

Great Lakes—St. Lawrence River Basin Water Resources Compact

Rules of Practice and Procedure

The requirements set forth herein are Rules of Practice and Procedure adopted pursuant to Section 3.3 of the Great Lakes—St. Lawrence River Basin Water Resources Compact (Compact) as rules and regulations of the Council.

Table of Contents

Part I. Definitions

Section 100 Definitions

Part II. [Left Intentionally Blank]

Part III. Rules of Practice Governing Administrative Appeals from Final Actions of the Council

Section 300 Scope

Section 301 Use of Number and Gender

Section 302 Petitioning for an Appeal Hearing on Council Decisions

Section 303 Responses to a petition for review

Section 304 Consent and form of briefs

Section 305 Appearances

Section 306 Burden of Proof

Section 307 Participation by amicus curiae

Section 308 Administrative Record

Section 309 Motions

Section 310 Filing and service requirements

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

Section 312 Petitioner request for dismissal of petition

Section 313 Oral argument

Section 314 Final disposition and judicial review

Section 315 Council authority

Section 316 Confidentiality of business information

Section 317 Computation of Time

Section 318 Ex parte communications

Section 319 Examination of documents filed

Section 320 Consolidation and severance

Section 321 Defense of Council Decision by State Agency Officials

Section 322 Settlement

Section 323 Assessment of Costs

Section 324 Conferences

DRAFT FOR PUBLIC COMMENT
SEPTEMBER 10, 2018

Part IV. Modification of Council Decision

Section 401. Types of Modifications

Section 402. Preliminary Consultation

Section 403. Requests for Material Modifications and Minor Modifications.

Section 404. Immaterial Modifications.

Part V. Rule-Making Procedures

Section 500 Rule-Making Initiation

Section 501 Notice

Section 502 Public Participation

Section 503 Availability of Records

Section 504 Final Adoption

Part I. Definitions

Section 100. Definitions.

1. The standard definitions set forth in Section 1.2 of the Compact shall apply to these Rules. All references to sections of the Compact are to the version of the Compact enacted as U.S. Public Law No: 110-342, October 3, 2008.
2. “Appeal Hearing” means the portion of a Proceeding conducted pursuant to Section 7.3.1 of the Compact and these Rules of Practice to afford a Person aggrieved by a Council Decision an opportunity to be heard. An Appeal Hearing under these Rules of Practice includes an opportunity to submit briefs and may also include an opportunity to present oral argument.
3. “Appeal Hearing Participant” means any Person who participates in an Appeal Hearing as a petitioner, respondent (including an Applicant) or intervenor.
4. “Application” or “Application to approve a Proposal” means the full Application package seeking approval of the Proposal for which Regional Review is undertaken.
5. “Compact” means the Great Lakes – St. Lawrence River Basin Water Resources Compact, Pub. L. 110-342, 122 Stat. 3739 (2008).
6. “Compact Council” or “Council” means the Great Lakes – St. Lawrence River Basin Water Resources Council.
7. “Council Decision” means an action by the Council that, subject to the outcome of any Appeal Hearing under these Rules of Practice, terminates its decision-making process and affects legal rights. A final decision by the Council on a Proposal that approves, approves with conditions or disapproves the Proposal is an example of a Council Decision.
8. “Executive Director” means the Executive Director of the Council unless otherwise indicated.
9. “Final Council Action” means the Council’s final disposition exhausting the review process provided by this Guidance and these Rules of Practice.
10. “Member” means the Governor of a Party to the Compact or the Governor’s duly appointed alternate.
11. “Notice List” means the list of names and associated contact information of those persons who have sent the Executive Director a written request to be notified of significant events with respect to a specific Compact Proceeding.
12. “Proceeding” means the entirety of a single administrative adjudication.

13. “Secretariat” means the Executive Director and other administrative staff hired or contracted by the Council.

Part II. [LEFT INTENTIONALLY BLANK]

Part III. Rules of Practice Governing Administrative Appeals from Final Actions of the Council

Section 300. Scope.

These Rules of Practice govern all Appeal Hearings conducted pursuant to Section 7.3.1 of the Compact.

Section 301. Use of number and gender.

As used in these Rules of Practice, words in the singular also include the plural and words in the masculine gender also include the feminine, and vice versa, as the case may require.

Section 302. Petitioning for an Appeal Hearing on Council Decisions.

1. Initiating an appeal. A request for an Appeal Hearing to review a Council Decision, including but not limited to a decision to approve, approve with conditions or deny a Proposal, shall be considered an administrative appeal and must be commenced by filing a petition for review with the Secretariat within the time prescribed in Section 302.3 of these Rules of Practice.
2. Persons who may file for review.
 - a. Council Decision on a Proposal. Any Person who is aggrieved by a Council Decision and who either filed written comments on the Proposal or participated in a public hearing on the Proposal may file a petition for review. Additionally, any Person who is aggrieved by a Council Decision and failed to file comments or failed to participate in the public hearing on the Proposal may file a petition for review of any permit conditions set forth in the Council Decision, but only to the extent that those conditions in the Council Decision reflect changes from the terms and conditions of the Proposal made available to federally recognized Tribes and the public during the public comment period.
 - b. Other Council Decisions. Any Person who is aggrieved by a Council Decision not involving a Proposal may file a petition for review, provided that such Person participated in any available Council public process resulting in the Council Decision or is raising issues that could not reasonably have been raised during any such public process.
3. Filing deadline. A petition for review must be filed with the Secretariat within thirty (30) days following the earliest of the date on which notice of the Council Decision is (i) published in a State register in a State in which the petitioner resides or regularly transacts business, (ii) published on the Council’s website or (iii) provided by the Council to petitioner. A petition is filed when it is received by the Secretariat at the address specified for the appropriate method of delivery as provided in Section 310.3 of these Rules of Practice.
4. Petition contents. A petition for review must be accompanied by a brief meeting the requirements set forth in Section 304 of these Rules of Practice and must identify how the Person is aggrieved, the contested condition or other specific challenge to the Council

DRAFT FOR PUBLIC COMMENT
SEPTEMBER 10, 2018

Decision and clearly set forth, with legal and factual support, petitioner's contentions why the Council Decision should be opened or modified.

- a. The petition must demonstrate that each challenge to the Council Decision is based on:
 - i. A finding of fact or conclusion of law that is clearly erroneous, or,
 - ii. An abuse of discretion.
- b. If the Council Decision followed an opportunity for public comment, Petitioner must demonstrate, by providing specific citation or other appropriate reference to the administrative record (*See* Section 304.4), that each issue and argument being raised in the petition was raised by one or more commenters during the public comment period (including at any public hearing). If the Petitioner concludes that it cannot provide a citation because the document it wishes to cite has been incorrectly omitted from the administrative record, Petitioner must attach a copy of such document to its petition and move to supplement the administrative record. For each issue or argument raised in the petition that was not raised previously, the petition must explain why such issues or argument could not have been raised during the public comment period.

Section 303. Response(s) to a petition for review.

1. In all Appeal Hearings conducted under these Rules of Practice and involving Appeal Hearing Participants in addition to petitioner(s), such Appeal Hearing Participants may file a response to the petition and supporting brief within 30 days after the filing of a petition.
2. Petitioner may file a reply brief within 20 days after service of any response. Petitioner may not raise new issues or arguments in the reply.
3. Upon request by any Appeal Hearing Participant in the Participant's response to the petition and supporting brief, or upon its own initiative, the Council may determine whether the Petitioner is an aggrieved Person under section 7.3.1 of the Compact and these Rules of Practice. In making its determination, the Council may consider the petition, the briefs of the Appeal Hearing Participants, the administrative record and any further evidentiary submissions or argument that the Council may require or allow. If by majority vote the Council determines that the petitioner is not an aggrieved Person, the Council may on that basis issue a Final Council Action dismissing the petition and/or disposing of the Proceeding under Section 314.

Section 304. Content and form of briefs.

1. Content Requirements. All briefs filed under this section must contain, under appropriate headings:
 - a. A table of contents, with page references;
 - b. A table of authorities with reference to the pages of the brief where they are cited;
 - c. A table of attachments, if provided under Section 304.2 of these Rules of Practice or otherwise; and
 - d. A statement of compliance with the word limitation.
2. Attachments. Parts of the record to which the Appeal Hearing Participants wish to direct the Council's attention may be appended to the brief submitted. If the brief includes attachments,

DRAFT FOR PUBLIC COMMENT
SEPTEMBER 10, 2018

a table must be included that provides the title of each appended document and assigns a label identifying where it may be found (e.g., Title, Attachment 1).

3. **Length.** The Council may exclude any petition, response, or other brief that does not meet word limitations. Unless otherwise ordered by the Council, petitioner's principal brief and response briefs may not exceed 13,000 words, and all other briefs may not exceed 6,500 words. Filers may rely on the word-processing system used to determine the word count. In lieu of a word limitation, filers may comply with a 30-page limit for petitioner's principal brief and response briefs, or a 15-page limit for replies. Headings, footnotes, and quotations count toward the word limitation. The cover page, table of contents, table of authorities, table of attachments (if any), statement requesting oral argument (if any), statement of compliance with the word limitation, signature block, proof of service and any attachments do not count toward the word limitation. Where an Appeal Hearing Participant can demonstrate a compelling and documented need to exceed such limitations, such Appeal Hearing Participant must seek advance leave of the Council to file a longer brief. Such request shall be filed at least five business days before the due date for the brief unless good cause is shown why it could not be filed earlier. Requests to exceed word limitations are discouraged and will be granted only in unusual circumstances.
4. Briefs filed before an administrative record is certified pursuant to Section 308.1 must cite to documents posted on the Secretariat's website relating to the Proposal at issue, copies of which are available at the Secretariat's offices. Citations in briefs must where feasible include the document name and date, the document page number, and the administrative record page number if available.

Section 305. Appearances.

Any Appeal Hearing Participant, or any Person requesting Appeal Hearing Participant or amicus curiae status, may appear in person or by counsel. In addition, an individual may appear on his or her own behalf, a member of a partnership may appear on behalf of the partnership, a member may appear on behalf of a limited liability company, an officer may appear on behalf of a corporation or other legal entity, and a duly authorized official of any government unit or agency may appear on behalf of that government unit or agency. Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States. Attorneys licensed to practice and in good standing in any state or Canadian province may appear before the Council.

Section 306. Burden of Proof.

Petitioner shall bear the burden of proving that the Council Decision was based on erroneous findings of fact, conclusions of law or an abuse of discretion that warrants opening or modifying the Council Decision.

Section 307. Participation by amicus curiae.

1. The United States, Canada, any Canadian province located in the Basin, any officer or agency thereof, or any representative of a U.S. federally recognized Tribe or Canadian First Nation may file an amicus-curiae brief without leave of the Council. Any other amicus curiae may file a brief only by leave of the Council.
2. A motion to participate as amicus curiae must be accompanied by the proposed brief and state:

DRAFT FOR PUBLIC COMMENT
SEPTEMBER 10, 2018

- a. The movant's interest in the Appeal Hearing and source of its authority to file,
 - b. Whether the brief supports affirmance or reversal of the Council Decision, and,
 - c. The reasons why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the appeal.
3. The deadline for filing such brief is 15 days after the principal brief of the Appeal Hearing Participant whom the amicus curiae supports is filed. An amicus curiae that does not support either Appeal Hearing Participant must file its brief no later than 15 days after the petitioner's principal brief is filed. Amicus briefs must comply with all requirements of Sections 304.1 and 304.2 of these Rules of Practice.
 4. Except by Council's permission, an amicus curiae may not file a reply brief.
 5. Unless the amicus curiae is one listed in Section 307.1, the brief of the amicus curiae must include a statement that indicates whether:
 - a. An Appeal Hearing Participant's counsel authored the brief in whole or in part;
 - b. An Appeal Hearing Participant or an Appeal Hearing Participant's counsel contributed money that was intended to fund preparing or submitting the brief; and,
 - c. A person – other than the amicus curiae, its members, or its counsel – contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person.
 6. Except by the Council's permission, an amicus brief may be no more than one-half the maximum length authorized by Section 304.3 of these Rules of Practice for an Appeal Hearing Participant's principal brief. If the Council grants an Appeal Hearing Participant permission to file a longer brief, that extension does not affect the allowed length of an amicus brief.
 7. An amicus curiae may participate in oral argument only with the Council's permission.
 8. If a motion to participate as amicus curiae is filed after the filing of the brief of the Appeal Hearing Participant whom the amicus supports, the deadline for the next response or reply brief of the opposing Appeal Hearing Participant(s) is extended for fifteen days unless otherwise ordered by the Council.

Section 308. Administrative Record.

1. The administrative record for the Appeal Hearing shall consist of those documents relied upon or otherwise considered by the Council as certified by the Executive Director. The Executive Director shall certify the administrative record as soon as practicable following conclusion of the briefing schedule specified in these Rules of Practice and resolution of any motion to supplement the administrative record filed in connection with the briefs, or at such other time specified by the Council.
2. An Appeal Hearing Participant may move to supplement the administrative record. Unless otherwise permitted by the Executive Director, the motion shall be accompanied by an appendix containing the documents that movant seeks to add to the record. A motion to supplement the administrative record must be filed no later than thirty (30) days after the Appeal Hearing participant files its initial brief, unless the date is extended by the Council.
3. In resolving a motion to supplement the administrative record, the Council shall supplement the record with those documents upon which the Council relied or which it otherwise considered in reaching the Council Decision under appeal.

DRAFT FOR PUBLIC COMMENT
SEPTEMBER 10, 2018

4. Where the Council concludes that the administrative record does not contain documents upon which it relied or which it otherwise considered, it may supplement the record on its own initiative.
5. The Council's final disposition of the appeal shall be based on the administrative record, as supplemented, and any matters or materials of which the Council may take official notice.
6. The Secretariat shall post on the Council's website a link to the website address at which the administrative record and any other unprivileged documents in the Council's files relevant to the Appeal Hearing may be viewed or instructions on how to obtain access to copies of these documents.

Section 309. Motions.

- a. In general. A request for an order or other relief must be made by written motion unless these Rules of Practice prescribe another form.
- b. Contents of a motion. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support the motion. In advance of filing a motion, Appeal Hearing Participants must attempt to ascertain whether the other Appeal Hearing Participants concur or object to the motion and must state in the motion the attempt made and the response obtained.
- c. Response to motion. Any Appeal Hearing Participant may file a response to a motion. Responses must state with particularity the grounds for opposition and the legal argument necessary to support the response. The response must be filed within 15 days after service of the motion unless the Council or the Chair of the Council alters the time for response.
- d. Reply. Any reply to a response filed under Section 309.3 of these Rules of Practice must be filed within 10 days after service of the response unless the Council or the Chair of the Council otherwise provides. A reply must not introduce any new issues or arguments and may respond only to matters presented in the response.
- e. Length. Unless otherwise ordered by the Council or the Chair of the Council, motions and any responses may not exceed 7000 words, and replies may not exceed 3500 words. Filers may rely on the word-processing system used to determine the word count. In lieu of a word limitation, filers may comply with a 15-page limit for motions and responses and an 8-page limit for replies. The provisions of Section 304.3 of these Rules of Practice apply for purposes of determining the portions of the brief to which the word or page-length limitation applies. The Council may exclude any motion that does not meet word limitations. Where an Appeal Hearing Participant can demonstrate a compelling and documented need to exceed such limitations, such Appeal Hearing Participant must seek advance leave of the Council. Such requests are discouraged and will be granted only in unusual circumstances.
- f. Disposition of a motion for a procedural order. The Council may act on a motion for a procedural order at any time without awaiting a response.
- g. Motions for extensions of time. The Council may grant an extension of time for filing any document: upon timely motion of an Appeal Hearing Participant, the Originating Party or an Applicant (who for this purpose must move to intervene if not already an Appeal Hearing Participant), for good cause shown, and after consideration of prejudice to other Appeal Hearing Participants, or upon its own initiative. Any motion for an extension of time shall be filed sufficiently in advance of the due date as to allow other Appeal Hearing Participants reasonable opportunity to respond and to allow the Council reasonable opportunity to issue an order.

DRAFT FOR PUBLIC COMMENT
SEPTEMBER 10, 2018

- h. Motions to Intervene.
- a. Any person desiring to become an Appeal Hearing Participant may move for leave to intervene. A motion for leave to intervene shall be filed no later than fifteen (15) days after the filing of the principal brief of the Appeal Hearing Participant who seeks an outcome in the Appeal Hearing most closely aligned with the outcome sought by the movant, unless the movant shows good cause for its failure to file within this time period. The motion shall set forth grounds for the proposed intervention, the position and interest of the movant in the Proceeding and whether movant is in support of or in opposition to the relief sought. The motion must be accompanied by a merits brief conforming to these Rules of Practice. All requirements of these Rules of Practice shall apply to a motion for leave to intervene as if the movant were an Appeal Hearing Participant. The Council shall grant leave to intervene in all or part of the proceeding if: the movant claims an interest relating to the cause of action; a final order may as a practical matter impair the movant's ability to protect that interest; and the movant's interest is not adequately represented by existing Appeal Hearing Participants. The Council may grant leave to intervene if the movant has a claim or defense that shares a common question of law or fact with the main action. The Council may limit the number of intervenors and the nature of their participation. If the motion is filed after the filing of the brief of the Appeal Hearing Participant most closely aligned with the movant, the deadline for filing the next response or reply brief of the remaining Appeal Hearing Participant(s) is extended for fifteen days, unless otherwise ordered by the Council. If intervention is granted, the intervenor shall be bound by any agreements, arrangements and other matters previously made in the Proceeding, unless otherwise ordered by the Council for good cause shown.
- b. The Canadian provinces of Quebec and Ontario may intervene as of right in any appeal. In any appeal involving a Proposal, the Applicant may intervene as of right. Intervention as a right shall be perfected by filing a notice of appearance and response to the petition for review with the Secretariat within thirty (30) days following the filing of the petition. Any request for intervention made beyond this thirty (30) day period shall be made by motion seeking leave of the Council. Following any intervention under this subsection 309.h.b, the briefing schedule set forth in these Rules of Practice shall continue to apply unless modified by the Council upon motion of an Appeal Hearing Participant or on the Council's own initiative.
- i. Motions for reconsideration or clarification. Motions to reconsider or clarify any order, decision or Final Agency Action (collectively, "Appeal Hearing decision") of the Council during the appeal must be filed within 10 days after service of the Appeal Hearing decision. Motions for reconsideration must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for clarification must set forth with specificity the portion of the Appeal Hearing decision for which clarification is being sought and the reason clarification is necessary. A motion for reconsideration or clarification does not stay the effective date of the Appeal Hearing decision unless the Council specifically so orders.
- j. Motion to Postpone Effective Date of Council Decision. The filing of a petition for review shall not automatically postpone the effective date of a Council Decision. Any Appeal Hearing Participant may file a motion seeking a postponement. The motion shall state the reasons for the relief requested and the facts relied upon and, if the facts are subject to dispute, shall be supported by an affidavit. After considering any response to the motion, the

DRAFT FOR PUBLIC COMMENT
SEPTEMBER 10, 2018

Council may postpone the effective date of the Council Decision pending its completion of the Appeal Hearing and disposition of the appeal, or pending the results of judicial review, if it determines that the movant is likely to succeed on the merits and would suffer irreparable harm absent a postponement, or justice otherwise so requires.

Section 310. Filing and service requirements.

1. **Filing with Secretariat.** Documents filed under these Rules of Practice, including the petition for review, must be filed with the Secretariat. A document is filed when it is received by the Secretariat at the address specified for the appropriate method of delivery as provided in Section 310.3 of these Rules of Practice. If a person files a document other than electronically, an electronic copy must be filed no later than the next business day unless otherwise permitted by the Executive Director or the Council. If the Executive Director or the Council excuses submission of an electronic copy, the filer must submit to the Council two copies, in addition to the original document filed, no later than the next business day after the original is filed.
2. **Caption and other filing requirements.** Every document filed with the Council must specifically identify in the caption the matter at issue (*e.g.*, the Applicant and the Proposal). All documents that are filed must be signed by the person filing the documents or the 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. or Canadian mail, or by hand delivery. 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 must also submit an original by mail 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 gsgp@gsgp.org, 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 filings.
5. **Filing by U.S. or Canadian Mail.** Documents that are sent by U.S. or Canadian Postal Service must be sent to the official mailing address of the Secretariat at: Conference of Great Lakes and St. Lawrence Governors and Premiers, 20 N. Wacker Drive, Suite 2700, Chicago, IL 60606. The person filing the documents must include a cover letter to the Executive Director

DRAFT FOR PUBLIC COMMENT
SEPTEMBER 10, 2018

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) must be delivered to the Secretariat at: Conference of Great Lakes and St. Lawrence Governors and Premiers, 20 N. Wacker Drive, Suite 2700, Chicago, IL 60606. 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, by any reliable commercial delivery service, or by facsimile or other electronic means, including but not necessarily limited to email. 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 necessarily 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 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 to have the Council 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 Council 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 Agency 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

DRAFT FOR PUBLIC COMMENT
SEPTEMBER 10, 2018

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 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 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 disposition 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 pleadings 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

DRAFT FOR PUBLIC COMMENT
SEPTEMBER 10, 2018

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.

6. 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.
7. 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 a publicly available 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 or the Council 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 Final Council Action, 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. Assessment of Costs.

1. Whenever an Appeal Hearing is conducted under these Rules of Practice, the costs thereof, as herein defined, shall be assessed upon and apportioned equitably by the Council Chair among the Appeal Hearing Participants. No costs shall be assessed upon or apportioned to any Appeal Hearing Participant in excess of its ability to pay as demonstrated by it to the Council Chair. For purposes of this subparagraph, costs include all incremental costs and fees incurred by the Council for the Appeal Hearing, including, but not limited to, costs of the court reporter, fees and costs of the Council's legal counsel, rental of a hearing room, transportation expenses of Council Members and Secretariat staff to the oral argument and any necessary lodging, Secretariat or Council Member time and expenses beyond that ordinarily incurred, and other related expenses.
2. As soon as practicable following receipt of a petition for review, the Executive Director on behalf of the Council Chair shall furnish to the Appeal Hearing Participants a reasonable estimate of the costs to be incurred under this section. The Executive Director may require some or all of this amount to be paid immediately to the Council, subject to return of any unused sums at the conclusion of the Appeal Hearing. The Council Chair may revise this estimate from time to time as circumstances change.

DRAFT FOR PUBLIC COMMENT
SEPTEMBER 10, 2018

3. Any appeal of the Council Chair's assessment of costs, including the allocation pursuant to Section 323.1 and the assessment pursuant to Section 323.2, shall be submitted to the Council in writing within ten (10) days of the action being challenged and simultaneously served on all other Appeal Hearing Participants. Unless the Council otherwise orders, the filing of such appeal shall stay the obligation to pay any funds pending order of the Council, but not alter the Appeal Hearing schedule.

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.

Part IV. Modification of Council Decision

Section 401. Types of Modifications

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, the Rules in this Section applicable to a Council Decision shall apply to the Final Council Action):

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 corrections such as fixing 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 in the Council Decision or described in the Application 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

DRAFT FOR PUBLIC COMMENT
SEPTEMBER 10, 2018

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 Chair of the Council, 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 Chair of the Council (or a majority of Council Members pursuant to Section 403.3) determines that the proposed modification is a Minor Modification, the Chair shall direct the Executive Director to modify the Council Decision accordingly.
5. If the Chair of the Council (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 these Rules, 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 have determined that such proposed alteration is an Immaterial

DRAFT FOR PUBLIC COMMENT
SEPTEMBER 10, 2018

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. Rulemaking Procedures.

Section 500. Rulemaking 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. 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.

Section 501. Notice.

1. Before the adoption of a Rule, the Council shall provide notice of the proposed Rule pursuant to this Section. Notice of a proposed Rule shall include the following:
 - a. The proposed Rule;
 - b. The location where 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 502. Public Participation.

1. After the notice has been given for the proposed rulemaking there shall be a comment period during which the Council shall allow all Persons to submit information and comment on the Rule proposed for adoption. The information or comment may be submitted electronically or in written form.
2. The Council shall consider all information and comments on a Rule proposed for adoption that is submitted within the comment period under Section 502.1
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.

Section 503. Availability of Records.

DRAFT FOR PUBLIC COMMENT
SEPTEMBER 10, 2018

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 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 504. Final Adoption.

1. The Council may not adopt a Rule until the announced 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 Secretariat shall give notice of final rulemaking by posting on the Council's website, as well as a comment and response document.