

**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 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. General.**

### **Section 100. Definitions.**

1. The standard definitions set forth in Section 1.2 of the Compact shall apply to this guidance.
2. 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 to the Prohibition of Diversions.**

### **Section 200. Application.**

#### **Section 200.1. Purpose.**

The purpose of this Section is to set forth procedures governing applications required by Section 4.9.2.c and Section 4.9.3 of the Compact.

#### **Section 200.2. Preliminary Consultations.**

Any Originating Party is encouraged, prior to submission of an application for Council review, to request a preliminary consultation with the Executive Director for an informal discussion of preliminary plans for any Proposal that is or may be subject to the Council's review and approval.

#### **Section 200.3. Submission of Application.**

1. An Applicant shall submit to the Originating Party an application for a Proposal that is subject to the 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 shall describe and consistent with Section 200.4.
2. The Originating Party shall submit to the Council and to the Regional Body an application for a Proposal that is subject to the review and approval of the Council under 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 these guidelines.
3. The Originating Party shall submit 12 copies of the application to the Council. These copies may be submitted in electronic form, including submission on CD, if they are in a common format that allows public accessibility (e.g. Adobe Acrobat PDF format).

#### **Section 200.4. Contents of Application.**

All Applications shall be submitted on forms and in a manner prescribed by the Council.

#### **Section 200.5. Notice of Application.**

1. The Originating Party shall, no later than 10 days after submission of an Application to the Council, notify each municipality in which the Proposal is located, the county planning agency of each county in which the Proposal is located and each federally recognized Tribe within the Basin that an application has been submitted to the Council. The Originating Party shall also publish at least once in a newspaper of general circulation serving the area in which the Proposal is located, a notice of the submission of the application no more than 10 days after the date of submission.

Additionally, the notice shall be posted on the Council's website and sent out, 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 their name added to the list by making a written request to the Council. All notices required under this Section shall contain a description of the Proposal, its purpose, requested water withdrawal, diversion and consumptive use amounts, location and address, electronic mail address, and phone number of the Council.

2. The Originating Party shall provide the Council with either a copy of the United States Postal Service return receipt or other form of proof of notification or receipt for the notification provided under Section 200.5.1 and a proof of publication for the newspaper notice required under Section 200.5.1. The Originating Party shall also provide certification on a form provided by the Council that it has made such other methods of notifications, such as electronic notification, as provided under Section 200.5.1. Until these items are provided to the Council, processing of the Application will not proceed.

**Section 200.6. Completeness of Application.**

1. The Executive Director as well as the Agency Staff of the Parties shall review the Application, and if necessary, request that the Originating Party provide any additional information that is deemed necessary for proper evaluation of the Proposal.
2. The Originating Party has a duty to provide information reasonably necessary for the Council's review of the Application. If the Originating Party fails to respond to the Council's request for additional information, the Council may terminate the Application process, close the file and so notify the Originating Party. The Originating Party may resubmit without prejudice a new Application.

**Section 201. Process for Review of 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.
2. The Council may, at its discretion, hold a hearing before a decision is made on an Application.
3. The Council shall consider the Regional Body's Declaration of Finding before making a decision on a Proposal.
4. Unless the Applicant or 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.

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

1. The Council may:
  - a. Approve the Proposal if it determines that the Proposal is consistent with the Compact, in particular with the Exception Standard and any additional relevant criteria as described in the Compact;
  - b. Modify and approve, as modified, a Proposal if it determines that the unmodified Proposal is inconsistent with the Compact, in particular with the Exception Standard and any additional relevant criteria as described in the Compact; or,

- c. Disapprove a Proposal if it determines that the Proposal is inconsistent with the Compact, in particular with the Exception Standard and any additional relevant criteria as described in the Compact.
2. Approvals issued under this Part shall have a term equal to the term of the accompanying Originating Party Approval regulating the same subject matter unless an alternate period is provided for in the Council Approval.
3. Council Approval of a Proposal shall expire five years from the date of such Approval if the Withdrawal, Diversion or Consumptive Use has not been commenced, unless an alternate period is provided for in the original Approval or such five-year period is extended in writing by the Council.
4. If a Withdrawal, Diversion or Consumptive Use approved by the Council is discontinued for a period of seven consecutive years, the Approval shall be null and void, unless a waiver is granted in writing by the Council.

### **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. Where comments may be inspected;
  - c. The time within which comments may be made;
  - d. Appropriate information about a public hearing, if any, including the names of the persons making the request;
  - 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 Council.

**Section 302. Public Participation.**

1. After the notice has been given for the proposed Rulemaking there shall be a public 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 public 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 public comment period has expired.
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.

**Adopted by the Great Lakes—St. Lawrence River Basin Water Resources Council  
*December 8, 2008***