

FEBRUARY 28, 2014  
DRAFT--FOR DISCUSSION PURPOSES ONLY

Draft Sequence of Events for Consideration of  
“Straddling County” Exceptions to the Prohibition on Diversions

Pre-Application Period

1. Pre-application conference call meeting with Secretariat, Chairs of the Regional Body and Compact Council (as applicable)<sup>1</sup>, Originating Party and Applicant to discuss decision making process, budget and administrative arrangements including deadlines.
2. Originating Party communicates in writing to States, Provinces and Secretariat regarding impending submission of Application for a Diversion. (Minimum 30 calendar days—60 days preferred—before formal submission of Application to Regional Body and Compact Council<sup>2</sup>.)
3. Secretariat staff at the direction of the Chair(s) sets tentative schedules of official notices, briefings and meetings.
4. State/Provincial staff conference call meeting/web presentation with Applicant and Originating Party to review tentative schedules of official notices, briefings and meetings, and to receive technical briefing on the Application.
5. Regional Body and Compact Council provide notice of public meeting to approve budget for Application for Diversion review process. (30 calendar days before meeting.)
6. Meeting<sup>3</sup> of Regional Body and Compact Council held to approve budget for Application for Diversion review process.<sup>4</sup>
7. Regional Body and Compact Council provide notice to Tribes and First Nations and public of briefing (see Step 13) that will be open to the public. (Ideally 30 calendar days before the briefing.)

Filing of Application

8. Originating Party provides notice to the Regional Body, Compact Council and public that it has determined that an Application for a Diversion is subject to Regional Review. [Agreement, Art. 501; Compact, Sec. 4.5.2]
9. Originating Party submits Application for Diversion, accompanied by the Technical Review and the “Originating Party’s Proposed Declaration of Finding”<sup>5</sup>

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

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

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

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

<sup>5</sup> If the Originating Party declines to participate in the decision, it need not prepare this Originating Party’s Proposed Declaration of Finding. If the Originating Party later decides not to participate in the decision, it

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to Regional Body and Compact Council, including 12 copies to the Executive Director for distribution to the Regional Body and Compact Council, as well as in electronic form in a common format that allows public accessibility (e.g. Adobe Acrobat PDF format).

Application Review Period

10. Regional Body and Compact Council provide the following notices of receipt of the Application for Diversion:
  - a. to Tribes and First Nations, including a copy of the Application for Diversion and “Originating Party’s Proposed Declaration of Finding”; and
  - b. to the public, including posting by the Secretariat of the Application for Diversion to Regional Body and Compact Council websites and a link to Originating Party’s website for further information, and notice to persons and groups that have registered as having an interest in receiving notice of the Application for Diversion.

These notices shall indicate that the Tribes and First Nations and the public, including those that have registered, have an opportunity to comment in writing on whether the Application meets the Exception Standard. [Agreement, Art. 501, 504; Compact, Sec. 5.1, 6.2]
11. Regional Review and Compact Council Review begins.
12. Public comment period begins, with opportunity to provide comment via website, hard copy or other means as appropriate.
13. Regional Body and Compact Council hold initial briefing on the Application for Diversion via conference call that will be open to Tribes/First Nations and public. Briefing includes:
  - a. Secretariat review of sequence of events for entire decision-making process including opportunities for Tribes/First Nations and public participation.
  - b. Originating Party and Applicant review of the contents of the Application for Diversion.
  - c. Originating Party presents Technical Review and “Originating Party’s Proposed Declaration of Finding.”
  - d. Regional Body and Compact Council announce and issue notice to Tribes and First Nations and public of Regional Body and Compact Council public information meeting and hearing (see Step 15 below). As part of the notice, announce that questions to be addressed during the presentation at public meeting must be submitted in writing by a set date. Questions may still be asked at the public meeting, but will be addressed only as time permits.
  - e. Regional Body and Compact Council announce and issue notice to Tribes and First Nations and public of Regional Body public meeting to consider final Declaration of Finding (see Step 21 below).

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may make that choice and the Chair or presiding officer may direct another Party to make any necessary modifications to the Originating Party’s Declaration of Finding.

FEBRUARY 28, 2014  
DRAFT--FOR DISCUSSION PURPOSES ONLY

14. Regional Body and Compact Council members review Application for Diversion, Technical Review and “Originating Party’s Proposed Declaration of Finding”, and may individually submit a written request for information from Originating Party, with a copy to the Secretariat. Originating Party responds in writing as appropriate to individual requests, with a copy to the Secretariat. All requests and responses are to be shared with all Regional Body and Compact Council members and will be included as part of the record of the Application. (A password protected website or sharepoint site may be used for this purpose.) All questions and answers will be incorporated into the record of decision and will be made available at the Q&A/Hearing in Step 15.

Public Meetings/Public Hearings

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

15. Regional Body and Compact Council public information meeting to be held in Originating Party’s jurisdiction with Members of the Regional Body and Compact Council to be physically present. Public ability for remote listening by phone or web provided.
  - a. *Part I—Public Information Meeting with Q&A.* Regional Body/Compact Council members present, Chair(s) preside(s). No recording or transcript of the event. Minutes will be prepared.
    - i. *Optional*—pre-meeting small group informal discussions (including Q&A) on key issues.
    - ii. *Optional*—Application and Technical Review materials and other materials to be incorporated in the record can be made available for inspection prior to the meeting.
    - iii. Secretariat reviews sequence of events for entire decision-making process including opportunities for Tribes/First Nations and public participation (10 minutes).
    - iv. Originating Party and Applicant review contents of Application for Diversion, Technical Review and “Originating Party’s Proposed Declaration of Finding”, during presentation address written questions received prior to the meeting (estimate approximately 20 minutes, but may change based on number of written questions received).
    - v. Members, Tribes/First Nations and public ask questions (preferably in writing) and receive verbal responses from Originating Party and Applicant on Application for Diversion, Technical Review and “Originating Party’s Proposed Declaration of Finding” and any written requests and responses received. Total question and answer period up to 90 minutes, those not addressed during this time will be encouraged to submit in writing for a response from the Secretariat (for process questions) or the Originating Party (for substantive questions).

FEBRUARY 28, 2014  
DRAFT--FOR DISCUSSION PURPOSES ONLY

- b. *Part II—Public Hearing*<sup>6</sup>. Regional Body/Compact Council members physically present. An independent Hearing Officer presides. This session is recorded, and a transcript will be provided to the Regional Body and Compact Council members, as well as made available to the public.
- i. Application for Diversion, Technical Review, “Originating Party’s Proposed Declaration of Finding” and any written requests and responses received will be incorporated into and made a part of the record.
  - ii. Tribes/First Nations and public opportunity to make oral statements or present written statements for the record.
  - iii. Those who pre-register are limited to five minutes for oral statements/comment, and those registering on-site are limited to three minutes. Organizations wishing to make oral statements/comments will be limited to one speaker.
  - iv. Announcement of timeframe (15 calendar days) for submission of additional written materials and comments for the record via web and hard copy.

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

16. Post-Hearing Briefing discussion (face to face) among Regional Body and Compact Council members, to be held the morning following the public hearing.
17. Deadline for submission of comments from the public for the record via web and hard copy (15 calendar days after public hearing).
18. Deadline for submission of any additional Technical Reviews by the Members (60 calendar days after submission of Application for Diversion).
19. As appropriate, Originating Party, or another Party designated by the Chair or presiding officer if the Originating Party declines to participate, revises “Originating Party’s Proposed Declaration of Finding” based upon all input received through deadlines for submission of comments and Technical Reviews.
20. Final “Originating Party’s Proposed Declaration of Finding” posted by the Secretariat to Regional Body website 14 calendar days before public meeting of Regional Body.
21. Regional Body meeting (face to face)<sup>8</sup>. [Agreement, Art. 506; Compact, Sec. 4.5.5]
  - a. Originating Party and Applicant present Application for Diversion and Technical Review.

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<sup>6</sup> If the Originating Party is a Province, this session will be a Public Meeting only, and will be run accordingly (e.g. no Hearing Officer.) If the Originating Party is a State, the Regional Body and Compact Chair will determine whether this session will be a Public Hearing or Public Meeting. [Agreement, Art. 503; Compact Interim Guidance, Sec. 201.3]

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

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

FEBRUARY 28, 2014  
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- b. A motion is made to adopt “Originating Party’s Proposed Declaration of Finding.” Motions to amend (including substitution motions) made and considered.
  - c. Regional Body, having considered the notice, Application for Diversion, Originating Party’s Technical Review, any other Independent Technical Reviews, comments, questions and objections, including comments by the public and Tribes/First Nations, and all other information in the record, considers motion of proposed “Originating Party’s Proposed Declaration of Finding.” If all members agree, then Declaration of Finding with consensus to be considered for adoption. If no consensus is reached, then the Regional Body shall work to achieve consensus within 25 days; if consensus still cannot be reached, the Regional Body may consider a Declaration of Finding that presents different points of view and indicates each Party’s conclusions.
22. Notification of Final Regional Body Declaration of Finding sent by the Secretariat to Originating Party, Compact Council,<sup>9</sup> Applicant, Tribes/First Nations and members of the public who have registered their participation in the Application review process.
23. Council Secretariat gives notice to Tribes and First Nations and public of Compact Council meeting to be held 30 calendar days after the final Regional Body Declaration of Finding, with or without consensus, is adopted (notice to be given immediately following adoption by the Regional Body).
24. <sup>10</sup>Compact Council meeting to be held (face to face<sup>11</sup>).
- a. Compact Council, having considered the notice, Application, Originating Party’s Technical Review, any other Independent Technical Reviews, comments, questions and objections, including comments by the public and Tribes/First Nations, Regional Body Declaration of Finding, and all other information in the record considers approval of Application. Approval shall be given unless one or more members votes to disapprove.
25. Decision is certified by Compact Council Secretariat and forwarded to Originating Party, notice of decision to Applicant, Regional Body and Compact Council members, Tribes/First Nations, and members of the public who have registered their participation in the Application review process.
26. Originating Party takes action pursuant to Regional Body Declaration of Finding and Compact Council action as appropriate.

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

<sup>10</sup> If the Originating Party is a Province, steps 23-25 are not applicable.

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