regional Body and Compact Council websites and a link to Originating Party’s website for further information, and notice to persons and groups that have registered as having an interest in receiving notice of the Application to approve a Proposal.

These notices will indicate that the federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada and the public, including those that have registered, have an opportunity to comment on whether the Application meets the Exception Standard. [Agreement, Art. 501, 504; Compact, Sec. 5.1, 6.2]

11. Regional Review and Compact Council Review begins.
12. Public comment period begins, with opportunity to provide comment electronically, hard copy or other means as appropriate.

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<sup>5</sup> If the Originating Party declines to participate in the decision, it need not prepare this Originating Party’s Proposed Declaration of Finding, which should instead be prepared as a “Chair’s” or “Presiding Officer’s Proposed Declaration of Finding.” The Chair or presiding officer may direct another Party to create this draft and later make any necessary modifications to such Declaration of Finding.

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13. Regional Body and Compact Council hold initial briefing on the Application to approve a Proposal via conference call/webinar that will be open to federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada and the public. Briefing includes:
  - a. Secretariat review of sequence of events for entire decision-making process including opportunities for federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada and public participation.
  - b. Originating Party and Applicant review of the contents of the Application to approve a Proposal.
  - c. Originating Party presents Technical Review and “Originating Party’s Proposed Declaration of Finding.”
  - d. Regional Body and Compact Council announce and issue notice to federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada and public of Regional Body and Compact Council public information meeting and hearing (see Step 15 below) and of meeting with federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada (see Step 15.e below). As part of the notice, announce that questions to be addressed during the presentation at public meeting must be submitted in writing by a set date. Questions may still be asked at the public meeting, but will be addressed only as time permits.
  - e. Regional Body and Compact Council announce and issue notice to federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada and public of Regional Body public meeting to consider final Declaration of Finding (see Step 21 below).
14. Regional Body and Compact Council members review Application to approve a Proposal, Technical Review and “Originating Party’s Proposed Declaration of Finding,” and may individually submit a written request for additional information to the Originating Party in a format to be prepared by the Secretariat. A copy of all such questions should be shared with the Secretariat. The members of the Regional Body and Compact Council are encouraged to submit all such questions before the deadline for completion of all technical reviews (see Step 18).

All such questions received by the Secretariat should be shared with the other members of the Regional Body and Compact Council. The Originating Party should respond in writing as appropriate to individual requests, with a copy to the Secretariat. All such responses are to be shared with all Regional Body and Compact Council members and will be included as part of the administrative record.

All questions and answers will be incorporated into the administrative record and will be made available to the public at the Q&A/Hearing in Step 15.

Public Meetings/Public Hearings

[Agreement, Art. 501; Compact Section 5.1; Interim Procedures Sec. 201.1; Interim Guidance, Sec. 201.1, 201.2]

15. Regional Body and Compact Council public information meeting to be held in Originating Party's jurisdiction with Members of the Regional Body and Compact Council to be physically present. Efforts should be made to allow federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada as well as the public to remotely listen.
- a. *Part I—Public Information Meeting with Q&A.* Regional Body/Compact Council members present, Chair(s) preside(s). No recording or transcript must be taken of the event by the Regional Body or Compact Council.
    - i. Secretariat reviews sequence of events for entire decision-making process including opportunities federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada and public participation (10 minutes).
    - ii. Originating Party and Applicant review contents of Application to approve a Proposal, Technical Review and “Originating Party’s Proposed Declaration of Finding”, during presentation address written questions received prior to the meeting (estimate approximately 20 minutes, but may change based on number of written questions received).
    - iii. Members, federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada and public ask questions (preferably in writing) and receive verbal responses from Originating Party and Applicant on Application to approve a Proposal, Technical Review and “Originating Party’s Proposed Declaration of Finding.” Total question and answer period up to 90 minutes.
  - b. *Optional Part IIA.*—members of the Regional Body and Compact Council take tour of sites relevant to consideration of the Application. The tour is open to the public and a record of the tour is created and made available to the public.
  - c. *Optional Part IIB.*—pre-meeting Regional Body and Compact Council discussions (including Q&A with Applicant) on key issues. The pre-meeting is open to the public and a record of the meeting is created and made available to the public.
  - d. *Optional Part IIC.*—Application and Technical Review materials and other materials to be incorporated in the record are made available for inspection prior to the meeting.
  - e. *Part III—Meeting federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada.* Regional Body/Compact Council members physically present. The Regional Body/Compact Council members hear from representatives from federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada on the Application to approve a Proposal,

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Technical Review and “Originating Party’s Proposed Declaration of Finding.” Issues specific to each participating federally recognized Tribe as well as First Nation and provincially recognized Métis and community in Canada may be raised during this session. This session is recorded, and a transcript will be provided to the Regional Body and Compact Council members, as well as made available to the public.

- f. *Part IV—Public Hearing*<sup>6</sup>. Regional Body/Compact Council members physically present. A Hearing Officer presides. This session is recorded, and a transcript will be provided to the Regional Body and Compact Council members, as well as made available to the public.
  - i. Application to approve a Proposal, Technical Review, “Originating Party’s Proposed Declaration of Finding” and any written requests and responses received will be incorporated into and made a part of the record.
  - ii. federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada and public opportunity to make oral statements or present written statements for the record.
  - iii. Those who pre-register are limited to five minutes for oral statements/comment, and those registering on-site are limited to three minutes, unless otherwise extended by the Hearing Officer. Organizations wishing to make oral statements/comments will be limited to one speaker.
  - iv. Announcement of timeframe for submission of additional written materials and comments for the administrative record via electronic submission and hard copy.
16. Each member of the Regional Body and Compact Council may determine if there is sufficient public interest to hold an additional public meeting or public hearing within its jurisdiction. Based on such determination, at the request of a member the Regional Body and Compact Council may also hold either a public meeting or public hearing (the format of which will be at the host jurisdiction’s discretion) within the jurisdiction. If such a meeting is organized, only a representative of the host jurisdiction will be required to participate in such event. A transcript or summary of oral comments received should be created by the host jurisdiction. Any transcript created or, in the absence of a transcript, a written summary of comments received from the public, including oral comments or summaries drafted by Members of the Regional Body and Council, will be forwarded by the Secretariat to the Members of the Regional Body and Council and will be incorporated into the administrative record. Regardless, each Party will also take actions to ensure that the public within their jurisdiction has an opportunity to comment during the public comment period. Such actions may include providing direction to the members of that jurisdiction’s public on how to submit comments

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<sup>6</sup> If the Originating Party is a Province, this session will be a Public Meeting only, and will be run accordingly (e.g. no Hearing Officer.)

to the Regional Body and Council, or hosting a public meeting or hearing as described in Step 15.

Post-Hearing<sup>7</sup> Review and Decision Process  
[Agreement, Art. 506; Compact Sec. 4.5.5]

17. Deadline for submission of written comments from the public to the Regional Body and Compact Council secretariat(s) for the administrative record via electronic submission and hard copy. Each Party to the Agreement or Compact should forward all written comments they have directly received as part of the Hearing to the Regional Body and Compact Council secretariat(s) to be incorporated into the administrative record.
18. Deadline for submission of any additional Technical Reviews by the Members (60 calendar days after submission of Application to approve a Proposal).
19. As appropriate, Originating Party, or another Party designated by the Chair or presiding officer if the Originating Party declines to participate, revises “Originating Party’s Proposed Declaration of Finding” based upon all input received through deadlines for submission of comments and Technical Reviews.
20. Final “Originating Party’s Proposed Declaration of Finding” posted by the Secretariat to Regional Body website 14 calendar days before public meeting of Regional Body.
21. Regional Body meeting<sup>8</sup>. [Agreement, Art. 506; Compact, Sec. 4.5.5]
  - a. Originating Party presents Application to approve a Proposal and Technical Review.
  - b. A motion is made to adopt “Originating Party’s Proposed Declaration of Finding.” Motions to amend (including substitution motions) may be made and considered. The members of the Regional Body should endeavor to submit all such motions to amend to the other members of the Regional Body, copying the Secretariat, one week before the meeting of the Regional Body. The Secretariat should make all such motions available to the public upon receipt.
  - c. The Regional Body, having considered the notice, Application to approve a Proposal, Originating Party’s Technical Review, any other Independent Technical Reviews, comments, questions and objections, including comments by the public and federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada, and all other information in the record, considers motion to adopt proposed “Originating Party’s Proposed Declaration of Finding.” If all members agree, then Declaration of Finding with consensus to be considered for adoption. If no consensus is reached, then the Regional Body should work to achieve consensus within 25 days; if consensus still cannot be reached,

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<sup>7</sup> If a Public Meeting is held instead of a Public Hearing, then this part of the sequence of events should equally apply to the Public Meeting.

<sup>8</sup> Meetings may be held face to face, via conference call or web as appropriate.

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- the Regional Body may consider a Declaration of Finding that presents different points of view and indicates each Party's conclusions.
22. Notification of Final Regional Body Declaration of Finding should be sent by the Secretariat to Originating Party, Compact Council,<sup>9</sup> Applicant, federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada and members of the public who have registered their participation in the Application review process.
  23. Compact Council Chair issues draft Council Decision with any conditions. Council's goal is for the draft to be issued within sixty (60) days of receiving the Final Regional Body Declaration of Finding and at least fourteen (14) days prior to the meeting of the Council to issue the Council Decision. If the Chair's draft contains provisions or conditions not previously published for public comment and that are not a logical outgrowth of the subjects previously published for public comment, then the Compact Council will hold a 30-day public comment period on such provisions or conditions included in the Chair's draft. Comments may only be submitted in writing, electronically or in hard copy.
  24. Compact Council Secretariat gives notice to federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada and public of Compact Council meeting to be held at least 30 calendar days after such notice is given (at least 7 days after the conclusion of any public comment period as per Step 23.)
  - 25.<sup>10</sup> Compact Council meeting to be held<sup>11</sup>.
    - a. Originating Party presents Application to approve a Proposal, Technical Review, and Regional Body Declaration of Finding(s). A motion is made to adopt the "Compact Council Chair's Proposed Council Decision." The Compact Council Chair's Proposed Council Decision should include a "comment and response" section.
    - b. Motions to amend (including substitution motions) may be made and considered. The members of the Compact Council should endeavor to submit all such motions to amend to the other members of the Compact Council, copying the Secretariat, one week before the meeting of the Compact Council. The Secretariat should make all such motions available to the public upon receipt.
    - c. Compact Council, having considered the notice, Application, Originating Party's Technical Review, any other Independent Technical Reviews, comments, questions and objections, including comments by the public and federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada, Regional Body Declaration of Finding, and all other information in the record considers approval of Proposal. Approval shall be given unless one or more members vote to disapprove.
  26. Decision is certified by Compact Council Secretariat and forwarded to Originating Party, notice of decision to Applicant, Regional Body and Compact

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<sup>9</sup> If Originating Party is not a Province.

<sup>10</sup> If the Originating Party is a Province, steps 23-27 are not applicable.

<sup>11</sup> Meetings may be held face to face, via conference call or web as appropriate.

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- Council members, federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada, and members of the public who have registered their participation in the Application review process.
27. Originating Party takes action pursuant to Regional Body Declaration of Finding and Compact Council action as appropriate.
  28. The Secretariat should develop and make available to the public a complete administrative record that should include but not be limited to the following:
    - a. The entirety of the Application forwarded by the Originating Party to the Regional Body and Compact Council.
    - b. All public comments received.
    - c. All public notices provided by the Regional Body and Compact Council.
    - d. All transcripts created during the Regional Review and Compact Council review process.
    - e. All drafts of documents made available to the public
    - f. All questions on the Application submitted to the Originating Party from the members of the Regional Body and Compact Council as well as any responses received from the Originating Party.
    - g. Any other document relied upon or otherwise considered by the members of the Regional Body and Compact Council when reviewing the Application.

**Great Lakes—St. Lawrence River Basin Water Resources Compact**

**Rules of Practice and Procedure**

The requirements set forth herein are Rules of Practice and Procedure adopted pursuant to Section 3.3 of the Great Lakes—St. Lawrence River Basin Water Resources Compact (Compact) as rules and regulations of the Council.

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**Part I. Definitions**

**Section 100. Definitions.**

1. The standard definitions set forth in Section 1.2 of the Compact shall apply to these Rules. All references to sections of the Compact are to the version of the Compact enacted as U.S. Public Law No: 110-342, October 3, 2008.
2. “Appeal Hearing” means the portion of a Proceeding conducted pursuant to Section 7.3.1 of the Compact and these Rules of Practice to afford a Person aggrieved by a Council Decision an opportunity to be heard. An Appeal Hearing under these Rules of Practice includes an opportunity to submit briefs and may also include an opportunity to present oral argument.
3. “Appeal Hearing Participant” means any Person who participates in an Appeal Hearing as a petitioner, respondent (including an Applicant) or intervenor.
4. “Application” or “Application to approve a Proposal” means the full Application package seeking approval of the Proposal for which Regional Review is undertaken.
5. “Compact” means the Great Lakes – St. Lawrence River Basin Water Resources Compact, Pub. L. 110-342, 122 Stat. 3739 (2008).
6. “Compact Council” or “Council” means the Great Lakes – St. Lawrence River Basin Water Resources Council.
7. “Council Decision” means an action by the Council that, subject to the outcome of any Appeal Hearing under these Rules of Practice, consummates its decision-making process and affects legal rights. A final decision by the Council on a Proposal that approves, approves with conditions or disapproves the Proposal is an example of a Council Decision.
8. “Executive Director” means the Executive Director of the Council unless otherwise indicated.
9. “Final Council Action” means the Council’s disposition of the Appeal Hearing that consummates the Council’s decision-making process and affects legal rights.
10. “Member” means the Governor of a Party to the Compact or the Governor’s duly appointed alternate.

11. “Notice List” means the list of names and associated contact information of those persons who have sent the Executive Director a written request to be notified of significant events with respect to a specific Compact Proceeding.
12. “Proceeding” means the entirety of a single administrative adjudication.
13. “Secretariat” means the Executive Director and other administrative staff hired or contracted by the Council.

## **Part II. [LEFT INTENTIONALLY BLANK]**

## **Part III. Rules of Practice Governing Administrative Appeals of Council Decisions**

### **Section 300. Scope.**

These Rules of Practice govern all Appeal Hearings conducted pursuant to Section 7.3.1 of the Compact.

### **Section 301. Use of number and gender.**

As used in these Rules of Practice, words in the singular also include the plural and words in the masculine gender also include the feminine, and vice versa, as the case may require.

### **Section 302. Petitioning for an Appeal Hearing on Council Decisions.**

1. Initiating an appeal. A request for an Appeal Hearing to review a Council Decision, including but not limited to a decision to approve, approve with conditions or deny a Proposal, shall be considered an administrative appeal and must be commenced by filing a petition for review with the Secretariat within the time prescribed in Section 302.3 of these Rules of Practice.
2. Persons who may file for review.
  - a. Council Decision on a Proposal. Any Person who is aggrieved by a Council Decision and who either filed written comments on the Proposal or participated in a public hearing on the Proposal may file a petition for review. Additionally, any Person who is aggrieved by a Council Decision and failed to file comments or failed to participate in the public hearing on the Proposal may file a petition for review of any approval conditions set forth in the Council Decision, but only to the extent that those conditions in the Council Decision reflect changes from the terms and conditions of the Proposal made available to federally recognized Tribes and the public during the public comment period.
  - b. Other Council Decisions. Any Person who is aggrieved by a Council Decision not involving a Proposal may file a petition for review, provided that such Person participated in any available Council public process resulting in the Council Decision or is raising issues that could not reasonably have been raised during any such public process.
3. Filing deadline. A petition for review must be filed with the Secretariat within thirty (30) days following the date on which notice of the Council Decision is published on the Council’s website. A petition is filed when it is received by the Secretariat at the address specified for the appropriate method of delivery as provided in Section 310.3 of these Rules of Practice.

4. Petition contents. A petition for review must be accompanied by a brief meeting the requirements set forth in Section 304 of these Rules of Practice and must identify how the Person is aggrieved, the contested condition or other specific challenge to the Council Decision and clearly set forth, with legal and factual support, petitioner's contentions why the Council Decision should be opened or modified.
  - a. The petition must demonstrate that each challenge to the Council Decision is based on:
    - i. A finding of fact or conclusion of law that is clearly erroneous, or,
    - ii. An abuse of discretion.
  - b. If the Council Decision followed an opportunity for public comment, Petitioner must demonstrate, by providing specific citation or other appropriate reference to the administrative record in the manner set forth in Section 304.4 of these Rules of Practice, that each issue and argument being raised in the petition was raised by one or more commenters during the public comment period (including at any public hearing). If the Petitioner concludes that it cannot provide a citation because the document it wishes to cite has been incorrectly omitted from the administrative record, Petitioner must attach a copy of such document to its petition and move to supplement the administrative record. For each issue or argument raised in the petition that was not raised previously, the petition must explain why such issues or argument could not have been raised during the public comment period.

**Section 303. Response(s) to a petition for review.**

1. In all Appeal Hearings conducted under these Rules of Practice and involving Appeal Hearing Participants in addition to petitioner(s), such Appeal Hearing Participants may file a response to the petition and supporting brief within 30 days after the filing of a petition.
2. Petitioner may file a reply brief within 20 days after service of any response. Petitioner may not raise new issues or arguments in the reply.
3. Upon request by any Appeal Hearing Participant in the Participant's response to the petition and supporting brief, or upon its own initiative, the Council may determine whether the Petitioner is an aggrieved Person under section 7.3.1 of the Compact and these Rules of Practice. In making its determination, the Council may consider the petition, the briefs of the Appeal Hearing Participants, the administrative record and any further evidentiary submissions or argument that the Council may require or allow. If by majority vote the Council determines that the petitioner is not an aggrieved Person, the Council may on that basis issue a Final Council Action dismissing the petition and/or disposing of the Proceeding under Section 314.

**Section 304. Content and form of briefs.**

1. Content Requirements. All briefs filed under this section must contain, under appropriate headings:
  - a. A table of contents, with page references;
  - b. A table of authorities with reference to the pages of the brief where they are cited;
  - c. A table of attachments, if provided under Section 304.2 of these Rules of Practice or otherwise; and

- d. A statement of compliance with the word limitation.
2. Attachments. Parts of the record to which the Appeal Hearing Participants wish to direct the Council's attention may be appended to the brief submitted. If the brief includes attachments, a table must be included that provides the title of each appended document and assigns a label identifying where it may be found (e.g., Title, Attachment 1).
3. Length. The Council may exclude any petition, response, or other brief that does not meet word limitations. Unless otherwise ordered by the Council or the Council Chair, petitioner's principal brief and response briefs may not exceed 13,000 words, and all other briefs may not exceed 6,500 words. Filers may rely on the word-processing system used to determine the word count. In lieu of a word limitation, filers may comply with a 30-page limit for petitioner's principal brief and response briefs, or a 15-page limit for replies. Headings, footnotes, and quotations count toward the word limitation. The cover page, table of contents, table of authorities, table of attachments (if any), statement requesting oral argument (if any), statement of compliance with the word limitation, signature block, proof of service and any attachments do not count toward the word limitation. Where an Appeal Hearing Participant can demonstrate a compelling and documented need to exceed such limitations, such Appeal Hearing Participant must seek advance leave of the Council to file a longer brief. Such request shall be filed at least five business days before the due date for the brief unless good cause is shown why it could not be filed earlier. Requests to exceed word limitations are discouraged and will be granted only in unusual circumstances.
4. Citation to Administrative Record. Briefs filed before an administrative record is certified pursuant to Section 308.1 must cite to documents posted on the Council's website relating to the Proposal at issue, copies of which are available at the Secretariat's offices. Citations in briefs must where feasible include the document name and date, the document page number, and the administrative record page number and/or URL if available. If a brief cites a document that will be the subject of a motion to supplement the administrative record pursuant to Section 308.2 of these Rules of Practice, a copy of the document must be attached.

**Section 305. Appearances.**

Any Appeal Hearing Participant, or any Person requesting Appeal Hearing Participant or amicus curiae status, may appear in person or by counsel. In addition, an individual may appear on his or her own behalf, a member of a partnership may appear on behalf of the partnership, a member may appear on behalf of a limited liability company, an officer may appear on behalf of a corporation or other legal entity, and a duly authorized official of any government unit or agency may appear on behalf of that government unit or agency. Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States. Attorneys licensed to practice and in good standing in any state or Canadian province may appear before the Council.

**Section 306. Burden of Proof.**

Petitioner shall bear the burden of proving that the Council Decision was based on erroneous findings of fact, conclusions of law or an abuse of discretion that warrants opening or modifying the Council Decision.

**Section 307. Participation by amicus curiae.**

1. The United States, Canada, any Canadian province located in the Basin, any officer or agency thereof, or any representative of a U.S. federally recognized Tribe or Canadian First Nation may file an amicus brief without leave of the Council. Any other amicus curiae may file a brief only by leave of the Council.
2. A motion to participate as amicus curiae must be accompanied by the proposed brief and state:
  - a. The movant's interest in the Appeal Hearing and source of its authority to file,
  - b. Whether the brief supports affirmance or reversal of the Council Decision, and,
  - c. The reasons why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the appeal.
3. The deadline for filing such brief is 15 days after the principal brief of the Appeal Hearing Participant whom the amicus curiae supports is filed. An amicus curiae that does not support either Appeal Hearing Participant must file its brief no later than 15 days after the petitioner's principal brief is filed. Amicus briefs must comply with all requirements of Sections 304.1 and 304.2 of these Rules of Practice.
4. Except by Council or Council Chair's permission, an amicus curiae may not file a reply brief.
5. Unless the amicus curiae is one listed in Section 307.1, the brief of the amicus curiae must include a statement that indicates whether:
  - a. An Appeal Hearing Participant's counsel authored the brief in whole or in part;
  - b. An Appeal Hearing Participant or an Appeal Hearing Participant's counsel contributed money that was intended to fund preparing or submitting the brief; and,
  - c. A person – other than the amicus curiae, its members, or its counsel – contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person.
6. Except by the Council or Council Chair's permission, an amicus brief may be no more than one-half the maximum length authorized by Section 304.3 of these Rules of Practice for an Appeal Hearing Participant's principal brief. If the Council grants an Appeal Hearing Participant permission to file a longer brief, that extension does not affect the allowed length of an amicus brief.
7. An amicus curiae may participate in oral argument only with the Council or Council Chair's permission.
8. If a motion to participate as amicus curiae is filed after the filing of the brief of the Appeal Hearing Participant whom the amicus supports, the deadline for the next response or reply brief of the opposing Appeal Hearing Participant(s) is extended for fifteen days unless otherwise ordered by the Council or the Council Chair.

**Section 308. Administrative Record.**

1. The administrative record for the Appeal Hearing shall consist of those documents relied upon or otherwise considered by the Council as certified by the Executive Director. The Executive Director shall certify the administrative record as soon as practicable following conclusion of the briefing schedule specified in these Rules of Practice and resolution of any motion to supplement the administrative record filed in connection with the briefs, or at such other time specified by the Council.

2. An Appeal Hearing Participant may move to supplement the administrative record. Unless otherwise permitted by the Executive Director, the motion shall be accompanied by an appendix containing the documents that movant seeks to add to the record. A motion to supplement the administrative record must be filed no later than thirty (30) days after the Appeal Hearing participant files its initial brief, unless the date is extended by the Council.
3. In resolving a motion to supplement the administrative record, the Council shall supplement the record with those documents upon which the Council relied or which it otherwise considered in reaching the Council Decision under appeal.
4. Where the Council concludes that the administrative record does not contain documents upon which it relied or which it otherwise considered, it may supplement the record on its own initiative.
5. The Council's final disposition of the appeal shall be based on the administrative record, as supplemented, and any matters or materials of which the Council may take official notice.
6. The Secretariat shall post on the Council's website a link to the website address at which the administrative record and any other unprivileged documents in the Council's files relevant to the Appeal Hearing may be viewed or instructions on how to obtain access to copies of these documents.

**Section 309. Motions.**

1. In general. A request for an order or other relief must be made by written motion unless these Rules of Practice prescribe another form.
2. Contents of a motion. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support the motion. In advance of filing a motion, Appeal Hearing Participants must attempt to ascertain whether the other Appeal Hearing Participants concur or object to the motion and must state in the motion the attempt made and the response obtained.
3. Response to motion. Any Appeal Hearing Participant may file a response to a motion. Responses must state with particularity the grounds for opposition and the legal argument necessary to support the response. The response must be filed within 15 days after service of the motion unless the Council or the Council Chair alters the time for response.
4. Reply. Any reply to a response filed under Section 309.3 of these Rules of Practice must be filed within 10 days after service of the response unless the Council or the Council Chair otherwise provides. A reply must not introduce any new issues or arguments and may respond only to matters presented in the response.
5. Length. Unless otherwise ordered by the Council or the Council Chair, motions and any responses may not exceed 7000 words, and replies may not exceed 3500 words. Filers may rely on the word-processing system used to determine the word count. In lieu of a word limitation, filers may comply with a 15-page limit for motions and responses and an 8-page limit for replies. The provisions of Section 304.3 of these Rules of Practice apply for purposes of determining the portions of the brief to which the word or page-length limitation applies. The Council may exclude any motion that does not meet word limitations. Where an Appeal Hearing Participant can demonstrate a compelling and documented need to exceed such limitations, such Appeal Hearing Participant must seek advance leave of the Council. Such requests are discouraged and will be granted only in unusual circumstances.

6. Disposition of a motion for a procedural order. The Council may act on a motion for a procedural order at any time without awaiting a response.
7. Motions for extensions of time. The Council or the Council Chair may grant an extension of time for filing any document: upon timely motion of an Appeal Hearing Participant, the Originating Party or an Applicant (who for this purpose must move to intervene if not already an Appeal Hearing Participant), for good cause shown, and after consideration of prejudice to other Appeal Hearing Participants, or upon its own initiative. Any motion for an extension of time shall be filed sufficiently in advance of the due date as to allow other Appeal Hearing Participants reasonable opportunity to respond and to allow the Council or the Council Chair reasonable opportunity to issue an order.
8. Motions to Intervene.
  - a. Any person desiring to become an Appeal Hearing Participant may move for leave to intervene. A motion for leave to intervene shall be filed no later than fifteen (15) days after the filing of the principal brief of the Appeal Hearing Participant who seeks an outcome in the Appeal Hearing most closely aligned with the outcome sought by the movant, unless the movant shows good cause for its failure to file within this time period. The motion shall set forth grounds for the proposed intervention, the position and interest of the movant in the Proceeding and whether movant is in support of or in opposition to the relief sought. The motion must be accompanied by a merits brief conforming to these Rules of Practice. All requirements of these Rules of Practice shall apply to a motion for leave to intervene as if the movant were an Appeal Hearing Participant. The Council shall grant leave to intervene in all or part of the proceeding if: the movant claims an interest relating to the cause of action; a final order may as a practical matter impair the movant's ability to protect that interest; and the movant's interest is not adequately represented by existing Appeal Hearing Participants. The Council may grant leave to intervene if the movant has a claim or defense that shares a common question of law or fact with the main action. The Council may limit the number of intervenors and the nature of their participation. If the motion is filed after the filing of the brief of the Appeal Hearing Participant most closely aligned with the movant, the deadline for filing the next response or reply brief of the remaining Appeal Hearing Participant(s) is extended for fifteen days, unless otherwise ordered by the Council or the Council Chair. If intervention is granted, the intervenor shall be bound by any agreements, arrangements and other matters previously made in the Proceeding, unless otherwise ordered by the Council for good cause shown.
  - b. The Canadian provinces of Quebec and Ontario may intervene as of right in any appeal. In any appeal involving a Proposal, the Applicant may intervene as of right. Intervention as a right shall be perfected by filing a notice of appearance and response to the petition for review with the Secretariat within thirty (30) days following the filing of the petition. Any request for intervention made beyond this thirty (30) day period shall be made by motion seeking leave of the Council. Following any intervention under this subsection 309.8.b, the briefing schedule set forth in these Rules of Practice shall continue to apply unless modified by the Council or the Council Chair upon motion of an Appeal Hearing Participant or on the Council's own initiative.
9. Motions for reconsideration or clarification. Motions to reconsider or clarify any order, decision or Final Agency Action (collectively, "Appeal Hearing decision") of the Council

during the appeal must be filed within 10 days after service of the Appeal Hearing decision, i.e. the date on which Council notifies the Appeal Hearing Participants of its Appeal Hearing decision. Motions for reconsideration must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for clarification must set forth with specificity the portion of the Appeal Hearing decision for which clarification is being sought and the reason clarification is necessary. A motion for reconsideration or clarification does not stay the effective date of the Appeal Hearing decision unless the Council specifically so orders.

10. **Motion to Postpone Effective Date of Council Decision.** The filing of a petition for review shall not automatically postpone the effective date of a Council Decision. Any Appeal Hearing Participant may file a motion seeking a postponement. The motion shall state the reasons for the relief requested and the facts relied upon and, if the facts are subject to dispute, shall be supported by an affidavit. After considering any response to the motion, the Council may postpone the effective date of the Council Decision pending its completion of the Appeal Hearing and disposition of the appeal, or pending the results of judicial review, if it determines that the movant is likely to succeed on the merits and would suffer irreparable harm absent a postponement, or justice otherwise so requires.

**Section 310. Filing and service requirements.**

1. **Filing with Secretariat.** Documents filed under these Rules of Practice, including the petition for review, must be filed with the Secretariat. A document is filed when it is received by the Secretariat at the address specified for the appropriate method of delivery as provided in Section 310.3 of these Rules of Practice. If a person files a document other than electronically, an electronic copy must be filed no later than the next business day unless otherwise permitted by the Executive Director or the Council. If the Executive Director or the Council excuses submission of an electronic copy, the filer must submit to the Council two copies, in addition to the original document filed, no later than the next business day after the original is filed.
2. **Caption and other filing requirements.** Every document filed with the Council must specifically identify in the caption the matter at issue (*e.g.*, the Applicant and the Proposal). All documents that are filed must be signed by the person filing the documents or the representative of the person filing the documents. Each filing must also indicate the signer's name, address, and telephone number, as well as an email address, and facsimile number, if any.
3. **Method of filing.** Unless otherwise permitted under these rules, documents must be filed either by attaching them to an e-mail sent to the Secretariat, by U.S. mail or Canadian Postal Service, or by hand delivery (including by a reliable commercial delivery service). In addition, a motion or a response to a motion may be submitted by facsimile if the submission contains no attachments. Upon filing a motion or response to a motion by facsimile, the sender must, within one business day, file an electronic copy with the Secretariat as required by Section 310.1 and send the Secretariat an original by U.S. mail, Canadian Postal Service or by hand-delivery, unless otherwise permitted by the Executive Director or the Council. The Council may by order specify the manner of filing in a specific Proceeding or as to a specific person or Appeal Hearing Participant.

Attachment C  
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4. Electronic filing. Documents that are filed electronically must be submitted to the Secretariat, via e-mail at an email address posted on the Council website, subject to any appropriate conditions and limitations imposed by order of the Council. The person filing the documents must include a cover letter to the Executive Director clearly identifying the documents that are being submitted, the name of the Appeal Hearing Participant on whose behalf the documents are being submitted, as well as the name of the person filing the documents, his or her address, telephone number and, if available, fax number and email address. The name of the filer must be preceded by “s/” and typed in the space where the signature would otherwise appear. Compliance with these electronic filing requirements and any others separately imposed by the Council constitutes compliance with applicable signature requirements. The Secretariat shall post on the Council’s website a link to the website address at which the electronic filings may be viewed or instructions on how to obtain access to copies of these docketed filings.
5. Filing by U.S. or Canadian Mail. Documents that are sent by U.S. mail or Canadian Postal Service must be sent to the official mailing address posted on the Council website. The person filing the documents must include a cover letter to the Executive Director clearly identifying the documents that are being submitted and the name of the Appeal Hearing Participant on whose behalf the documents are being submitted, as well as the name of the person filing the documents, his or her address, telephone number, and if available, fax number and email address.
6. Filing by hand delivery. Documents delivered by hand or courier (including deliveries by U.S. Express Mail and any reliable commercial delivery service) must be delivered to an address posted on the Council website. The person filing the documents must include a cover letter to the Executive Director clearly identifying the documents being submitted and the name of the Appeal Hearing Participant on whose behalf the documents are being submitted, as well as the name of the person filing the documents, his or her address, telephone number, and if available, fax number and email address.
7. Service.
  - a. Service information. The first document filed by any person shall contain the name, mailing address, telephone number, and email address of an individual authorized to receive service relating to the proceeding. Appeal Hearing Participants shall promptly file any changes in this information with the Secretariat, and serve copies on all Appeal Hearing Participants. If an Appeal Hearing Participant fails to furnish such information and any changes thereto, service to the Appeal Hearing Participant’s last known address shall satisfy service requirements.
  - b. Service requirements for Appeal Hearing Participants. If the appeal pertains to a Proposal, Petitioner must serve the petition for review on the Applicant (if the Applicant is not the petitioner). Once an appeal is docketed, every document filed with the Secretariat must be served on all other Appeal Hearing Participants. Service must be made by first class U.S. mail or Canadian Postal Service, by hand delivery (including any reliable commercial delivery service), or by e-mail, facsimile or other electronic means. When an Appeal Hearing Participant files a document with the Secretariat electronically, it shall provide an electronic copy to all other Appeal Hearing Participants who have provided an address to the Appeal Hearing Participant for receipt of electronic communications. Service of a document between or among Appeal

Hearing Participants or by the Council on an Appeal Hearing Participant is complete upon mailing by U.S. mail, when placed in the custody of a reliable commercial delivery service, or upon transmission for facsimile or email. The Council may, as to one or more Appeal Hearing Participants or filers, specify the form and manner of service, including any appropriate conditions and limitations.

- c. Service of rulings, orders, and decisions. The Secretariat shall serve copies of rulings, orders, and decisions on all Appeal Hearing Participants. Service may be made by U.S. mail (including by certified mail or return receipt requested, Overnight Express and Priority Mail), any reliable commercial delivery service, or electronic means (including but not limited to facsimile and email).
- d. Proof of service. In any appeal involving more than a single Appeal Hearing Participant or an Applicant who is not also the petitioner, a certificate of service must be appended to each document filed stating the names of persons served, the date and manner of service, as well as the electronic, mailing, or hand delivery address, or facsimile number, as appropriate.

**Section 311. Withdrawal of Council Decision or portions of Council Decision by the Council.**

1. The Council at any time during the Proceeding may withdraw all or a part of the Council Decision and prepare a new Council Decision addressing the portions so withdrawn. Such action may be made by majority vote, except a unanimous vote of all voting members (excluding abstentions) is required to withdraw any disapproval of a Proposal subject to review by the Council under Section 4.9.2.c (Intra-Basin Transfer) or Section 4.9.3 (Communities in Straddling Counties) of the Compact or to adopt a new Council Decision on a Proposal subject to such review.
2. Where a required public process preceded the Council Decision, any new or modified Council Decision that contains provisions or conditions that are not a logical outgrowth of the subjects previously published for public comment shall be subject to a new public comment period. Unless the Council or the Council Chair otherwise orders, the comment period shall be thirty days in length and limited to written submissions commenting on the new or modified conditions or provisions.

**Section 312. Petitioner request for dismissal of petition.**

Petitioner, by motion, may request the Council to dismiss its appeal. The dismissal shall be deemed to be made with prejudice unless otherwise specified by the Council.

**Section 313. Oral argument.**

The Council may hold oral argument on its own initiative or, in its discretion, in response to a request by one or more of the Appeal Hearing Participants. To request oral argument, an Appeal Hearing Participant must include in its substantive brief a statement explaining why oral argument should be permitted. The Council may, by order, establish additional procedures governing any oral argument before it. Any oral argument shall be open to the federally recognized Tribes and the public unless the Council otherwise orders and shall be scheduled only with reasonable notice to the Appeal Hearing Participants, federally recognized Tribes and the public. Such notice may be given through the Council's website with either electronic or mail

notice to persons on Council’s Notice List for the Proceeding. The Secretariat shall prepare and maintain for public examination a transcript of the oral argument.

**Section 314. Final disposition and judicial review.**

1. Filing a petition with the Council under these Rules of Practice is, under Section 7.3.1 of the Compact, a prerequisite to seeking judicial review of the Council Decision.
2. For purposes of judicial review, exhaustion of administrative remedies occurs when the Council issues Final Council Action disposing of the Proceeding and an opinion or other document setting forth the reasons for its decision.
3. At the conclusion of the Appeal Hearing:
  - a. Except as provided in Sections 314.3.b and c of these Rules, the Council by majority vote may affirm, reverse or modify the Council Decision, or open the Council Decision and require further technical reviews, analyses or other proceedings.
  - b. With respect to a Council Decision on a Proposal subject to Council review under Section 4.9.2.c (Intra-Basin Transfer) or Section 4.9.3 (Straddling Counties) of the Compact approving a Proposal or approving a Proposal with conditions, the Council by majority vote may affirm or reverse the Council Decision, or open the Council Decision and require further technical reviews, analyses or other proceedings. In addition, the Council by unanimous vote of voting Members (excluding abstentions) may issue a modified approval.
  - c. With respect to a Council Decision on a Proposal subject to Council review under Section 4.9.2.c (Intra-Basin Transfer) or Section 4.9.3 (Straddling Counties) of the Compact disapproving a Proposal, the Council by unanimous vote of voting Members (excluding abstentions) may open the Council Decision and approve the Proposal, approve the Proposal with conditions or require further technical reviews, analyses or other proceedings. Absent a unanimous vote to open the Council Decision, the disapproval is deemed affirmed.
4. Where a required public comment period preceded the Council Decision, any new or modified Council Decision that contains provisions or conditions that are not a logical outgrowth of the subjects previously published for public comment shall be subject to a new public comment period. Unless the Council otherwise orders, the comment period shall be thirty days in length and limited to written submissions commenting on the new or modified conditions or provisions.
5. The Council will promptly publish notice of its Final Council Action or other disposition of the Proceeding on its website, serve copies upon the Appeal Hearing Participants and notify those persons on Council’s Notice List for the Proceeding.

**Section 315. Council authority.**

In exercising its duties and responsibilities under this part, the Council may do all acts and take all measures necessary for the efficient, fair, and impartial adjudication of issues arising in an appeal under this part, including, but not limited to, imposing procedural sanctions against an Appeal Hearing Participant who, without adequate justification, fails or refuses to comply with these Rules of Practice or an order of the Council. Such sanctions may include, among others, drawing adverse inferences against an Appeal Hearing Participant, striking an Appeal Hearing Participant’s petition, briefs or other submissions from the record, and denying any or all relief

sought by the Appeal Hearing Participant in the Proceeding. Additionally, for good cause, the Council may relax or suspend the filing or other requirements prescribed by these Rules of Practice.

**Section 316. Confidentiality of business information.**

1. A person who wishes to assert a business confidentiality claim with regard to any trade secret or other confidential or privileged financial or commercial information contained in any document to be filed in an Appeal Hearing governed by these Rules of Practice shall assert such a claim at the time that the document is filed. A document filed without a claim of business confidentiality shall be available to federally recognized Tribes and the public for inspection and copying.
2. Two versions of any document which contains information claimed confidential shall be filed with the Secretariat:
  - a. One version of the document shall contain the information claimed confidential. The cover page shall include the words “Business Confidentiality Asserted”. The specific portion(s) alleged to be confidential shall be clearly identified within the document.
  - b. A second version of the document shall contain all information except the specific information claimed confidential, which shall be redacted and replaced with notes indicating the nature of the information redacted. The cover page shall state that information claimed confidential has been deleted and that a complete copy of the document containing the information claimed confidential has been filed with the Secretariat.
3. Both versions of the document shall be served on all Appeal Hearing Participants or their representatives, authorized to receive the information claimed confidential by the person making the claim of confidentiality. Only the redacted version shall be served on persons not authorized to receive the confidential information. Upon motion by an Appeal Hearing Participant or application by a non- Appeal Hearing Participant, the Council may upon majority vote uphold or reject a claim of confidentiality and/or may order service of an unredacted version on an Appeal Hearing Participant subject to a protective order preserving confidentiality.
4. Only the second, redacted version shall be treated as public information unless the Council otherwise orders.

**Section 317. Computation of Time.**

In computing any period of time prescribed or allowed in these Rules of Practice, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal holidays shall be included. When a stated time expires on a Saturday, Sunday or Federal holiday, the stated time period shall be extended to include the next business day.

**Section 318. Ex parte communications.**

The Council renders its final disposition of the appeal based on the administrative record and any matters or materials of which the Council may take official notice. To this end and to avoid bias, at no time after the filing of a petition for review shall the Members of the Council or any person who is likely to advise these officials on any decision in the Proceeding, communicate *ex parte* regarding the merits of the Proceeding with any interested person outside the Council and

Secretariat, with any staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any *ex parte* memorandum or other communication addressed to the Council or a Member thereof or to the Secretariat staff during the pendency of the Proceeding and relating to the merits thereof, by or on behalf of any Appeal Hearing Participant, shall be regarded as argument made in the Proceeding and shall be served upon all other Appeal Hearing Participants. The other Appeal Hearing Participants shall be given an opportunity to reply to such memorandum or communication. The requirements of this section shall not apply to any person who has formally recused himself or herself from all adjudicatory functions.

**Section 319. Examination of documents filed.**

1. The Secretariat may maintain a copy of documents filed in the proceeding on the Council's website to which federally recognized Tribes and the public may be directed in response to requests to examine documents filed. In addition, the Council shall make a copy of documents filed in the Proceeding available to federally recognized Tribes and the public at the offices of the Secretariat during normal business hours. The Secretariat in its discretion may require up to three business days advance notice of any request to examine documents.
2. The cost of duplicating documents at a reasonable rate established by the Executive Director shall be borne by the person seeking copies of such documents. The Executive Director, the Council or the Council Chair may waive this cost in its discretion for good cause shown.

**Section 320. Consolidation and severance.**

1. Consolidation. The Council upon motion or at its own initiative may consolidate any or all matters at issue in two or more petitions for review or Proceedings, subject to these Rules of Practice where: there exist common parties or common questions of fact or law; consolidation would expedite and simplify consideration of the issues; and consolidation would not adversely affect the rights of Appeal Hearing Participants engaged in otherwise separate Proceedings.
2. Severance. The Council may upon motion or at its own initiative order any Proceedings severed with respect to any or all Appeal Hearing Participants or issues. The Council may upon motion or at its own initiative sever issues in a single proceeding, including without limitation the question of whether petitioner is an aggrieved Person entitled to an Appeal Hearing.

**Section 321. Defense of Council Decision by State Agency Officials.**

The Executive Director may, with the consent of a Basin state that voted in favor of the Council Decision, appoint one or more officials of an agency of such state to participate as an Appeal Hearing Participant to defend the Council Decision. The prohibition on *ex parte* communications in Section 318 above shall apply to communications between any state agency officials performing this defense function and Members of the Council and their advisors.

**Section 322. Settlement.**

At the request of an Appeal Hearing Participant or on its own initiative, the Council may schedule a settlement conference to resolve some or all of the issues on appeal. The Council may appoint a person other than a Council Member or a person advising a Member to preside

over the conference. With the consent of all Appeal Hearing Participants, a Member of the Council, the Executive Director or his designee, and/or a member or advisor to the Great Lakes – St. Lawrence River Regional Body may preside over and/or participate in the conference.

**Section 323. Filing Fees.**

Whenever an Appeal Hearing is conducted under these Rules of Practice, the Petitioner shall include with its petition for review a non-refundable check or money order in the amount \$500 made payable to “Conference of Great Lakes and St. Lawrence Governors and Premiers” as Secretariat to the Council, or a request for waiver of the fee and evidence of inability to pay the fee. The fee shall be waived if it is in excess of Petitioner’s ability to pay as demonstrated by it to the satisfaction of the Council Chair. The Council Chair may request additional information from Petitioner, and impose a deadline for providing that information, if the Council Chair concludes that additional information is necessary for a determination of Petitioner’s ability to pay. Within ten (10) days of the decision of the Council Chair under this Section 323, Petitioner may appeal the decision to the full Council for resolution by motion stating the reasons Petitioner believes the Council Chair’s decision is in error.

**Section 324. Conferences.**

The Council may at any time during the Appeal Hearing require the Appeal Hearing Participants to participate in a conference to simplify the Appeal Hearing, promote settlement or otherwise further the fair and prompt resolution of the Appeal Hearing. The Council may require Appeal Hearing Participants to be represented at the conference by persons with settlement authority. The Council Chair, or a person designated by the Council Chair, shall preside at the conference, provided that if the Council Chair is the member representing the Originating Party, the Council Vice-Chair shall perform the functions of the Council Chair under this sentence, and provided further that any discussion of settlement at the conference shall be subject to the provisions of Section 322 of these Rules of Procedure.

**Section 325. Signing Documents, Representations to Council.**

Every petition, brief, written motion, and other paper must be signed by at least one attorney of record in the attorney’s name—or by a party personally if the party is unrepresented. The paper must state the information required by Section 310.2 of these Rules of Practice. By presenting to the Council a petition, brief, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

1. It is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
2. The claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
3. The factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and,

4. The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.  
Any violation of such certification may result in the Council imposing sanctions pursuant to Section 315 of these Rules of Practice.

#### **Part IV. Modification of Council Decision**

##### **Section 401. Types of Modifications.**

This Section applies to modifications to a Council Decision on an Application to approve the Proposal or alterations of the activity approved by a Council Decision. (In the event of an Appeal Hearing and Final Council Action, this Section applies to the Final Council Action in lieu of the Council Decision):

1. **Material Modifications.** Material Modifications are revisions to the Council Decision or alterations of the activity approved by the Council Decision that a reasonable decision maker would consider important when determining whether a Proposal meets the criteria in the Agreement or the Compact. Approval of a Material Modification may require a revision of a Finding or Condition in the Regional Body's Declaration of Finding or the Council's Council Decision.
2. **Minor Modifications.** Minor Modifications are revisions to the Council Decision that a reasonable decision maker would not consider important when determining whether a Proposal meets the criteria in the Agreement or Compact. Examples include technical implementation issues, typographical errors or changes to background information contained in the Council Decision that Council did not consider important when making its decision.
3. **Immaterial Modifications.** Immaterial Modifications are alterations of the activity approved by the Council Decision that fall under the Originating Party's jurisdiction, do not require a change to any text included in the Council Decision, and would not otherwise be considered important to a reasonable decision maker when determining whether a Proposal meets the criteria in the Agreement or the Compact. Examples in some instances may include relocation of a pipe due to field conditions or a change in water supplier without any change in the water source.

##### **Section 402. Preliminary Consultation.**

Before submitting any request for modification of a Council Decision, the Originating Party is encouraged to consult with the Chair and Secretariat staff to determine if the proposed modification is likely to be considered a Material Modification, Minor Modification or Immaterial Modification.

##### **Section 403. Requests for Material Modifications and Minor Modifications.**

1. The Originating Party may seek a Material or Minor Modification of a Council Decision by submitting a request for such modification to the Executive Director. Such request shall include the following information:
  - i. The specific proposed modification requested to the Council Decision, including a description of any language to be struck, added or revised.
  - ii. Any additional documentation the Originating Party deems appropriate in support of the proposed Modification.

2. Within 5 days of receiving such request, the Executive Director shall distribute the request for modification and any supporting documentation to the members of the Regional Body and Council.
3. Within 30 days of receiving such request, the Council Chair, in consultation with the members of the Regional Body and Council, shall determine if the requested modification would constitute a Material or Minor Modification, provided that if during the consultation any Council Member requests that the determination be made by the full Council, the Chair shall schedule a vote of Council.
4. If the Council Chair (or a majority of Council Members pursuant to Section 403.3) determines that the proposed modification is a Minor Modification, the Chair shall direct the Executive Director to modify the Council Decision accordingly.
5. If the Council Chair (or a majority of Council Members pursuant to Section 403.3) determines that the proposed modification is a Material Modification, the Chair and the Originating Party shall initiate the Regional Review and Council review process as provided for in the Compact and in Part II of Council's Guidance, with the exception that only the proposed modification to and effects on the Council Decision shall be subject to the Regional Review and Council review process. Matters unrelated to the proposed modification will not be considered, and public, Tribal or First Nation comment will not be considered on such unrelated matters.
6. The determination of whether a proposed modification is Material or Minor shall be issued in writing by the Council Chair, shared with the members of the Regional Body and Council, and posted to the Council and Regional Body websites within five days of such determination.

**Section 404. Immaterial Modifications.**

1. Immaterial Modifications may be made at the discretion of the Originating Party.
2. Notice of such modifications may be provided by the Originating Party to the members of the Council and Regional Body if the Originating Party believes such modifications may be of interest to the members of the Council and Regional Body.
3. Such notice may include a request for confirmation that the members of the Regional Body and Council have determined that such proposed alteration is an Immaterial Modification. If such request is made, the Regional Body and Council shall make such determination at their next public meeting.
4. All such notices and any responses shall be posted by the Secretariat to the Regional Body and Council websites within 5 days of receipt.

**Part V. Rulemaking Procedures.**

**Section 500. Rulemaking Initiation.**

The Council may commence a rulemaking proceeding on its own initiative, including without limitation upon the recommendation of any Council Committee charged with making any such recommendation. Such rulemaking may include adoption of new rules, amendment or

modification of an existing rule or any part thereof or rescission of all or any part of a previously adopted rule.

**Section 501. Notice.**

1. Before the adoption of a Rule, the Council shall provide notice of the proposed Rule pursuant to this Section. Notice of a proposed Rule shall include the following:
  - a. The proposed Rule;
  - b. The location where the proposed Rulemaking record may be inspected;
  - c. The time within which comments may be made;
  - d. Appropriate information about a public hearing, including its date time and place;
  - e. How comments may be submitted; and
  - f. The timetable for action.
2. The notice shall identify the right of any Person to participate in the rulemaking proceeding by the submission of written comment, either as part of, or independent of, the hearing.
3. The Secretariat shall give notice of a proposed rulemaking and hearing under this Section as follows:
  - a. Posting on the Council's website; and
  - b. Correspondence, either electronically or in written form, to interested Persons in accordance with a list of such Persons compiled by the Council. Any interested Person may have his or her name added to the list by making a written request to the Secretariat.

**Section 502. Public Participation.**

1. After the notice has been given for the proposed rulemaking, there shall be a comment period during which the Council shall allow all Persons to submit information and comment on the Rule proposed for adoption. The information or comment may be submitted electronically or in written form in the manner specified in the notice of rulemaking.
2. The Council shall consider all information and comments on a Rule proposed for adoption that are submitted within the comment period under Section 502.1
3. When the Council holds a hearing, a Person may make an oral presentation providing information and comment about the proposed Rule. Hearings must be open to federally recognized Tribes and the public and shall be recorded. The Council may specify reasonable requirements applicable to the conduct of such hearings.

**Section 503. Availability of Records.**

1. A copy of hearing records, including any electronic record or written transcript (if created) shall be available for review at the Secretariat offices during its official business hours, unless otherwise determined by Council or specified by the Presiding Officer at the close of the hearing.
2. A copy of the electronic records or transcript may be obtained upon written request and payment of reasonable costs.
3. A copy of all comments received during the comment period may be obtained upon written request and payment of reasonable costs.

**Section 504. Final Adoption.**

1. The Council may not adopt a Rule until the announced comment period has expired.

Attachment C  
Draft—December 6, 2018

2. In accordance with Sections 2.4.2 and 3.3.1 of the Compact, the Council shall, by majority vote, decide whether to adopt a Rule.
3. The Secretariat shall give notice of final rulemaking by posting the final Rule on the Council's website and shall also post a comment and response document if appropriate.