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MEETING OF THE GREAT LAKES-ST. LAWRENCE  
RIVER BASIN WATER RESOURCES COUNCIL

Conducted on: October 3, 2018

Location: Indiana Government Center South  
302 West Washington Street  
Conference Rooms 1&2  
Indianapolis, Indiana 46204

A STENOGRAPHIC RECORD BY:

Clarice H. Howard  
Professional Court Reporter & Notary Public

A P P E A R A N C E S

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THE GREAT LAKES-ST. LAWRENCE RIVER BASIN  
WATER RESOURCES COUNCIL:

- Chris Smith - Chair
- Dan Injerd
- Don Zelazny
- Jim Zehringer
- Tim Bruno
- Loren Wobig
- Cynthia Frazzini
- Peter Johnson, Deputy Director  
Great Lakes St. Lawrence Governors & Premiers

1 (Time noted: 1:00 p.m.)

2

3 MR. JOHNSON: Good afternoon everybody. This  
4 is Peter Johnson. We are just about to start. I  
5 wanted to start by noting that because of the phone  
6 system, unfortunately you may have some difficulty  
7 hearing us here in the room. We're trying to speak  
8 up so that people on the phone can hear us. But  
9 please know that we can hear you just fine.

10 If there is an issue, we'll let you know so  
11 that we can make sure we get your statements on the  
12 record. But on that note, I'm going to turn it  
13 over to Chris Smith.

14 MR. SMITH: Thank you, Pete. Good afternoon.  
15 My name is Chris Smith and on behalf of Governor  
16 Eric Holcomb of Indiana, I serve as the Vice Chair  
17 of the Great Lakes-St. Lawrence River Basin  
18 Waterway Resources Council and the Great Lakes-St.  
19 Lawrence River Basin Water Resources Regional Body.

20 I would like to begin by noting that a  
21 transcript of this hearing is being created. The  
22 Council under the Great Lakes-St. Lawrence River  
23 Basin Water Resources Compact, which I will refer  
24 to as the Compact, is proposing to adopt rules of  
25 practice and procedure and to amend the interim

1 guidance and the regional body under the Great  
2 Lakes-St. Lawrence River Basin Sustainable Water  
3 Resources Agreement, which I will refer to as the  
4 Agreement, is proposing to amend its Interim  
5 Procedures Guidance and the Council and the  
6 Regional Body under the Compact and the Agreement,  
7 respectively, are jointly proposing to amend their  
8 Sequence of Events guidance.

9 I will offer a short description of these  
10 documents. The Great Lakes-St. Lawrence River  
11 Basin Water Resources Compact Rules of Practice and  
12 Procedures. This document, proposed to be adopted  
13 by the Council as regulation, describes the process  
14 for any administrative hearing, how modifications  
15 may be made to the Council's decisions and the  
16 process to be used for the Council in rule making.  
17 Comments are being accepted on all portions of the  
18 proposed Rule of Practice and Procedure.

19 Secondly, the Great Lakes-St. Lawrence River  
20 Basin Water Resources Compact Guidance. This  
21 guidance document mirrors the Regional Body  
22 Procedures through Parts I and II with respect to  
23 review of diversions subject to the Compact and  
24 also includes certain provisions applicable only to  
25 the Council. The Council proposes amending its

1 Interim Guidance adopted on June 10, 2010.  
2 Comments are being accepted on all portions of the  
3 proposed Compact Guidance.

4 Thirdly, The Great Lakes-St. Lawrence River  
5 Water Resources Regional Body Procedures. This  
6 guidance document contains the procedures that the  
7 Regional Body will follow during the review of a  
8 diversion subject to the Agreement through this  
9 issuance of Declaration of Findings. This document  
10 mirrors the Compact Guidance for Parts I and II.  
11 The Regional Body proposes amending its Interim  
12 Procedures adopted on June 10, 2010. Comments are  
13 being accepted on all portions of the proposed  
14 Regional Body Procedures.

15 And fourthly, the Sequence of Events for  
16 Consideration of Proposals for Exceptions to  
17 Prohibitions on Diversions that are subject for  
18 Regional Review. This guidance document, proposed  
19 to be adopted by both the Council and the Regional  
20 Body, outlines the steps for review and  
21 decisionmaking for the diversion proposal.  
22 Comments are being accepted on all portions of the  
23 proposed Sequence of Events.

24 To fully understand these documents and  
25 develop comments, I recommend that you read them in

1       their entirety. Copies are at the front row up  
2       here in person and all materials are available for  
3       review at [http://www.glslcompactcouncil.org/  
4       proposedupdates.aspx](http://www.glslcompactcouncil.org/proposedupdates.aspx) and  
5       [http://www.glslregionalbody.org/proposed  
6       updates.aspx](http://www.glslregionalbody.org/proposedupdates.aspx).

7               On September 10th of 2018, these drafts were  
8       made available for public comments. Written  
9       comments may be submitted until the comment period  
10       closes on October 10, 2018, at 5:00 p.m. Eastern  
11       Daylight Time.

12               We are here today to afford an opportunity for  
13       oral comments. Whether or not you choose to speak  
14       today, you may submit written comments at any time  
15       before the comment period closes.

16               We will start with those in the room and ask  
17       you to speak into the microphone. As you do,  
18       please identify yourself and state whether you're  
19       speaking on behalf of yourself or an organization.  
20       We will then go to anybody who is on-line.

21               To allow everybody to participate, please  
22       limit your comments to five minutes or less. If  
23       more than five minutes has elapsed, we will note  
24       that and ask that you conclude your comments in a  
25       timely manner.

1           MR. JOHNSON: Just one thing before we get  
2 started on the comments here, if we could go around  
3 the table and identify who is at the table and  
4 we'll start with Tim.

5           MR. BRUNO: Sure. Good afternoon. Timothy  
6 Bruno. I'm with the Pennsylvania Department of  
7 Environmental Protection as the chief of the Office  
8 of the Great Lakes. And I am the alternate and  
9 designee of Governor Wolf.

10          MR. INJERD: Hello. I'm Dan Injerd. I'm with  
11 the Illinois Department of Natural Resources,  
12 Office of Water Resources. I am Governor Rauner's  
13 designee on the Compact Council and Regional Body.

14          MR. WOBIG: Good afternoon. I'm Loren Wobig.  
15 I'm the director of the Office of Water Resources  
16 for the Illinois Department of Natural Resources.

17          MR. SMITH: Good afternoon, once again, Chris  
18 Smith, Deputy Director with the Indiana Department  
19 of Natural Resources and designee of Governor  
20 Holcomb.

21          MR. JOHNSON: Good afternoon. I'm Peter  
22 Johnson. I'm the deputy director of the  
23 Great Lakes-St. Lawrence Governors & Premiers,  
24 which serves as the secretary to both the Compact  
25 Council and Regional Body.

1           MR. ZELAZNY: I also welcome everyone. I'm  
2 Don Zelazny, Great Lakes program manager with New  
3 York State Department of Environment Conservation.  
4 I'm Governor Cuomo, New York Governor's Cuomo  
5 designee for the Regional Body and I'm Deputy  
6 Commissioner James Tierny's alternate on the  
7 Compact Council.

8           MS. FRAZZINI: Cynthia Frazzini, deputy legal  
9 counsel for the Ohio Department of Natural  
10 Resources.

11          MR. ZEHRINGER: Good afternoon. I'm Jim  
12 Zehringer, the director of the Ohio Department of  
13 Natural Resources and Ohio John Kasich's designee.

14          MR. JOHNSON: And then I would also on-line  
15 listening in we also have Grant Trigger, who is  
16 Governor's Snyder's designee and alternate to the  
17 Regional Body and Compact Council. And bear with  
18 me one moment as I look through the list of people.  
19 We also have Julia Holder from Ontario, and that's  
20 it from the states and the provinces.

21          Others may be joining us. If they do, I will  
22 announce it for the record. So with that, Mr.  
23 Chair, we'd like to get started. I guess one last  
24 thing, for the speakers, because it is difficult  
25 for people on the phone to hear us, even if you

1 think you're speaking loudly, we're kind of close.  
2 You can even speak a little over the microphone  
3 into the phone, if you can here, to just try to  
4 give them a chance to be able to hear.

5 MR. SMITH: With that, we would invite those  
6 in attendance with us today, if you wish to speak,  
7 go ahead and step forward, please.

8 MR. JOHNSON: One last thing, for those people  
9 who are on-line, if you do want to speak, please  
10 raise your hand now. We're going to go through the  
11 people in the room first, but I'd like to at least  
12 get a sense of who on-line would like to make  
13 comments.

14 MS. FLANAGAN: Good afternoon. My name is  
15 Molly Flanagan. I'm vice president for policy at  
16 the Alliance for the Great Lakes and a member of  
17 your advisory committee.

18 I'd like to start by congratulating you on the  
19 tenth anniversary of the Great Lakes Compact being  
20 signed into law. It's a significant achievement  
21 and one all of us in the region should be proud of.  
22 I also want to thank you for this opportunity to  
23 provide public comments and for taking the time to  
24 review your procedures for considering proposals to  
25 divert water under the exceptions to the Great

1 Lakes Compact and Agreement.

2 I appreciate the multiple opportunities to  
3 provide comments to the procedures update team, and  
4 that you have listened to some of the comments that  
5 we and our partners have submitted. I appreciate  
6 that you have created additional opportunities for  
7 trades and for the public to participate.

8 However, the Alliance for the Great Lakes  
9 still feels that additional improvements are needed  
10 to allow for transparent decisionmaking and robust  
11 public participation. We will be submitting longer  
12 comments for the record before the end of the  
13 comment period. Those written comments will  
14 include references to section numbers and  
15 documents.

16 Because of time constraints, I'm just going to  
17 sort of lump them together here. We urge you to  
18 make the following changes to the draft procedure.

19 When a diversion request is under review by  
20 the Compact Council and Regional Body, every state  
21 and province should hold a public hearing to allow  
22 for robust public participation across the basin.  
23 Those meetings should be recorded and all comments  
24 forwarded to the Regional Body and Compact Council  
25 for consideration as part of the administrative

1 record.

2 While the current draft has improved this  
3 provision, we feel it isn't enough to give each  
4 jurisdiction the option of hosting a hearing.

5 No. 2, the administrative record created by  
6 the Regional Body and Compact Council should  
7 automatically include all comments by the public.

8 No. 3, members of the public should be able to  
9 comment on the Compact Council and Regional Body's  
10 modified draft declaration of findings before it is  
11 voted on by the Compact Council.

12 No 4, a clear full record of the  
13 decisionmaking process and reasons for the decision  
14 should be public.

15 No. 5, the public should not have to face the  
16 threat of administrative costs to appeal a decision  
17 by the Regional Body or the Compact Council. You  
18 know the current rules call for appellant to share  
19 the costs of the appeal unless the Compact Council  
20 choses to waive those fees.

21 We believe the appeals costs should be borne  
22 by the Compact Council itself or alternatively, the  
23 originating party seeking the diversion, not the  
24 appellant.

25 No. 6, the procedures should include a more

1       robust pre application period that allows each  
2       jurisdiction time to review and identify potential  
3       issues of concern before the state or province  
4       where the diversion is proposed submits a formal  
5       application for regional review.

6               And then finally, I have several comments I  
7       know that you're not taking up in this round of  
8       procedure, but something that we would like you to  
9       consider perhaps going into new year and looking at  
10      other parts of the procedures. We believe that  
11      procedures should include rules that govern how the  
12      Compact Council and Regional Body review regionally  
13      significant or potentially precedent setting  
14      proposals.

15              And finally, we request that the Compact  
16      Council and Regional Body develop a way to evaluate  
17      the cumulative impacts of diversions and  
18      consumptive uses on a lake by lake basis.

19              Once again, we appreciate that you have  
20      initiated this process to formalize rule making  
21      guidance and the sequence of decisionmaking for  
22      reviewing diversion requests. Thank you for this  
23      opportunity to provide comments. I appreciate your  
24      consideration and look forward to submitting more  
25      formal comments before the close of the comment

1 period.

2 MR. SMITH: Thank you.

3 MR. KENT: Good afternoon. My name is Paul  
4 Kent and I serve as special legal counsel for the  
5 City of Waukesha in Wisconsin. And I was last  
6 before the Council during oral arguments on the  
7 City's initiative appeal. And for those of you  
8 that don't know me, by way of background, my  
9 practice, when I'm not working for the City of  
10 Waukesha, focuses on water issues for  
11 municipalities throughout the state of Wisconsin,  
12 on water, wastewater, storm water and a variety of  
13 other water related issues.

14 I've also represented state municipal  
15 associations through the municipalities and others  
16 in rule making and legislation. So I'm also  
17 familiar with the rule making process.

18 And at the outset on behalf of the City, we  
19 would really like to commend the Council for the  
20 work that has gone into this, for developing  
21 written policy to clarify the process for  
22 diversion, exceptional requests. And I know from  
23 personal experience, not just here, but in  
24 elsewhere, that having clear procedures and  
25 standards for major permits and approvals makes the

1 application process more efficient. It provides  
2 more consistent decisionmaking and it provides for  
3 a greater transparency.

4 And yet at the same time, it's also important  
5 to build flexibility into this process. Municipal  
6 water and wastewater facilities have common  
7 elements but each are very unique, the water shed  
8 at which they function, the source and chemical  
9 composition of the water supply, the size and  
10 nature of the populations served, the types of  
11 existing infrastructure. There's enormous variety  
12 just in the state of Wisconsin, much less  
13 throughout the entire basin.

14 So from our standpoint, providing flexibility  
15 is important, particularly like when a program like  
16 this is new. And to provide a regulatory example  
17 outside of Compact, just to provide some context,  
18 one of the things that I've been involved in in  
19 Wisconsin is that our municipalities are required  
20 to meet very, very stringent water quality  
21 standards.

22 But in that context there have been all kinds  
23 of challenges with technology, alternatives to  
24 treatment, such as trading between point and non  
25 point sources. And as municipalities are dealing

1 with this for the first time, there have been a  
2 variety of technical and legal issues. And so  
3 flexibility has been very important as we've gone  
4 through this very challenging process.

5 And I think there's an analogy here. Waukesha  
6 is the first real application here, but there needs  
7 to be built in flexibility, not just for Waukesha,  
8 but to realize for future applications all  
9 utilities are somewhat unique. And with that, I've  
10 got two kind of specific comments I'd like leave  
11 with the Council.

12 First, we would urge the Council to adopt this  
13 proposal. And I'm talking now in particular about  
14 the rules of practice and procedure as guidance  
15 rather than formal of rule. Adopting it as  
16 guidance provides clear written policy direction  
17 for now and the future, but doing so as guidance  
18 rather than a rule allows for some case by case  
19 flexibility. And we can pretty much guarantee you  
20 that you'll need that flexibility.

21 To go back to my example, the water quality  
22 standards in Wisconsin are set out by rules. But  
23 in terms of implementing this through trading and  
24 other mechanisms, that's be done by guidance. And  
25 I think what the Department of Natural Resources

1 has said there is applicable here.

2 I'll just quote a couple of sentences out of  
3 their trading guidance. It's important for DNR  
4 staff to be as consistent as possible when  
5 implementing permit requirements, and this guidance  
6 was created to help ensure this. However, it's  
7 also important to recognize that there will be  
8 situations when decisions inconsistent with this  
9 document may be necessary because the assumption  
10 upon which this guidance is based are not  
11 applicable.

12 This guidance document will be updated as  
13 experiences gained in developing and implementing  
14 trading strategies. That kind of flexibility  
15 provides some flex in the system for conditions and  
16 technical issues that might not have otherwise been  
17 considered. And for that reason, we would urge you  
18 to adopt these practice and procedures as guidance.

19 The more other specific comment I have relates  
20 to the minor modification section in the rules, and  
21 in particular Section 4.01. And I will leave with  
22 you copies today and we'll follow it up with some  
23 written comments. But as you would expect on  
24 behalf of Waukesha, there's a number of complex  
25 engineering questions that need to be answered to

1 complete the actual design and operation of the  
2 system and the wastewater treatment plant.

3 And as we've been focusing this last year or  
4 two on meeting all of those conditions in the  
5 Compact approval, we've discovered that there's  
6 some conditions that have the potential to create  
7 unintended consequences or impose substantial  
8 technical challenges with no real corresponding  
9 benefit.

10 And when I look at the list in 401 defining my  
11 modifications, it really doesn't allow room to talk  
12 about minor technical modifications that may allow  
13 for a clarification or correction to avoid  
14 consequences that were either unknown or unintended  
15 at the time.

16 MR. JOHNSON: Just a quick note, we're at the  
17 five-minute mark. If you're close to finishing,  
18 that's fine.

19 MR. KENT: A couple of other paragraphs and  
20 I'll be done. So Waukesha, as you probably know,  
21 is under a court order deadline to be at least 50  
22 percent complete by 2022 and in compliance by 2023.

23 If we have an implementation question that  
24 impact pump size or operating criteria, there's not  
25 going to be enough time for us to get through a

1 full Compact Council review of all of that and  
2 still be able meet our deadlines.

3 So even if everyone on the Council agreed that  
4 our suggestion was a great idea, there really  
5 wouldn't be time to go through it because of the  
6 expense of process we have. So we're just looking  
7 to have some flex in that minor modification so  
8 that we can come to you with a suggestion. And if  
9 there is something that comes up, the choice is  
10 still yours. You can say no, it's not a minor  
11 modification, we need full review. But this way  
12 you at least have the option.

13 You can say yeah, there really is a technical  
14 issue we hadn't intended and we think that we can  
15 deal with that in a timely fashion. And so that's  
16 really what we're proposing today in our comments.  
17 I have some suggestive language that I would urge  
18 you to consider. And we appreciate the time that  
19 you've put into this and an opportunity to speak to  
20 you here today.

21 MR. SMITH: Thank you. I'll invite our next  
22 speaker.

23 MR. STASKIEWICZ: Good afternoon. I'm Pat  
24 Staskiewicz, Public Utilities Director for the  
25 Ottawa County Road Commission. And today I'm

1 representing the Michigan Section of the American  
2 Waterworks Association as their incoming director.  
3 And I've got a written statement.

4 The Michigan Section of the American  
5 Waterworks Association commends the Regional Body  
6 and Compact Council for the process being used to  
7 update the processes utilized to carry out the  
8 Great Lakes Water Resources Agreement and Compact.  
9 The Michigan section remains supportive of the  
10 purpose of the Agreement and Compact and of the  
11 established diversion supplied exception allowed  
12 therein, which limit allowable exceptions to those  
13 where need exists for the public water supply  
14 purposes only.

15 We believe that the rules and procedures  
16 should be followed as adopted and are supportive of  
17 any effort to update the procedures for carrying  
18 out the rules of the Agreement and Compact,  
19 provided that they stay true to the purpose and  
20 intent of the Agreement and Compact charter, which  
21 is the manage and protect the water resources of  
22 the Great Lakes and St. Lawrence River Basin and to  
23 eliminate potential exceptions to those  
24 specifically for public water supply purposes.

25 Thank you for engaging stakeholders and for

1           utilizing an ultimate process where stakeholders'  
2           input can be considered. We will look forward to  
3           providing more detailed comments as the process  
4           continues. Thank you.

5           MR. SMITH: Thank you. We'd invite our next  
6           speaker up.

7           MS. CAMPBELL: Good afternoon. My name is  
8           Laura Campbell, and I am with Michigan Farm Bureau,  
9           one of the advisory committee members for this  
10          process for revising these rules and procedures.  
11          And I would like to echo our earlier speakers'  
12          comments to say that we also appreciate the process  
13          that has been undertaken to update these rules and  
14          the inclusiveness of not only advisory committee  
15          members, but also opportunities for the public to  
16          weigh in.

17          I'd like to say that as a whole, Michigan  
18          farmers very, very highly value the water resources  
19          that are throughout the state of Michigan and  
20          throughout the Great Lakes basin. It is one of our  
21          most key resources obviously, not only for  
22          protection for natural habitats but also for use in  
23          agriculture.

24          So we appreciate that these processes of the  
25          new rules that are being considered help to make

1 the process more robust, help to make the review  
2 clearer and also help to limit those exceptions and  
3 exclusions that might otherwise allow more water to  
4 leave the basin than I think would be in the  
5 interest of the communities and an agriculture  
6 community that is within the basin.

7 So I'd like to say that on behalf of Michigan  
8 Farm Bureau we support the changes that have been  
9 proposed and are certainly welcoming of any  
10 questions that anyone has or opportunities to be  
11 able to weigh in further on that. Thank you very  
12 much.

13 MR. SMITH: Thank you. Anybody else who would  
14 like to make a comment on the proposed rules and  
15 guidance? Seeing none, we'll turn to those who are  
16 joining us remotely. And I'm going to ask Peter to  
17 kind of call them out as they are listed.

18 MR. JOHNSON: Thank you, Mr. Chair. The first  
19 person we have is Cameron Welch. I am un muting  
20 your line. Please go ahead, Mr. Welch.

21 MR. WELCH: Thank you, Peter, and allow me to  
22 echo the sentiments of thanks to update team for  
23 all the good work that's been done. My name is Dr.  
24 Cameron Welch. I am the policy advisor for the  
25 Amish Novack Nation in Ontario, in the Canadian

1 province of Ontario. We represent 41st nations who  
2 are clustered around the Great Lakes.

3 For the record, I'd like to just make it clear  
4 that we intend to submit more detailed written  
5 comments pursuant to what we're talking about today  
6 before the deadline of the 10th. That being said,  
7 I'd like to make four quick points for the record  
8 today.

9 First, a general comment in terms of  
10 flexibility versus rules. We encourage the update  
11 team to use the strongest language possible and,  
12 again, we feel like these should be rules. We're  
13 dealing with exceptions here and we need to set the  
14 bar higher rather than -- we feel like in a lot of  
15 cases the bar has been lowered here in terms of the  
16 language that's used throughout the documents that  
17 we're considering. And we'll point some of those  
18 examples out in our written comments.

19 Second of all, we'd like to second the call  
20 for meetings for each of the jurisdictions. This  
21 is extremely important for our citizens. We have  
22 about 65,000 citizens within the Amish Novack  
23 Nation and it's very important for us to have  
24 access to this process through hearings in our  
25 jurisdiction of Ontario.

1           And thirdly, we'd like to raise this issue,  
2           again, of the cost of participating in an appeal.  
3           It's very important for us that the Regional Body  
4           and the Compact Council understand that this is not  
5           a cost that's reasonable to be put onto our nations  
6           and our citizens, and we echo the call for the  
7           originating party to pay those costs.

8           And lastly, I wanted to make just a point  
9           around consultation. We appreciate the work that  
10          everybody has done in recognizing as we update  
11          these things, recognizing the need for meaningful  
12          with tribes and first nations. However, we have  
13          some issue with the communication protocol and in  
14          terms of lining those things up.

15          We would like it on the record that we insist  
16          that we are consulted as rights holders, both  
17          inherent rights and rights that are  
18          constitutionally protected in Canada. We insist  
19          that our consultations conducted in line with our  
20          consultation protocols, our first nation protocols  
21          as well as Canadian law and Ontario provincial law.

22          As it's written now, the consultation would be  
23          conducted according to the laws and procedures of  
24          the originating party. And because of our unique  
25          legal and constitutional position in Canada, we

1           insist that those laws are applicable to us through  
2           the duty of the Crown to consult and accommodate  
3           our interest. Thank you.

4           MR. JOHNSON: Thank you. We will next be  
5           going to Jacqueline Wilson.

6           MS. WILSON: I'm going to try to speak through  
7           the phone. Can you hear me?

8           MR. JOHNSON: Yes, we can hear.

9           MS. WILSON: Fabulous. Okay. Thank you very  
10          much for the opportunity to comment. My name is A  
11          Jacqueline Wilson. I'm a lawyer at the Canadian  
12          Environmental Law Association.

13          We are an Ontario legal aid clinic, which  
14          means that in litigation, we represent low income  
15          and vulnerable communities. And we're bringing out  
16          expertise and our significant experience in dealing  
17          with the issues of blocked communities from  
18          participating in environmental law processes to  
19          this review.

20          And with that background, we remain very  
21          concerned that the review of the rules and the  
22          guidance and the Sequence of Events hasn't been  
23          undertaken with an environmental equity lens in  
24          mind.

25          In our view, the question to consider is do

1 these rules and the Guidance and the Sequence allow  
2 nontraditional parties, like small community  
3 groups, like first nations and vulnerable  
4 communities, participate in the diversion review  
5 protest, or do the rule changes exacerbate the  
6 challenges facing those communities if they wish to  
7 participate.

8 The Great Lakes Compact and Agreement is based  
9 on the premise that the decision to divert water  
10 affect all of us across the region. In these oral  
11 comments, I'm going to focus on two  
12 recommendations. We're also going to follow up  
13 with written comments with more details and more  
14 recommendations.

15 The first recommendation is to host a public  
16 hearing in each jurisdiction. The guidance  
17 currently allows parties to hold hearings, but  
18 doesn't make it mandatory. And the Sequence of  
19 Events in Step 16 reiterates that point and notes  
20 that each jurisdiction may hold it if there's  
21 significant public interest to hold the hearing.

22 It simply should not be up to the jurisdiction  
23 to decide whether there is sufficient public  
24 interest. And we note, of course, by requiring a  
25 hearing in every jurisdiction, that will bring

1 attention to these important issues and will allow  
2 for concerned members to participate rather than  
3 requiring members of the public to already know  
4 about what's happening and push for a hearing.

5 It's important for this body and each of the  
6 jurisdictions to be facilitating and encouraging  
7 public participation to allow it to make good  
8 inclusive decisions. And having a hearing in each  
9 jurisdiction would help with that.

10 The second recommendation that we would make  
11 is to fundamentally change the current proposal in  
12 Section 323 of the rules about costs of the appeal  
13 of hearing. The current proposal would require  
14 appeal hearing participants to share the cost of an  
15 appeal, which include logistical costs like paying  
16 for Great Lakes governors to travel to the hearing,  
17 hotel rooms, lawyers for the Council, hearing room,  
18 court reporter, and that is massive barrier to  
19 participation.

20 The waiver provision that has been included is  
21 insufficient. And there's a few reasons why that  
22 is. First off, having this rule where the default  
23 is that an appeal hearing participant has to share  
24 in the cost is going to deter appellants based on  
25 that risk. An appellant is going to have to appeal

1 before knowing whether those cost provisions will  
2 be waived. And it's putting a burden on an  
3 appellant to both do the appeal and prove that the  
4 waiver should be applied to them at the same time,  
5 along with an additional burden if they need to  
6 appeal a decision not to apply the waiver.

7 The International Joint Commission found in  
8 its triannual assessment in November of 2017 that  
9 it specifically needs to address the fact that  
10 certain populations are systematically excluded  
11 from key decisionmaking processes. Environmental  
12 justice is an objective when it comes to public  
13 engagement at the International Joint Commission.

14 In Assessment 16 in that report, the  
15 Commission acknowledges that it needs to actively  
16 engage traditionally excluded communities. We  
17 should be taking that lesson and applying it here;  
18 not repeating the same mistake.

19 The current rule in my view is much more  
20 appropriate to something like a commercial  
21 arbitration context, where there are more equal  
22 parties that are agreeing in advance to share the  
23 cost of a dispute. But that type of model isn't  
24 appropriate here where the public isn't agreeing  
25 and, in fact, has been strenuously objecting to

1           this cost rule in this process. And, of course,  
2           we'll calling that this is a mandatory step to go  
3           through if a party wants to further appeal a  
4           decision.

5           Our proposal, therefore, is to either create a  
6           fund for appeals that the Great Lakes states and  
7           provinces can fund or require an originating party  
8           to pay for the appeal. There shouldn't be a lot of  
9           appeals if the Compact and the Agreement are  
10          fulfilling their intended purpose. And that  
11          approach, either the Great Lakes states and  
12          provinces funding it or the originating party, is  
13          fundamentally more fair than requiring the public  
14          to face a threat of cost if they wish to appeal.

15          Thank you very much.

16          MR. JOHNSON: Thank you. We do have another  
17          individual in the room. Did you wish to make  
18          comments?

19          MR. MARK SMITH: My name is Mark Smith. I'm  
20          with the National Water Federation. I direct our  
21          water policy throughout the Great Lakes region.  
22          Thank you for hosting this meeting. I appreciate  
23          it. I'm glad to be here in Indiana.

24          We're going to be submitting some more robust  
25          for you to peruse. But what I want to do is first

1           congratulating everyone in this room for taking  
2           part in the Compact. We're celebrating ten years.  
3           A lot of hard work went into that to get where are  
4           we are today. I want to acknowledge that that was  
5           a huge accomplishment for the region where we saw  
6           business, industry, conservation and environmental  
7           groups and the public all come together and unite  
8           and get this thing done. So that's a huge  
9           accomplishment, especially in this day and age.

10                  But as I was reviewing our comments, and what  
11           I wanted to say today was that process to develop  
12           the Compact was transparent, it was fair and it  
13           was -- what's the last word -- efficient. Funny  
14           word since it took about a hundred meetings to do  
15           that, but I still it was an efficient process that  
16           was a good government process.

17                  Having those three buzz words reflect upon  
18           what we're doing today, looking at the guidance, is  
19           this revised guidance efficient, is it transparent,  
20           and is it fair. Is it making the guidance review  
21           procedures better? And I would argue that we've  
22           made a lot of improvements and I appreciate the  
23           opportunity to share those opportunities to change  
24           in public meetings and on the phone, and track  
25           changes, you name it. That's been wonderful.

1           The big picture for me is are the things that  
2           we're looking at today and providing information to  
3           you, are they fair, efficient and transparent.  
4           Efficient in that we feel that the last process  
5           with Waukesha was clunky. This is the first time  
6           you've done it; we've got to admit that. How do we  
7           make that efficient. Is this revised guidance  
8           making it more efficient.

9           One of the recommendations we have is before  
10          an application is submitted formally, have a free  
11          application. Before the clock starts, you guys  
12          have more time, without a shot clock, if you will,  
13          to review this, consult with tribes, have a  
14          temporal review, provide information back to the  
15          applicant to maybe make some corrections, change  
16          course so that when it's formally submitted and  
17          applied, it's actually closer to a final product  
18          that makes your formal review on the clock much  
19          more efficient. That's what I would say is the  
20          efficiency improvement we need in this process.

21          The transparent process is certainly the  
22          public participation. We acknowledge that you have  
23          done some good things to encourage the states and  
24          provinces to do more public, but we think they  
25          should do that, not just provide them a shall. So

1 we feel that there should be more opportunities for  
2 the public to engage and have everything that's  
3 submitted in the comments submitted an official  
4 record at the end of the day through the Regional  
5 Body and Compact Council.

6 The fair part, everyone had a role in creating  
7 the Compact negotiations, they submit their  
8 thoughts, their opinions to create the final  
9 product we have today. The new guidance you have  
10 done today is unfair by putting the burden of  
11 challenging decisions on people who may not be able  
12 to afford them.

13 Why would we go backwards to restrict the  
14 ability to challenge decisions. I don't know why  
15 we would put the burden of costs, hotels on  
16 communities that just can't afford it. That  
17 restricts their ability to participate and be  
18 transparent in the process. Let's not do that.  
19 That's going backwards.

20 So in the spirit of the Compact ten years  
21 we've made a lot good things happen. Let's think  
22 about the next ten years. Let's continue that  
23 transparency, equity and fairness so the Compact is  
24 stronger.

25 So, again, we thank you for your time. We

1       also have some place orders we'd like to do for the  
2       next process. We'd love to see you guys look at  
3       cumulative impacts on lake by lake basis. We'd  
4       love to have you guys look at what's the process if  
5       an applicant is not abiding by the terms of their  
6       approval, i.e., if Waukesha doesn't comply with the  
7       conditions that you put upon them, what do you do,  
8       what's the process for that.

9               And then third, what if a withdrawal comes up  
10       that a jurisdiction says we probably need to have a  
11       regional review, like we're seeing, a couple of  
12       questions about a regional review of that, what  
13       does that look like. We would like you guys to  
14       have those three things in a separate process after  
15       you finish this and I know it's outside the scope,  
16       and we'd really love to be as part of that process  
17       as much as the business industry that actually  
18       negotiate the Compact would love to be a part of  
19       that as well.

20               So, again, thank you and thank you for your  
21       service to your states and to the region.

22               MR. SMITH: Did anybody else come in that  
23       wanted to speak before we go back to remote  
24       participants? Seeing none, I'll turn it back to  
25       Peter.

1           MR. JOHNSON: Okay. The only other remote  
2 participant that has his hand up is Grant actually.  
3 And did you just want to note your presence, Grant?  
4 I've un muted you.

5           MR. TRIGGER: I probably inadvertently clicked  
6 the wrong button.

7           MR. JOHNSON: Okay. No problem. Again, I  
8 would just like to ask is there anybody on the  
9 phone that would like to provide a comment? If you  
10 would, again, I'd just ask you to raise your hand.

11           Okay. Nobody else -- I'm sorry, we do have  
12 Dale Phencie here. Dale, you're line is un muted.

13           MR. PHENCIE: Good afternoon. I'd just like  
14 to add my congratulations on this 10th anniversary.

15           MR. JOHNSON: Dale, before you go any further,  
16 could you just identify your name and who you're  
17 with?

18           MR. PHENCIE: Dale Phencie and I'm here on  
19 behalf American Forest and Paper Association and we  
20 were obviously part of that a hundred meeting  
21 that's been described here. I'd like to first  
22 compliment everybody on the tenth anniversary of  
23 the Compact and Agreement. It's been an important  
24 methodology or important tool, I guess, for moving  
25 us forward with water resource utilization in the

1 lakes.

2 And I guess the point that I would like to  
3 make is that we're talking about a very small  
4 portion of the business that's get transacted  
5 around water resource use approvals within the  
6 region here. And I wouldn't want anybody to think  
7 that all of the discussion that we're having here  
8 has to do with all of the permits and whatnot that  
9 get administered by the individual jurisdictions.

10 And I would highlight that it's our individual  
11 jurisdiction that have the authority here to issue  
12 the permits and whatnot. And we need to make sure  
13 that we keep that in mind and we keep our  
14 procedures and our rules and our guidelines in  
15 order with the powers of the individual  
16 jurisdictions and not think that we can spill that  
17 over or should spill that over into the other  
18 business or the other approvals that take place  
19 other than the exception to diversions.

20 So I just want to make that point and make  
21 sure that we keep a clear line drawn here about  
22 what these rules and this guidance pertains to and  
23 what it does not.

24 MR. SMITH: Thank you.

25 MR. JOHNSON: I am not seeing any other hands

1 raised on-line. I would ask again if there's  
2 anybody else on-line, on the phone, who would like  
3 to make a comment, please raise your hand.

4 I would also note, as the Chair noted earlier,  
5 even you do not make oral comments today, we are  
6 still accepting written comments through  
7 October 10th, 5:00 p.m., Eastern Time, pursuant to  
8 the notice. And the comments are to be sent to  
9 comments@gsgp.org or to our office address which is  
10 in the notice that was sent around.

11 MR. SMITH: Seeing no other takers on making  
12 comments, I would like to thank everybody who came  
13 today to provide their comments and for those who  
14 participated remotely. We greatly appreciate your  
15 oral comments, and we'll take them as well as all  
16 the written comments into consideration as we  
17 finalize the regulations and guidance documents.

18 Thank you for participation once again, and we  
19 are adjourned.

20

21 (Time noted: 1:45 p.m.)

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1 STATE OF INDIANA )  
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2 COUNTY OF BOONE )

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I, Clarice H. Howard, Professional Court Reporter and Notary Public, within and for the County of Boone, State of Indiana at large, do hereby certify that on the 3rd day of October, 2018, I took down in stenographic notes the foregoing hearing;

That the transcript is a full, true and correct transcript made from my stenographic notes.

IN WITNESS WHEREOF, I have hereunto set my hand on this the 17th day of October, 2018.

\_\_\_\_\_  
Clarice H. Howard  
Court Reporter  
Notary Public

My Commission Expires:  
July 24, 2026  
County of Residence:  
Boone County, Indiana