

## **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 of the Compact.

DRAFT FOR PUBLIC COMMENT  
September 15, 2020

Deleted: December 6, 2018\*

**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, or 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. Promptly and within 15 days of 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 Regional Review and Council approval.
  - i. If the Originating Party 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 Sections 4.9.3.f and g 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 Proposal is subject to Regional Review, or Regional Review and Council approval.
  - ii. If the Diversion is not subject to Regional Review under the provisions of the Compact cited in section 200.3.2.i of this Guidance, but there is a substantial likelihood the other Parties would reasonably consider it important to evaluate whether the Application contains a regionally significant or precedent setting Proposal, the notice provided under this Section 200.3.2 should so state. In such circumstance, the notice should also include a brief explanation of the reasons why the Diversion may be considered regionally significant or precedent setting to assist other Parties in evaluating whether to request Regional Review pursuant to section 4.5.1.f.f. of the Compact.
  - iii. 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 Proposal, the Originating Party obtains the missing information from the Applicant.
3. Promptly and within 30 days of receipt of an Application for a New or Increased Withdrawal or Consumptive Use for which notice is not provided under Section 200.3.2 of this Guidance, the Originating Party should notify the other Parties if there is a substantial likelihood the other Parties would reasonably consider it important to evaluate whether the Application contains a regionally significant or precedent setting Proposal for which to request Regional Review. The notice provided under this Section

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200.3.3 should also include a brief explanation of the reasons why the Withdrawal or Consumptive Use may be considered regionally significant or precedent setting to assist other Parties in evaluating whether to request Regional Review pursuant to Section 4.5.1.f. of the Compact.

4. After receiving any notice pursuant to Section 200.3 of this Guidance, any Party may request information about the Proposal from the Originating Party. The requesting Party should send a copy of any written request for information to the Secretariat for distribution to all Parties. The Originating Party should use its best efforts to provide information responsive to the request for information as soon as practicable. Any written response to such request by the Originating Party should be sent to the requesting Party, with a copy of such response sent to the Secretariat for distribution to all Parties. The Originating Party may provide responsive information in one or more productions. The Originating Party shall send written notice to the requesting Party and to the Secretariat for distribution to all Parties when the Originating Party has fully completed its response to an information request pertaining to a Proposal for which Regional Review is not mandatory.

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

- If it concludes that an Application to approve a Proposal is subject to the mandatory 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.
- No Application should be submitted to the Council or Regional Body as provided in Section 200.4 of this Guidance 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.
- 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.**

- This Section applies to any Application for which notice has been provided pursuant to Section 200.3 of this Guidance, and for which Regional Review is not mandatory pursuant to the terms of the Agreement or Compact. This Section also applies where a Party has provided written notice to the Originating Party and the Secretariat that the

Party is invoking this Section 200.5 to determine whether the Application sets forth a regionally significant or potentially precedent setting Proposal.

2. When the Originating Party concludes that it has a description of a Proposal sufficient for the Parties to determine whether to request Regional Review, the Originating Party will notify and provide such description to the other Parties and the Secretariat. The information contained in this description should include at a minimum identification of the specific Exception to the Prohibition of Diversions being applied for (if any), identification of the proposed source watershed, the source of water, the location of the Diversion or Withdrawal, the purpose of the water use, the total maximum volume of the Diversion or Withdrawal and associated Consumptive Use as expressed in millions of gallons per day averaged over a calendar year and the location of the return flow.
3. Such notices may be given via email, the U.S. Postal Service or Canadian Postal Service.
4. Any Party may request information about the Proposal from the Originating Party in accordance with Section 200.3.4, regardless whether the Originating Party has provided notice under Section 200.3.
5. A Request for Regional Review may be made by any Party to the Compact or Agreement on or before the later of (a) a date 45 days after receiving notice in accordance with Section 200.5.2, or (b) a date 45 days after the Originating Party informs a requesting Party and the Secretariat in writing that it has completed its response to an information request, but only if the requesting Party made its written request for information from the Originating Party no later than 30 days after the Originating Party sent the Parties the notice and description referenced in Section 200.5.2. Such Request for Regional Review shall be made either in writing to the Parties and the Regional Body Secretariat via email or U.S. or Canadian Postal mail within the time period specified in the preceding sentence of this Guidance; or, by motion during the course of any Regional Body meeting if held within such time period. All such requests will include a description of why the Proposal is regionally significant or potentially precedent setting.
6. If a majority of the Regional Body members request or vote for Regional Review pursuant to and within the time period set forth in Section 200.5.5 of this Guidance, after consulting the Applicant, Regional Review should be initiated within 60 days following the date on which the requests or vote attained a majority.
7. If Regional Review is initiated pursuant to Section 200.5.6 of this Guidance, the Originating Party should not approve the Application before the Regional Review is completed and should consider the results of the Regional Review in any final decision on whether to approve the Application. In any final decision on such Application, the Originating Party should include a description of how the Declaration of Findings was taken into consideration.
8. If Regional Review is not initiated pursuant to a request made by a majority of the Parties within the time period specified in Section 200.5.5 of this Guidance, the Parties may within that same time period by written request of a majority of the Parties determine to pursue alternative means of collectively reviewing any such Application for compliance with the requirements of the Compact and Agreement. Such means include but are not limited to one or more of the following:

- a. A discussion among the Parties regarding the Proposal, with advice given to the Originating Party on whether the Proposal meets the criteria in the Compact and Agreement;
  - b. Upon majority vote and after consulting the Applicant, initiate review by Council or the Regional Body of one or a limited number of issues raised by the Proposal. This review would conform to only the procedures for Regional Review applicable to the issues under consideration.
  - c. Submission by individual Parties, or by Council if a majority of Parties agree, of comments to the Originating Party to be placed in the Originating Party's administrative record.
  - d. Where applicable, invoking the alternative dispute resolution procedures in Section 500 of the Regional Body Procedures and/or Part V of the Rules of Practice and Procedure.
9. No later than 15 days after determining to pursue an alternative means of collectively reviewing the Application, the Parties should establish a schedule for the review. Unless the Originating Party otherwise requests, the Regional Body will endeavor to conclude its review at the earliest practicable time within 90 days of the date the Parties determined to pursue an alternative means of review.
  10. If an alternative to Regional Review is initiated pursuant to this Section 200.5.8, the Originating Party should not approve the Application before the alternative is completed and should consider the results of the alternative in any final decision on whether to approve the Application. In any final decision on such Application, the Originating Party should include a description of how the results of the alternative to Regional Review were taken into consideration.
  11. The provisions of Sections 200.3 and 200.5 of this Guidance as they pertain to regionally significant or potentially precedent setting Proposals should be implemented in conjunction with corresponding sections of the Regional Body Procedures.

## **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).

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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).

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;
- 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 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

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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.



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 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;
- 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 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 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 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 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 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:

- 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

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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.”

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]

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.

[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. 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]

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;
    - 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 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 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;

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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).

- 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 4.9.3 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).
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]

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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.

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 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 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
- 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.  
Ref: Section 4.9.3.d of the Compact]
  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.  
[Ref: Section 4.9.3.e of the Compact]
  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.

[Ref: Section 4.9.3 of the Compact]

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. Federally Recognized 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 201.2.3, 201.2.4.f, and 201.2.6.
  - 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 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 201.4.5 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 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.
4. 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.
5. 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.
6. The Council will consider the comments received before taking any action on a Proposal.
7. 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 200.9.2 or 200.9.3 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.

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**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 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 an 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, and 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.
2. The Council shall hold a public hearing pursuant to Section 201.2 and may additionally hold 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.
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.