

representative of the person filing the documents. Each filing must also indicate the signer's name, address, and telephone number, as well as an email address, and facsimile number, if any.

3. Method of filing. Unless otherwise permitted under these rules, documents must be filed either by attaching them to an e-mail sent to the Secretariat, by U.S. mail or Canadian Postal Service, or by hand delivery (including by a reliable commercial delivery service). In addition, a motion or a response to a motion may be submitted by facsimile if the submission contains no attachments. Upon filing a motion or response to a motion by facsimile, the sender must, within one business day, file an electronic copy with the Secretariat as required by Section 310.1 and send the Secretariat an original by U.S. mail, Canadian Postal Service or by hand-delivery, unless otherwise permitted by the Executive Director or the Council. The Council may by order specify the manner of filing in a specific Proceeding or as to a specific person or Appeal Hearing Participant.
4. Electronic filing. Documents that are filed electronically must be submitted to the Secretariat, via e-mail at an email address posted on the Council website, subject to any appropriate conditions and limitations imposed by order of the Council. The person filing the documents must include a cover letter to the Executive Director clearly identifying the documents that are being submitted, the name of the Appeal Hearing Participant on whose behalf the documents are being submitted, as well as the name of the person filing the documents, his or her address, telephone number and, if available, fax number and email address. The name of the filer must be preceded by "s/" and typed in the space where the signature would otherwise appear. Compliance with these electronic filing requirements and any others separately imposed by the Council constitutes compliance with applicable signature requirements. The Secretariat shall post on the Council's website a link to the website address at which the electronic filings may be viewed or instructions on how to obtain access to copies of these docketed filings.
5. Filing by U.S. or Canadian Mail. Documents that are sent by U.S. mail or Canadian Postal Service must be sent to the official mailing address posted on the Council website. The person filing the documents must include a cover letter to the Executive Director clearly identifying the documents that are being submitted and the name of the Appeal Hearing Participant on whose behalf the documents are being submitted, as well as the name of the person filing the documents, his or her address, telephone number, and if available, fax number and email address.
6. Filing by hand delivery. Documents delivered by hand or courier (including deliveries by U.S. Express Mail and any reliable commercial delivery service) must be delivered to an address posted on the Council website. The person filing the documents must include a cover letter to the Executive Director clearly identifying the documents being submitted and the name of the Appeal Hearing Participant on whose behalf the documents are being submitted, as well as the name of the person filing the documents, his or her address, telephone number, and if available, fax number and email address.
7. Service.
 - a. Service information. The first document filed by any person shall contain the name, mailing address, telephone number, and email address of an individual authorized to receive service relating to the proceeding. Appeal Hearing Participants shall promptly

file any changes in this information with the Secretariat, and serve copies on all Appeal Hearing Participants. If an Appeal Hearing Participant fails to furnish such information and any changes thereto, service to the Appeal Hearing Participant's last known address shall satisfy service requirements.

- b. Service requirements for Appeal Hearing Participants. If the appeal pertains to a Proposal, Petitioner must serve the petition for review on the Applicant (if the Applicant is not the petitioner). Once an appeal is docketed, every document filed with the Secretariat must be served on all other Appeal Hearing Participants. Service must be made by first class U.S. mail or Canadian Postal Service, by hand delivery (including any reliable commercial delivery service), or by e-mail, facsimile or other electronic means. When an Appeal Hearing Participant files a document with the Secretariat electronically, it shall provide an electronic copy to all other Appeal Hearing Participants who have provided an address to the Appeal Hearing Participant for receipt of electronic communications. Service of a document between or among Appeal Hearing Participants or by the Council on an Appeal Hearing Participant is complete upon mailing by U.S. mail, when placed in the custody of a reliable commercial delivery service, or upon transmission for facsimile or email. The Council may, as to one or more Appeal Hearing Participants or filers, specify the form and manner of service, including any appropriate conditions and limitations.
- c. Service of rulings, orders, and decisions. The Secretariat shall serve copies of rulings, orders, and decisions on all Appeal Hearing Participants. Service may be made by U.S. mail (including by certified mail or return receipt requested, Overnight Express and Priority Mail), any reliable commercial delivery service, or electronic means (including but not limited to facsimile and email).
- d. Proof of service. In any appeal involving more than a single Appeal Hearing Participant or an Applicant who is not also the petitioner, a certificate of service must be appended to each document filed stating the names of persons served, the date and manner of service, as well as the electronic, mailing, or hand delivery address, or facsimile number, as appropriate.

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

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

period shall be thirty days in length and limited to written submissions commenting on the new or modified conditions or provisions.

Section 312. Petitioner request for dismissal of petition.

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

Section 313. Oral argument.

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

Section 314. Final disposition and judicial review.

1. Filing a petition with the Council under these Rules of Practice is, under Section 7.3.1 of the Compact, a prerequisite to seeking judicial review of the Council Decision.
2. For purposes of judicial review, exhaustion of administrative remedies occurs when the Council issues Final Council Action disposing of the Proceeding and an opinion or other document setting forth the reasons for its decision.
3. At the conclusion of the Appeal Hearing:
 - a. Except as provided in Sections 314.3.b and c of these Rules, the Council by majority vote may affirm, reverse or modify the Council Decision, or open the Council Decision and require further technical reviews, analyses or other proceedings.
 - b. With respect to a Council Decision on a Proposal subject to Council review under Section 4.9.2.c (Intra-Basin Transfer) or Section 4.9.3 (Straddling Counties) of the Compact approving a Proposal or approving a Proposal with conditions, the Council by majority vote may affirm or reverse the Council Decision, or open the Council Decision and require further technical reviews, analyses or other proceedings. In addition, the Council by unanimous vote of voting Members (excluding abstentions) may issue a modified approval.
 - c. With respect to a Council Decision on a Proposal subject to Council review under Section 4.9.2.c (Intra-Basin Transfer) or Section 4.9.3 (Straddling Counties) of the Compact disapproving a Proposal, the Council by unanimous vote of voting Members (excluding abstentions) may open the Council Decision and approve the Proposal, approve the Proposal with conditions or require further technical reviews, analyses or other proceedings. Absent a unanimous vote to open the Council Decision, the disapproval is deemed affirmed.

4. Where a required public comment period preceded the Council Decision, any new or modified Council Decision that contains provisions or conditions that are not a logical outgrowth of the subjects previously published for public comment shall be subject to a new public comment period. Unless the Council otherwise orders, the comment period shall be thirty days in length and limited to written submissions commenting on the new or modified conditions or provisions.
5. The Council will promptly publish notice of its Final Council Action or other disposition of the Proceeding on its website, serve copies upon the Appeal Hearing Participants and notify those persons on Council's Notice List for the Proceeding.

Section 315. Council authority.

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

Section 316. Confidentiality of business information.

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

Participant or application by a non- Appeal Hearing Participant, the Council may upon majority vote uphold or reject a claim of confidentiality and/or may order service of an unredacted version on an Appeal Hearing Participant subject to a protective order preserving confidentiality.

4. Only the second, redacted version shall be treated as public information unless the Council otherwise orders.

Section 317. Computation of Time.

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

Section 318. Ex parte communications.

The Council renders its final disposition of the appeal based on the administrative record and any matters or materials of which the Council may take official notice. To this end and to avoid bias, at no time after the filing of a petition for review shall the Members of the Council or any person who is likely to advise these officials on any decision in the Proceeding, communicate *ex parte* regarding the merits of the Proceeding with any interested person outside the Council and Secretariat, with any staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any *ex parte* memorandum or other communication addressed to the Council or a Member thereof or to the Secretariat staff during the pendency of the Proceeding and relating to the merits thereof, by or on behalf of any Appeal Hearing Participant, shall be regarded as argument made in the Proceeding and shall be served upon all other Appeal Hearing Participants. The other Appeal Hearing Participants shall be given an opportunity to reply to such memorandum or communication. The requirements of this section shall not apply to any person who has formally recused himself or herself from all adjudicatory functions.

Section 319. Examination of documents filed.

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

Section 320. Consolidation and severance.

1. Consolidation. The Council upon motion or at its own initiative may consolidate any or all matters at issue in two or more petitions for review or Proceedings, subject to these Rules of Practice where: there exist common parties or common questions of fact or law;

consolidation would expedite and simplify consideration of the issues; and consolidation would not adversely affect the rights of Appeal Hearing Participants engaged in otherwise separate Proceedings.

2. Severance. The Council may upon motion or at its own initiative order any Proceedings severed with respect to any or all Appeal Hearing Participants or issues. The Council may upon motion or at its own initiative sever issues in a single proceeding, including without limitation the question of whether petitioner is an aggrieved Person entitled to an Appeal Hearing.

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

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

Section 322. Settlement.

At the request of an Appeal Hearing Participant or on its own initiative, the Council may schedule a settlement conference to resolve some or all of the issues on appeal. The Council may appoint a person other than a Council Member or a person advising a Member to preside over the conference. With the consent of all Appeal Hearing Participants, a Member of the Council, the Executive Director or his designee, and/or a member or advisor to the Great Lakes – St. Lawrence River Regional Body may preside over and/or participate in the conference.

Section 323. Filing Fees.

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

Section 324. Conferences.

The Council may at any time during the Appeal Hearing require the Appeal Hearing Participants to participate in a conference to simplify the Appeal Hearing, promote settlement or otherwise further the fair and prompt resolution of the Appeal Hearing. The Council may require Appeal Hearing Participants to be represented at the conference by persons with settlement authority. The Council Chair, or a person designated by the Council Chair, shall preside at the conference, provided that if the Council Chair is the member representing the Originating Party, the Council

Vice-Chair shall perform the functions of the Council Chair under this sentence, and provided further that any discussion of settlement at the conference shall be subject to the provisions of Section 322 of these Rules of Procedure.

Section 325. Signing Documents, Representations to Council.

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

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

Any violation of such certification may result in the Council imposing sanctions pursuant to Section 315 of these Rules of Practice.

Part IV. Modification of Council Decision

Section 401. Types of Modifications.

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

1. **Material Modifications.** Material Modifications are revisions to the Council Decision or alterations of the activity approved by the Council Decision that a reasonable decision maker would consider important when determining whether a Proposal meets the criteria in the Agreement or the Compact. Approval of a Material Modification may require a revision of a Finding or Condition in the Regional Body's Declaration of Finding or the Council's Council Decision.
2. **Minor Modifications.** Minor Modifications are revisions to the Council Decision that a reasonable decision maker would not consider important when determining whether a Proposal meets the criteria in the Agreement or Compact. Examples include technical

implementation issues, typographical errors or changes to background information contained in the Council Decision that Council did not consider important when making its decision.

3. **Immaterial Modifications.** Immaterial Modifications are alterations of the activity approved by the Council Decision that fall under the Originating Party’s jurisdiction, do not require a change to any text included in the Council Decision, and would not otherwise be considered important to a reasonable decision maker when determining whether a Proposal meets the criteria in the Agreement or the Compact. Examples in some instances may include relocation of a pipe due to field conditions or a change in water supplier without any change in the water source.

Section 402. Preliminary Consultation.

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

Section 403. Requests for Material Modifications and Minor Modifications.

1. The Originating Party may seek a Material or Minor Modification of a Council Decision by submitting a request for such modification to the Executive Director. Such request shall include the following information:
 - i. The specific proposed modification requested to the Council Decision, including a description of any language to be struck, added or revised.
 - ii. Any additional documentation the Originating Party deems appropriate in support of the proposed Modification.
2. Within 5 days of receiving such request, the Executive Director shall distribute the request for modification and any supporting documentation to the members of the Regional Body and Council.
3. Within 30 days of receiving such request, the Council Chair, in consultation with the members of the Regional Body and Council, shall determine if the requested modification would constitute a Material or Minor Modification, provided that if during the consultation any Council Member requests that the determination be made by the full Council, the Chair shall schedule a vote of Council.
4. If the Council Chair (or a majority of Council Members pursuant to Section 403.3) determines that the proposed modification is a Minor Modification and should be made, the Chair shall direct the Executive Director to modify the Council Decision accordingly.
5. If the Council Chair (or a majority of Council Members pursuant to Section 403.3) determines that the proposed modification is a Material Modification, the Chair and the Originating Party shall initiate the Regional Review and Council review process as provided for in the Compact and in Part II of Council’s Guidance, with the exception that only the proposed modification to and effects on the Council Decision shall be subject to the Regional Review and Council review process. Matters unrelated to the proposed modification will not be considered, and public, Tribal or First Nation comment will not be considered on such unrelated matters.

6. The determination of whether a proposed modification is Material or Minor shall be issued in writing by the Council Chair, shared with the members of the Regional Body and Council, and posted to the Council and Regional Body websites within five days of such determination.

Section 404. Immaterial Modifications.

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

Part V. Alternative Dispute Resolution and Arbitration

Section 500. Alternative Dispute Resolution (ADR)

1. The following procedures apply to ADR conducted pursuant to Section 7.2 of the Compact. No decision or recommendation made pursuant to this Section shall be binding upon the Parties. These procedures shall not be used to dispute a Council Decision or Final Council Action on a Proposal that is subject to Council review.
2. A Party choosing to commence ADR shall do so by sending via email, or U.S. or Canadian postal mail a detailed written notice of dispute to the Secretariat identifying the Parties to the dispute, summarizing the issues in dispute, the Party's position on those issues, any legal authority relied upon, and any additional information that might facilitate settlement of these issues. The Secretariat will distribute a copy of the notice to all of the Parties and shall give notice of an ADR application under this Section as follows:
 - a. Posting on the Council's website; and
 - b. Correspondence, either electronically or in written form, to interested Persons in accordance with a list of such Persons compiled by the Council. Any interested Person may have his or her name added to the list by making a written request to the Secretariat. The host State shall also provide a copy of the notice to the project applicant, either electronically or in written form.
3. The Party whose actions are in dispute must participate in the ADR proceedings. Any other Party electing not to participate in an ADR proceeding commenced in accordance with Section 500.2 of these Rules shall within 30 days of receiving notice from the Secretariat pursuant to Section 500.2 of these Rules, send to the Secretariat written notice of its intent to not participate in the ADR proceeding.
4. If ADR is initiated pursuant to this Section, the Party whose actions are in dispute shall not undertake the action in ADR before such is completed, unless the Parties agree otherwise or

such Party notifies the Secretariat in writing, after having consulted with the project applicant, that there is an important public need to undertake such action before the completion of ADR, such as the need to comply with a State or Federal court order or other legal requirement or to address a public health concern. After such notice is given, the other Parties to the ADR may initiate actions as they determine necessary, including invoking provisions of Section 7.3 of the Compact.

5. Any Party may send a written request to the Secretariat identifying a Person other than a Party whom the requesting Party desires participate in the ADR proceeding. The Secretariat shall promptly provide a copy of the written request to all Parties. Such identified Person may participate unless any Party sends a written objection to the Secretariat within thirty (30) days following the date the Secretariat provided a copy of the written request. The ADR proceeding may be combined with a similar ADR proceeding commenced pursuant to the Agreement.
6. Within 45 days of receiving notice from the Secretariat, the Chair of the Council shall initiate the most appropriate measures to resolve the dispute. These measures may involve, among others:
 - a. The appointment of a panel to hear the Parties to the dispute;
 - b. Consultation with experts;
 - c. Establishment of a working or fact-finding group;
 - d. Appointment of a mediator, who may be the Chair, a Member, or such other person as the Chair may select, and who may engage in joint communications among the Parties to the proceeding or separate confidential communications with each Party to the proceeding in aid of settlement; and
 - e. Communications among the Parties and/or meetings of Council.
7. Unless the participating Parties agree to an extension, any alternative dispute measures shall conclude within 45 days of initiation by the Chair.
8. At any point in the process, if the Chair determines that the measures have not resulted in substantial progress to resolve the dispute or that the measures initiated are no longer appropriate, those measures shall not proceed further, and the Chair may refer the dispute to the Council.
9. Unless the Chair has terminated the measures pursuant to Section 500.7 of these Rules of Practice and Procedure, at the conclusion of the measures initiated by the Chair, recommendations shall be made by the Person(s) selected to implement such measures and in accordance with directions given by the Chair at the time the measures were adopted. The disputing Parties shall consider the recommendations and exercise their best efforts to settle the dispute.
10. If the disputing Parties, having considered any recommendations made pursuant to Section 500.8 of these Rules of Practice and Procedure fail to settle the dispute, any one of them may refer the matter to the Council. In this case, the Chair shall, in consultation with the other members who are not involved in the dispute, direct the Council to take such further steps as he or she considers advisable in the circumstances to resolve the dispute.
11. If a dispute has been referred to the Council pursuant to Sections 500.7 or 500.9 of these Rules of Practice and Procedure, the disputing Parties may submit their respective positions, evidence and legal support to the Council. After considering any such submissions by the

disputing Parties, the Council by majority vote shall issue its recommendations regarding the resolution of the dispute. The disputing Parties shall thereafter consider the recommendations and exercise their best efforts to settle.

12. In the event that a dispute involves the Party of the Chair, the role of the Chair under this Part V of these Rules of Practice and Procedure shall be filled by the Vice Chair or failing him or her, another Member who is not a Party to the dispute. If all Parties are involved in the dispute, the Council shall by majority vote appoint a person to perform the role of the Chair under this Section. Such person may be the Chair, another Member or any other Person.
13. After considering any recommendations of Council and utilizing best efforts to settle, any Party or the Council may commence a legal action in a court of appropriate jurisdiction seeking judicial resolution of the dispute. Participating in the procedures set forth in Section 500 of these Rules of Practice and Procedure satisfies the ADR requirement of Section 7.2 of the Compact. Alternatively, the Parties to the dispute may agree to resolve the dispute by arbitration employing such procedures as the Parties may establish or may invoke the non-binding arbitration procedures in Section 501.
14. At the discretion of Council and subject to the approval of the Regional Body, the ADR proceedings may be combined with similar proceedings before the Regional Body.
15. All common costs and expenses of the ADR process shall be borne by the participating Parties equally. Each participating Party shall bear all of its own costs and expenses, including without limitation, the costs of its own counsel, experts and witnesses.

Section 501. Arbitration Procedures

1. Any Party desiring to engage in non-binding arbitration in an effort to resolve its dispute with one or more other Parties shall send to the Chair and Secretariat via email or U.S. or Canadian postal mail a written request for arbitration identifying the Parties to the dispute and the issues to be arbitrated. The Secretariat will distribute a copy of the notice to all of the Parties and shall give notice of the request for arbitration under this Section as follows:
 - a. Posting on the Council's website; and
 - b. Correspondence, either electronically or in written form, to interested Persons in accordance with a list of such Persons compiled by the Council. Any interested Person may have his or her name added to the list by making a written request to the Secretariat.The host State shall also provide a copy of the notice to the project applicant, either electronically or in written form. Binding arbitration may not be undertaken by any Party under this Section.
2. Each Party, whether or not identified as a Party to the dispute in the written request for arbitration, shall within 30 days of its receipt of the request send to the requesting Party, the Chair and the Secretariat via email or U.S. or Canadian postal mail a written response to the request agreeing or objecting to the request or opting out of participation in the arbitration. The Secretariat will distribute a copy of the response to all Parties to the Compact. If any Party objects to the arbitration, or if a Party identified in the written request opts out, the arbitration shall not proceed.

3. The Parties participating in the arbitration (“Arbitration Parties”) shall unanimously agree on the procedures to be followed in the arbitration. Absent unanimous agreement, the following procedures should apply to the arbitration:
 - i. The dispute shall be determined by arbitration administered by the International Center for Dispute Resolution of the American Arbitration Association (“ICDR”) in accordance with its International Arbitration Rules.
 - ii. The place of arbitration shall be Chicago, Illinois, USA.
 - iii. The language of the arbitration shall be English.
 - iv. The Arbitration Parties should attempt to agree upon a single arbitrator. In the absence of agreement, there shall be three arbitrators, one selected by the initiating Party jointly with any other Arbitration Parties similarly aligned within 30 days of the expiration of the period in Section 501.2, the second selected by the other Arbitration Party or Parties with opposing alignments within the same time period, and the third, who shall act as the presiding arbitrator, selected by the two Party-appointed arbitrators within 30 days thereafter. Any arbitrator not selected within these time periods shall be selected by ICDR. When selecting an arbitrator, preference shall be given to persons with experience in water resource management or water resource law.
 - v. In addition to the authority conferred on the arbitral tribunal by its arbitration rules, the arbitral tribunal shall have the authority to order such production of documents as may be reasonably requested by any Arbitration Party or by the arbitral tribunal itself. No Arbitration Party shall make any application pursuant to 28 U.S.C. §1782.
 - vi. The arbitral tribunal shall have the power to recommend any remedy or relief that it deems appropriate, including conservatory relief and injunctive relief.
 - vii. The arbitration award and any recommended remedy or relief are advisory only and may not be entered as a judgment in any court, tribunal, or other adjudicatory body.
 - viii. The arbitration award and any recommended remedy or relief may not be cited as evidence or precedent in any court, tribunal or other adjudicatory body or in any subsequent arbitration or proceeding.
 - ix. The fact that the non-binding arbitration took place and any award, pleadings, briefs, testimony, evidence or rulings from that process may not be referred to in any subsequent proceedings.
4. Unless all Arbitration Parties agree, the content of the arbitral proceedings and any rulings of the arbitrator(s) preliminary to the arbitration award shall be kept confidential except (i) to the Parties to the Compact, or (ii) to the extent that disclosure may be required of a Party to fulfill a legal duty or protect or pursue a legal right. Notwithstanding the foregoing sentence, any Arbitration Party may disclose matters relating to the arbitration or the arbitral proceedings where necessary for the preparation or presentation of a claim or defense in such arbitration.
5. Unless an Arbitration Party objects, the Secretariat shall give notice of the non-binding arbitration award including any remedy or relief recommended by the arbitrator(s) as follows:

- a. Posting on the Council’s website; and
- b. Correspondence, either electronically or in written form, to the project applicant, and interested Persons in accordance with a list of such Persons compiled by the Council. Any interested Person may have his or her name added to the list by making a written request to the Secretariat.

The host State shall also provide a copy of the notice to the project applicant, either electronically or in written form.

- 6. If an Arbitration Party objects to providing notice pursuant to Section 501.5 of these Rules of Practice and Procedure, the Secretariat shall not provide the notice specified in Section 501.5. In such event, the Secretariat and Arbitrators shall keep the non-binding arbitration award including any recommended remedy or relief shall be kept confidential except (i) to the Parties to the Compact, or (ii) to the extent that disclosure may be required of a Party to fulfill a legal duty. Notwithstanding the foregoing, any Party to the Compact (whether or not an Arbitration Party) may make the arbitration award and any recommended remedy or relief available to the public at such Party’s discretion.
- 7. All costs and expenses of the arbitral tribunal shall be borne by the Arbitration Parties equally. Each Arbitration Party shall bear all of its own costs and expenses, including without limitation, the costs of its own counsel, experts and witnesses, involved in preparing and presenting its case.

Part VI. Enforcement

Section 600. Enforcement.

- 1. Section 7.3.2.a of the Compact authorizes any Party or the Council to compel compliance with the provisions of the Compact and the rules and regulations promulgated by the Council. Because the Originating Party is in the best position to monitor an Applicant’s compliance with any Council approval and its own state approvals, it is the policy of Council to rely on monitoring and enforcement by the Originating Party to the greatest extent practicable.
- 2. When the Originating Party concludes that any Person within the Originating Party’s jurisdiction is acting in material violation of the Compact, the Council’s rules and regulations or any approval or order issued by the Council, the Originating Party shall (a) take appropriate action under its own laws or the Compact to compel compliance and obtain such further relief as the Originating Party determines is warranted, or (b) if the Originating Party determines that a modification that would alter or eliminate the non-compliance is warranted, invoke the modification procedures of Part IV of these Rules of Practice and Procedure and, following a decision of Council, compel compliance with any remaining material violation.
- 3. If any Party concludes that the Originating Party is required by Section 600.2 of these Rules of Practice & Procedure to initiate and appropriately pursue enforcement but has not done so, that Party shall first (a) communicate with the Originating Party to seek agreement on the nature and timing of any enforcement action the Originating Party will initiate and pursue

- and (b) inform the Secretariat, who in turn will inform the Parties, of that Party's concerns regarding enforcement.
4. At any time after initiation of communications referenced in Section 600.3, any Party may inform the Council of a dispute between or among the Parties and request the commencement of alternative dispute resolution in accordance with Section 7.2 of the Compact and Part V of these Rules of Practice and Procedure. Such request shall be made by written notice to the Secretariat identifying the Parties to the dispute and setting forth the information listed in Part V. The Secretariat shall distribute a copy of the notice to all Parties.
 5. Following the conclusion of the alternative dispute resolution process, or during the process if emergency circumstances warrant, any Party may request Council to commence an action against the Originating Party to compel it to take all necessary enforcement actions.
 6. A request to Council pursuant to Section 600.5 of these Rules of Practice and Procedure shall be made in writing and sent to the Chair and the Secretariat for distribution to the Parties. The request must identify the action the Party desires Council to take and the factual and legal basis for requesting the action. Any Party may seek further information from the Originating Party and/or any other Party to help evaluate whether or not to approve the request for enforcement. Council may authorize commencing an enforcement action, including against the Originating Party, by majority vote upon motion by any Party. Council may name additional defendants in any lawsuit to the extent Council finds the naming of these defendants necessary or appropriate. Except for those communications subject to attorney-client privilege, the enforcement-related communications between and among the Parties, the Secretariat and the Council shall be treated as confidential unless Council by majority vote determines otherwise. Communications subject to attorney-client privilege shall be treated as confidential unless Council by unanimous vote of the Parties with whom the attorney is aligned determines otherwise.
 7. Nothing in this Section 600 precludes any Party from commencing its own lawsuit pursuant to Section 7.3.2.a against any Person not a Party to compel compliance with the provisions of the Compact.

Part VII. Rulemaking Procedures.

Section 700. Rulemaking Initiation.

The Council may commence a rulemaking proceeding on its own initiative, including without limitation upon the recommendation of any Council Committee charged with making any such recommendation. Such rulemaking may include adoption of new rules, amendment or modification of an existing rule or any part thereof or rescission of all or any part of a previously adopted rule.

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Section 701. Notice.

- i. 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;

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

Section 702. Public Participation.

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- 1. After the notice has been given for the proposed rulemaking, there shall be a comment period during which the Council shall allow all Persons to submit information and comment on the Rule proposed for adoption. The information or comment may be submitted electronically or in written form in the manner specified in the notice of rulemaking.
- 2. The Council shall consider all information and comments on a Rule proposed for adoption that are submitted within the comment period under Section 702.1.
- 3. When the Council holds a hearing, a Person may make an oral presentation providing information and comment about the proposed Rule. Hearings must be open to federally recognized Tribes and the public and shall be recorded. The Council may specify reasonable requirements applicable to the conduct of such hearings.

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Section 703. Availability of Records.

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

Section 704. Final Adoption.

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- 1. The Council may not adopt a Rule until the announced comment period has expired.
- 2. In accordance with Sections 2.4.2 and 3.3.1 of the Compact, the Council shall, by majority vote, decide whether to adopt a Rule.
- 3. The Secretariat shall give notice of final rulemaking by posting the final Rule on the Council’s website and shall also post a comment and response document if appropriate.