

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

RESOLUTION #13—ADOPTION OF INTERIM GUIDANCE

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

WHEREAS, Section 2.5 of the Compact states in part that “[t]he Council shall provide for its own organization and procedure...”; and,

WHEREAS, on December 8, 2008, the Council adopted interim guidance pursuant to its Resolution #2; and,

WHEREAS, on December 8, 2008 the Council adopted Resolution #4, creating a Rules & Regulations Committee charged with developing recommendations for rules and procedures for the Council to consider adopting; and,

WHEREAS, the Rules & Regulations Committee has forwarded to the Council recommendations for further interim guidance to adopt.

NOW THEREFORE BE IT RESOLVED THAT the Council approves and adopts the interim guidance dated June 10, 2010, and attached to this resolution as Attachment “A,” and that such interim guidance shall replace in its entirety the interim guidance adopted by the Council on December 8, 2008.

*Adopted by the Great Lakes-St. Lawrence River Basin Water Resources Council on
June 10, 2010*

Great Lakes—St. Lawrence River Basin Water Resources Compact

Interim Guidance

The policies and procedures outlined in this guidance are intended to supplement existing requirements in the Great Lakes—St. Lawrence River Basin Water Resources Compact (Compact). Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not adjudication or a regulation. There is no intent on the part of the Council to give the rules in these guidelines that weight or deference. This document establishes the framework within which the Council will exercise its administrative discretion in the future. The Council reserves the discretion to deviate from these guidelines 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.
2. "Executive Director" means the Executive Director of the Council.
3. All references to sections of the Compact are to the version of the Compact enacted as U.S. Public Law No: 110-342.

Part II. Review and Approval of Exceptions.

Section 200. Application.

Section 200.1. Purpose.

The purpose of this Part is to set forth guidance governing Applications required by Section 4.9.1.c, Section 4.9.2.c and Section 4.9.3 of the Compact, as well as for Regional Review of regionally significant or potentially precedent setting Proposals as set forth in Section 4.5.1.f of the Compact.

Section 200.2. Preliminary Consultations.

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

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

1. An Applicant shall submit to the Originating Party an Application for a Proposal that is subject to Regional Review under Section 4.9.1c of the Compact, or subject to Regional Review and approval of the Council under Section 4.9.2.c or Section 4.9.3 of the Compact in such manner and with such accompanying information as the Originating Party may require in addition to the requirements included in Section 200.5 of this Guidance.
2. Upon receipt of an Application, the Originating Party shall determine if the Proposal addressed in the Application is subject to Regional Review or Council approval. The Originating Party shall notify the public in accordance with relevant State law that the Application is subject to Regional Review, or Regional Review and Council approval, after making such determination.
3. If the Application is subject to Regional Review, or Regional Review and Council approval, the Originating Party shall perform all necessary reviews to determine if there is sufficient information in the Application to determine if the Proposal does or does not meet the relevant criteria in the Compact. If there is insufficient information in the Application, the Originating Party shall obtain the information from the Applicant.

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

1. The Originating Party shall submit to the Executive Director, acting on behalf of the Council, and to the Executive Director of the Regional Body, acting on behalf of the Regional Body, an Application for a Proposal that is subject to the review and approval of the Council under Section 4.9.1, Section 4.9.2.c or Section 4.9.3 of the Compact, consistent with Section 4.7 of the Compact and in accordance with this Guidance, accompanied with any and all information arising from the Technical Review referenced in Section 200.3.2 of this Guidance.
2. No Application shall be submitted to the Council or Regional Body unless all information and documents, including information to be included as part of the Application pursuant to Section 200.5 of this Guidance, and the Originating Party's Technical Review needed to evaluate whether the Proposal meets the Standard of Review and Decision are included in such Application.
3. The Originating Party shall submit 12 copies of the Application to the Executive Director and the Executive Director of the Regional Body. The Application should also, if possible, be submitted in electronic form in a common format that allows public accessibility (e.g. Adobe Acrobat PDF format).

Section 200.5. Contents of Application.

Section 200.5.1. 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 Great Lakes-St. Lawrence River Basin Water Resources Compact) where the underlying Proposal is to transfer Water to a Straddling Community¹ and such Proposal will result in a New or Increased Consumptive Use of 5 million gallons per day or greater average over any 90-day period (see Section 4.9.1 of the Compact).

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

Any required information that was not included in the original Application to the Originating Party shall be added as an attachment to the original Application as appropriate.

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

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

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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 shall 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 shall 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 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 shall not be included in response to this section.

[Ref: Section 4.12.3 of the Compact]

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5. *Source of the Withdrawal and location of the Diversion.*
Provide the following:
- 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.
 - To the extent that the local entity that will be making the Withdrawal is not the Applicant, the Applicant must also demonstrate 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.
 - A map or photo of the area identifying the Source Watershed², proposed location of the Diversion including a description of the area that is proposed to receive the Diverted Water, location of the return flow and water supply service area.
 - Identify 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*³.
Identify:
- The total maximum volume of the Diversion and associated Consumptive Use over the next 25 years (or the time period required by the Originating Party) as expressed in millions of gallons per day averaged over a calendar year as well as over the peak 90 day period during a calendar year.
 - Include the expected monthly usage, expressed in millions of gallons per day, of the Diversion and information regarding whether the proposed use would be continuous, seasonal or temporary.
 - The location of the point of measurement of the Diversion, and the technical method to be used for measuring the rate of the Diversion.
 - The total volume of any existing Diversion and Consumptive Use registered 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 shall be expressed in millions of gallons per day.

² "Source Watershed" 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.

³ "Consumptive Use" means 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."

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7. *Originating Party Technical Assessments.*

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

[Ref: Section 4.5.4.a of the Compact]

B. Exception Standard Criteria. All Applications shall 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 shall include a narrative description of the need for the New or Increased Diversion. This description shall include an analysis of the efficiency of current water uses, including the application of Environmentally Sound and Economically Feasible Water Conservation Measures. Any such analysis previously submitted to the Originating Party may be submitted in satisfaction of this requirement.

[Ref: Section 4.9.4.a of the Compact]

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

Applications shall include a narrative description as to why the quantities requested in Section A.6.a. above are considered reasonable for the purposes for which it is proposed (for example, population projections). To that end, the Application must also include a Water use plan. The plan must 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 shall include a description of how the Water will be returned. This description shall include:

a. An explanation as to 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 must be presented;

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- b. An estimate of total return flow by volume in millions of gallons per day averaged over a calendar year and as a percentage of Water Diverted including proposed measurement methods;
- c. A description of the discharge location(s) of the return flow;
- d. A description of the anticipated Water quality of the return flow including proposed methods for determining the Water quality;
- e. A description of the return flow as identified in Section A.5.c. above, including what Water will be returned, where it will be returned, and how it will minimize the use 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 must 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. To assist with the development of this analysis, provide information about the potential Cumulative Impacts of the Proposal to the quantity or quality of the Waters and Water Dependent Natural Resources of the applicable Source Watershed. 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. The Application shall include data and analyses on Cumulative Impacts that are available from the Originating Party. To that end, all Originating Party Cumulative Impact assessments must

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be included in the Application, including but not limited to Cumulative Impact assessments performed pursuant to the Compact. The Application shall 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 shall 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 shall be provided. The description shall outline how such measures are:

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

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

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

Any approval of a Diversion pursuant to the terms of the Compact or relevant State law does not relieve the Applicant or the Originating Party of the responsibility to obtain additional authorizations required for the activity approved by the Compact Council or 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 received, they shall 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 deems relevant for the Council's and Regional Body's consideration.

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

All Applications shall include information to show that the Proposal meets the following additional criteria contained in Section 4.9.1 of the Compact.

1. *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 shall include:

- a. A statement 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 satisfies the required geographical eligibility [Ref: Section 4.9.1 of the Compact]; and,
- b. 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]

2. A report about the Proposal prepared for any other purpose, or an Application for approval prepared for submission to a Member State, may be accepted by the Council provided that said report or application addresses all necessary items listed in this section, as appropriate.

Section 200.5.2. Contents of Application for Regional Review and Compact 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 Great Lakes-St. Lawrence River Basin Water Resources 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 Compact Council and Regional Body. Applications may not be submitted directly to the Compact Council and Regional Body by the Applicant, but rather must be submitted to the Originating Party.

Any required information that was not included in the original Application to the Originating Party shall be added as an attachment to the original Application as appropriate.

If applicable or necessary, please provide a table of contents or index indicating the location in the Application where 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.

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A. Basic Information. All Applications shall 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 shall 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 shall 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.

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- b. To the extent that the local entity that will be making the Withdrawal is not the Applicant, the Applicant must also demonstrate 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 Watershed⁴, proposed location of the Diversion including 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. Identify 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*⁵. Identify:
- a. The total maximum volume of the Diversion and associated Consumptive Use over the next 25 years (or the time period required by the Originating Party) as expressed in millions of gallons per day averaged over a calendar year as well as over the peak 90 day period during a calendar year.
 - b. Include the expected monthly usage, expressed in millions of gallons per day, of the Diversion and 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 registered 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 shall 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 must be included in the Application package.

[Ref: Section 4.5.4.a of the Compact]

⁴ "Source Watershed" 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.

⁵ "Consumptive Use" means 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."

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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.

B. Exception Standard Criteria. All Applications shall 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 shall include a narrative description of the need for the New or Increased Diversion. This description shall include an analysis of the efficiency of current water uses, including the application of Environmentally Sound and Economically Feasible Water Conservation Measures. Any such analysis previously submitted to the Originating Party may be submitted in satisfaction of this requirement.

[Ref: Section 4.9.4.a of the Compact]

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

Applications shall include a narrative description as to why the quantities requested in Section A.6.a. above are considered reasonable for the purposes for which it is proposed (for example, population projections). To that end, the Application must also include a Water use plan. For public water supply systems the plan must 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 shall include a description of how the Water will be returned. This description shall include:

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- a. An explanation as to 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 must 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 use 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 must 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. To assist with the development of this analysis, provide information about the potential Cumulative Impacts of the Proposal to the quantity or quality of the Waters and Water Dependent Natural Resources of the applicable Source Watershed. 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

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evaluate Cumulative Impacts from this Proposal. The Application shall include data and analyses on Cumulative Impacts that are available from the Originating Party. To that end, all Originating Party Cumulative Impact assessments must be included in the Application including but not limited to Cumulative Impact assessments performed pursuant to the Compact. The Application shall 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 shall 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 shall be provided. The description shall outline how such measures are:

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

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

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

Any approval of a Diversion pursuant to the terms of the Compact or relevant State law does not relieve the Applicant or the Originating Party of the responsibility to obtain additional authorizations required for the activity approved by the Compact Council or 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 received, they shall 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 deems relevant for the Council's and Regional Body's consideration.

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

All Applications shall 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 Application must show how water will be returned to the Source Watershed where the Withdrawal occurs [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 must include an analysis showing that there is no feasible, cost effective, and environmentally sound water supply alternative(s), including conservation and efficient use of existing water supplies, within the Great Lake watershed to which the Water will be transferred. Such analysis shall address quantity and quality (including treatability) of alternative sources and shall describe the rationale for not using the other considered water supply alternatives.

[Ref: Section 4.9.2.c.ii of the Compact]

3. A report about the Proposal prepared for any other purpose, or an Application for Approval prepared for submission to a Member State, may be accepted by the Council provided that said report or application addresses all necessary items listed in this section, as appropriate.

Section 200.5.3. Contents of Application for Regional Review and Compact 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 Great Lakes-St. Lawrence River Basin Water Resources Compact) where the underlying Proposal is to transfer Water to a Community within a Straddling County⁶ (see Section 4.9.3 of the Compact).

Only Proposals to Divert Water for Public Water Supply Purposes to 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).

⁶ "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).

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

Any required information that was not included in the original Application to the Originating Party shall be added as an attachment to the original Application as appropriate.

If applicable or necessary, please provide a table of contents or index indicating the location in the Application where 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 shall 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 shall 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]

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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 shall 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, the Applicant must also demonstrate 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 Watershed⁷, proposed location of the Diversion including 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. Identify 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. Include the expected monthly usage, expressed in millions of gallons per day, of the Diversion and 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 registered 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.

⁷ "Source Watershed" means the watershed from which a Withdrawal originates. If Water is Withdrawn directly from a Great Lake or from the St. Lawrence River, then the Source Watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively. If Water is Withdrawn from the watershed of a stream that is a direct tributary to a Great Lake or a direct tributary to the St. Lawrence River, then the Source Watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively, with a preference to the direct tributary stream watershed from which it was Withdrawn.

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Unless otherwise noted, all rates and volumes shall 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 must be included in the Application package.

[Ref: Section 4.5.4.a of the Compact]

B. Exception Standard Criteria. All Applications shall 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 shall include a narrative description of the need for the New or Increased Diversion. This description shall include an analysis of the efficiency of current water uses, including the application of Environmentally Sound and Economically Feasible Water Conservation Measures. Any such analysis previously submitted to the Originating Party may be submitted in satisfaction of this requirement.

[Ref: Section 4.9.4.a of the Compact]

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

Applications shall include a narrative description as to why the quantities requested in Section A.6.a. above are considered reasonable for the purposes for which it is proposed (for example, population projections). To that end, the Application must also include a Water use plan. The plan must 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 shall include a description of how the Water will be returned.

This description shall include:

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- a. An explanation as to 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 must 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 use 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 must 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. To assist with the development of this analysis, provide information about the potential Cumulative Impacts of the Proposal to the quantity or quality of the Waters and Water Dependent Natural Resources of the applicable Source Watershed. Information may also be included how the Proposal relates to other existing Withdrawals, Diversions and Consumptive Uses for purposes of enabling the Parties to collectively evaluate

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Cumulative Impacts from this Proposal. The Application shall include data and analyses on Cumulative Impacts that are available from the Originating Party, including but not limited to Cumulative Impact assessments performed pursuant to the Compact. To that end, all Originating Party Cumulative Impact assessments must be included in the Application. The Application shall 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 shall 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 shall be provided. The description shall 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 Compact Council or 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 shall be included in the Application.

[Ref: Section 4.9.4.f of the Compact; Article 201 Paragraph 4.f. of the Agreement]

7. *Additional Information.*

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

C. Additional Information--Straddling County Exception [Diversion] Applications. All Applications shall 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 shall include:

- a. A statement 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 satisfies the required geographical eligibility.
- 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 shall include 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 4.9.3.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.*

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. This analysis may be incorporated and addressed as part of the Applicant's response to section B.1. above.

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.*

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

5. *Substantive consideration will also be given to whether or not the Proposal can provide sufficient scientifically based evidence that the existing water supply is*

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derived from groundwater that is hydrologically interconnected to Waters of the Basin.

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

6. A report about the Proposal prepared for any other purpose, or an Application for Approval prepared for submission to a Member State, may be accepted by the Council provided that said report or application addresses all necessary items listed in this section, as appropriate.

Section 200.6. Notice of Receipt of Application; Technical Reviews.

1. Upon receiving an Application from the Originating Party, the Executive Director shall endeavor to give notice of receipt within 5 days of such receipt to the other Members. The notice shall include all materials submitted by the Originating Party to the Council pursuant to Section 200.4.
2. The Executive Director and the Parties shall review the Application, and if necessary, request that the Originating Party provide any additional information that is asked for pursuant to Section 200.5 of this Guidance. The Originating Party has a duty to provide information reasonably necessary for the Council's review of the Application.
3. If the Council determines that there is insufficient information to determine if the criteria for the relevant Exception has been met by the Applicant, the Executive Director may make a request to the Originating Party to cure the deficiencies. The Originating Party shall have a period of time prescribed by the Executive Director to cure the technical deficiencies. At the end of such period of time, the Council's review shall 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 Application. The Council or Member shall complete all additional Technical Reviews no later than 60 days after the Originating Party submits the Application to the Regional Body and Council.
5. Any extension of time granted for the purposes of curing deficiencies will result 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 200.7. Tribes Notice.

1. The Executive Director shall, on behalf of the Council, provide notice to the federally recognized Tribes within the Basin of the opportunity to comment, pursuant to Section 200.8 of this Guidance, in writing to the Council on whether the Proposal meets the relevant criteria in the Compact. The Executive Director and the Parties shall endeavor to provide such notice within 10 days after receiving an Application from the Originating Party.
2. The Executive Director shall, on behalf of the Council, also inform the federally recognized Tribes of public hearings or meetings set pursuant to Section 201.2 of this Guidance and invite them to attend.

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3. The Executive Director shall forward the comments that it receives from the federally recognized Tribes under this Section to the Members and the Originating Party for their consideration before the Council makes a decision on the Application.
4. The Council shall consider the comments that it receives from the federally recognized Tribes under this Section before issuing its decision.

Section 200.8. General Notice and Opportunity to Comment.

1. The Executive Director, on behalf of the Council, shall provide notice to the public of all Proposals submitted to the Council for Regional Review and Council approval. Such notice shall indicate 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 shall 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 shall endeavor to provide such notice within 10 days after receiving the Application from the Originating Party.
2. All notices required under this Section shall contain a description of the Proposal, its purpose, requested Water Withdrawal, Diversion and Consumptive Use amounts, location(s) where copies of the Application and all other relevant documents are available for review, timeframe for that availability, time period, manner and recipient of any comments regarding the Proposal and identification of address, electronic mail address, and phone number of the Council.
3. All documents relevant to the Application, including all materials submitted to the Council pursuant to Section 200.4 and all Technical Reviews, shall be made accessible to the public by posting the documents on the Council's website whenever possible, offering the documents for inspection at the offices of the Secretariat and designated offices of the Parties, and providing copies of the documents upon request at a reasonable fee.
4. The Council shall either hold a public hearing pursuant to Section 201.2 or a public meeting pursuant to Section 201.1 within the jurisdiction of the Originating Party in order to receive comment regarding whether the Proposal under consideration meets the relevant criteria in the Compact.
5. The Council shall consider the comments received before taking any action on an Application.
6. The Council shall forward the comments it receives to the Originating Party. The comments shall also be made publicly accessible in the manner provided in Section 200.8.3.

Section 201. Process for Review of and Meetings/Hearings on Applications.

Section 201.1. Public Meetings on Applications.

1. For most Applications the Council will hold a public meeting within the jurisdiction of the Originating Party in order to receive comment regarding whether the Proposal under consideration meets the relevant criteria under the Compact. The Council may hold additional public meetings whenever it determines there is sufficient interest.

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2. The public meeting can take a variety of formats including, at a minimum, 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 Originating Party.

Section 201.2. Hearings on Applications.

1. The Council may, at its discretion, hold a hearing on an Application subject to Regional Review. The location of the hearing within the jurisdiction of the Originating Party shall be determined by the Presiding Officer. The Council may hold additional public hearings if there is sufficient interest.
2. At least 20 days before any Council hearing, notices stating the date, time, place and purpose, including issues of interest to the Council, shall 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 may have his name added to the list by informing the Executive Director.
3. Included in the notice of the hearing shall be instructions on where and how the public may review all of the documents relevant to the Application, including all materials submitted to the Council pursuant to this Guidance, as well as all Technical Reviews.
4. Standard Hearing Procedure.
 - a. Presiding Officer. A hearing shall be presided over by a Presiding Officer, who shall be the Council Chair, or individual appointed by the Council Chair. The Presiding Officer shall 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 Vice Chair of the Council shall be the Presiding Officer, or an individual appointed by the Council Vice Chair.
 - b. Open to the Public. Hearings shall be open to the public,
 - c. Participants. Hearing Participants shall be the Originating Party, the Applicant, and the Council Secretariat. Participants may also be any Person wishing to appear at the hearing and make an oral or written statement. Persons (except the Applicant, the Originating Party and the Council Secretariat) may file with the Executive Director at the Council offices written notice of their intention to appear at the hearing as Participants.
 - d. Statements. Statements may favor or oppose the Proposal, or may simply express a position without specifically favoring or opposing the Proposal. Statements shall be 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.
 - 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, 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 intends to appear.
 - f. Informational Meeting. The hearing may be preceded by an informational meeting at which the Originating Party, the Applicant and the Council Secretariat may be

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present to explain the Proposal and the governing requirements. Members of the public shall have the opportunity to ask questions about the Proposal.

5. A certified copy of the transcript or audio recording and exhibits shall be available for review during business hours at the Council's offices to anyone wishing to examine them. Copies shall be made available on request at a reasonable fee. Any transcript, audio recording file and exhibits shall also be made available whenever possible on the Council's website. Persons wishing to obtain a certified copy of the transcript of any hearing shall make arrangements to obtain it directly from the recording stenographer at their expense.

Section 201.3. Optional Joint Hearing or Public Meeting.

1. Any public meeting held pursuant to Section 201.1 may be held concurrently with any similar public meeting held by the Regional Body or the Originating Party. Any public hearing held pursuant to Section 201.2 may be held concurrently with any public hearing held by the Originating Party.
2. The Council may order any two or more hearings or public meetings involving a common or related question of law or fact to be consolidated for hearing on any or all of the matters at issue in such meetings, including meetings involving the Regional Body.
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 Application for the Council and for such other department, agency or instrumentality. Pursuant to the additional designation, a Presiding Officer shall cause to be filed with the department, agency, or instrumentality making the designation, a certified copy of the transcript of the evidence taken before him or her and any exhibits. Neither the Presiding Officer nor the Council shall have or exercise any power or duty as a result of such additional designation.

Section 201.4. Process for Review of Applications; Decisions on Applications.

1. No decision shall 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 shall consider the Regional Body's Declaration(s) of Finding before making a decision on a Proposal.
2. The Council may, at its discretion, hold a public hearing pursuant to Section 201.2 or a public meeting pursuant to Section 201.1 before a decision is made on an Application.
3. Unless the Originating Party otherwise requests, the Council shall endeavor to meet and act upon all Applications within 60 days after receiving all final Declarations of Finding from the Regional Body.
4. The Council's decision shall be based on consideration of the Application 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

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Body, and any other information provided to the Council or any Member under the Compact.

5. After approving, approving with modifications, or disapproving an Application, the Executive Director shall provide notice to the Applicant and Members of such action. The Executive Director shall 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 shall include the text of the disapproval or the terms and conditions of the approval as relevant. In addition, the Executive Director shall post the notice and text of the decision on the Council's website.
6. The Council may suspend the review of any Application 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 shall resume its review of the Application. Where, however, an Application has been suspended hereunder for a period greater than three years, the Council may terminate its review. Thereupon, the Council shall notify the Originating Party of such termination. The Originating Party may reactivate the terminated Application by reapplying to the Council, providing evidence of its receipt of all necessary governmental approvals and, at the discretion of the Council, submitting new or updated information.

Section 202. Conditions and Term of Council Approval.

1. Originating Party approval of an Application may not be given to an Applicant unless and until the Originating Party receives approval or approval with modifications of the Application from the Council.
2. If the Originating Party also approves the Application, any such approval given to the Applicant shall expressly incorporate the terms and conditions of the Council's Approval.
3. If the Originating Party also approves the Application, 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.

Part III. Rule-Making Procedures.

Section 300. Rule-Making Initiation.

The Council may commence a rulemaking proceeding on its own initiative, including upon the recommendation of any Council Committee charged with making any such recommendation.

Section 301. Notice.

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

Section 302. Public Participation.

1. After the notice has been given for the proposed rulemaking there shall be a comment period during which the Council shall allow all Persons to submit information and comment on the Rule proposed for adoption. The information or comment may be submitted electronically or in written form.
2. The Council shall consider all information and comments on a Rule proposed for adoption that is submitted within the comment period under Section 302.1
3. When the Council holds a hearing, the Council may allow a Person to make an oral presentation with information and comment about the Rule. Hearings must be open to the public and shall be recorded.

Section 303. Availability of Records.

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

Section 304. Final Adoption.

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

Attachment "A"

June 10, 2010

2. In accordance with Section 3.3 of the Compact, the Council shall, by majority vote, decide whether to adopt a Rule.
3. The Executive Director shall give notice of final rulemaking by posting on the Council's website.