

SEPTEMBER 10, 2018

NOTICE

AGENCY:

The Great Lakes-St. Lawrence River Basin Water Resources Council (Council) and the Great Lakes-St. Lawrence River Water Resources Regional Body (Regional Body).

The Great Lakes St. Lawrence Governors & Premiers serves as the Secretariat to the Council and Regional Body.

ACTION:

Notice of: Council's proposed Rules of Practice and Procedure; Council's proposed Council Guidance; Regional Body's proposed Regional Body Procedures; and, Council's and Regional Body's joint proposed Sequence of Events for Consideration of Proposals for Exceptions to the Prohibition on Diversions that are subject to Regional Review (Sequence of Events).

SUMMARY:

The Council under the Great Lakes-St. Lawrence River Basin Water Resources Compact ("Compact") is proposing to adopt Rules of Practice and Procedure and to amend its Interim Guidance, and the Regional Body under the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement ("Agreement") is proposing to amend its Interim Procedures guidance; and, the Council and Regional Body under the Compact and Agreement, respectively, are jointly proposing to amend their Sequence of Events guidance as described below:

1. ***Great Lakes-St. Lawrence River Basin Water Resources Compact Rules of Practice and Procedures.*** This document, proposed to be adopted by Council as a regulation, describes the process for any administrative hearing, how modifications may be made to Council decisions, and the process to be used for Council rule making. Comments are being accepted on all portions of the proposed Rules of Practice and Procedure.
2. ***Great Lakes—St. Lawrence River Basin Water Resources Compact Guidance.*** This guidance document mirrors the Regional Body Procedures through Parts I and II with respect to review of a diversion subject to the Great Lakes-St. Lawrence River Basin Water Resources Compact, and also includes certain provisions applicable only to the Council. The Compact Council proposes amending Interim Guidance adopted on June 10, 2010. Comments are being accepted on all portions of the proposed Compact Guidance.
3. ***Great Lakes—St. Lawrence River Water Resources Regional Body Procedures.*** This guidance document contains the procedures that the Regional Body will follow during the review of a diversion subject to the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement through the issuance of its Declaration of Finding. This document mirrors the Compact Guidance for Parts I and II. The Regional Body proposes amending Interim Procedures adopted on June 10, 2010. Comments are being accepted on all portions of the proposed Regional Body Procedures.

SEPTEMBER 10, 2018

4. *Sequence of Events for Consideration of Proposals for Exceptions to the Prohibition on Diversions that are Subject to Regional Review.* This guidance document, proposed to be adopted by both Council and the Regional Body, outlines the steps for review and decision-making for a diversion proposal. Comments are being accepted on all portions of the proposed Sequence of Events.

All materials are available for review at <http://www.glscompactcouncil.org/ProposedUpdates.aspx> and <http://www.glsregionalbody.org/ProposedUpdates.aspx>.

Copies may also be obtained by contacting the office of the Great Lakes St. Lawrence Governors & Premiers at the address noted under “For Further Information Contact” below.

DATES:

Anyone wishing to comment on the proposed Rules of Practice and Procedure; proposed Council Guidance; proposed Regional Body Procedures; and, proposed Sequence of Events must file such comments at the addresses noted below no later than 5:00 p.m. EDT October 10, 2018.

A Public Hearing will be held on the proposed Rules of Practice and Procedure; proposed Council Guidance; proposed Regional Body Procedures; and, proposed Sequence of Events for Consideration of Proposals for Exceptions to the Prohibition on Diversions on October 3, 2018 beginning no sooner than 1:00 p.m. EDT at:

Indiana Department of Natural Resources
Indiana Government Center South
302 W. Washington Street
Conference Rooms 1&2
Indianapolis, Indiana 46204

Remote participation is available by registering at <https://attendee.gotowebinar.com/register/6281040830923352833>. Please note that while every effort will be made to allow remote participation, due to the inherent instability of remote participation, no guarantee can be made that remote participation will be available or recorded. Those wishing to guarantee their participation will be recorded will present in person.

ADDRESSES:

Comments should be submitted to the Council and/or Regional Body electronically at comments@gsgp.org. Comments may also be submitted at:

Great Lakes St. Lawrence River Water Resources Council
Great Lakes St. Lawrence Water Resources Regional Body
c/o Great Lakes St. Lawrence Governors & Premiers
20 N. Wacker Drive, Suite 2700
Chicago, Illinois 60606

SEPTEMBER 10, 2018

FOR FURTHER INFORMATION CONTACT:

Peter Johnson, Deputy Director
Great Lakes St. Lawrence Governors & Premiers
20 N. Wacker Drive, Suite 2700
Chicago, Illinois 60606
Tel: 312/407-0177
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Responsible Official: Peter R. Johnson, Deputy Director, is the official responsible for the development of the Council’s Rules of Practice and Procedure and the guidance documents discussed herein.

SUPPLEMENTARY INFORMATION:

Table of Contents

Part I	Introduction and Background
Part II	Summary of Proposed Regional Body Procedures and Council Guidance
Part III	Summary of Proposed Council Rules of Practice and Procedure
Part IV	Summary of Sequence of Events for Consideration of Proposals for Exceptions to the Prohibition on Diversions

PART I Introduction and Background

The Great Lakes-St. Lawrence River Water Resources Regional Body was created on December 13, 2005, when the Great Lakes Governors (Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin) and the Premiers of Ontario and Québec signed the *Great Lakes—St. Lawrence River Basin Sustainable Water Resources Agreement* (“Agreement”). The Agreement details how the States and Provinces will work together to manage and protect the Great Lakes—St. Lawrence River Basin. It also provides a framework for each State and Province to enact programs and laws protecting the Basin.

The Great Lakes-St. Lawrence River Basin Water Resources Council was established on December 8, 2008, when the *Great Lakes—St. Lawrence River Basin Water Resources Compact* (“Compact”) became State and federal law, enacted as U.S. Public Law No: 110-342, October 3, 2008. The Compact details how the States will work together to manage and protect the Great Lakes—St. Lawrence River Basin. It also provides a framework for each State to enact programs and laws protecting the Basin.

Both the Agreement and the Compact include provisions that allow both the Regional Body and Compact Council to adopt rules and procedures for managing their authorities. To that end, on

SEPTEMBER 10, 2018

June 10, 2010, the Regional Body and the Council respectively adopted Interim Procedures and Interim Guidance. The Interim Procedures and Interim Guidance have provided procedures for regionally reviewing proposals to divert water from the Great Lakes-St. Lawrence River Basin. In addition, a sequence of events for regionally reviewing and considering a “Straddling County” exception to the prohibition on diversions was released on February 28, 2014.

Procedures Update Team

On September 1, 2017, the Council and the Regional Body created a Procedures Update Team (“Team”). The Team was charged with drafting updates to the Regional Body Interim Procedures and Compact Council Interim Guidance for the Regional Body and Compact Council’s consideration and potentially drafting new rules for the Compact Council’s consideration. Each member of the Regional Body and the Council has appointed at least one individual to the joint Team.

Advisory Committee, Resource Group, Observers; Tribes and First Nations

The existing Regional Body/Compact Council Advisory Committee, Resource Group, and Observers, as well as Tribes and First Nations have provided input and feedback to the Team at specific times throughout the process. In addition, from May 22 through June 21, 2018, the public provided comments on initial drafts.

The Council and Regional Body will accept written comments from the public on their respective proposed Rules of Practice and Procedure; proposed Council Guidance; proposed Regional Body Procedures; and, proposed Sequence of Events until the deadline stated above. After considering written comments and comments made at the public hearing scheduled as noted above, on or about December 6, 2018, the Council and Regional Body will conduct meetings open to the public to consider and potentially adopt the final Rules of Practice and Procedure; Council Guidance; Regional Body Procedures; and, Sequence of Events. .

Part II Summary of Proposed Regional Body Procedures and Council Guidance

The statements below provide general summaries of some of the proposed Regional Body Procedures and Council Guidance. Note that this general summary describes the provisions in the Council Guidance, which is more extensive and contains more provisions than the Regional Body Procedures.

Section 100 Definitions

- Includes Definitions to be used when interpreting the Procedures/Guidance.

Section 200.1 Purpose

- Summarizes the purpose of Part II of the Procedures/Guidance.

Section 200.2 Preliminary Consultations

- Allows the Originating Party to consult with the Regional Body/Council Secretariat or Parties’ agencies before forwarding a Proposal to the Regional Body/ Council for their review.
- The Applicant may be included in such consultations

Section 200.3 Originating Party Powers and Duties; Applicant's Submission to Originating Party

- Provides an overview of notifications and other actions to be undertaken by the Originating Party before submitting a Proposal to the Regional Body/Council for their review.

Section 200.4 Submission of Application to Council and Regional Body

- Includes provisions for the process whereby the Originating Party submits Applications to the Regional Body/Council for their review.

Section 200.5 Consideration of regionally significant or potentially precedent setting Proposals.

- This Section is included as a placeholder.

Section 200.6 Contents of Application

- The sub-provisions outline what information should be included in an application for an Exception to the Prohibition on Diversions that is submitted to the Regional Body/Council for review.

Section 200.6.1 Contents of Application for Regional Review for a "Straddling Communities" Exception to the Prohibition against Diversions

- This sub-provision describes the information that should be included in an application for a "Straddling Community" Exception to the Prohibition against Diversions.
- The Section is broken into three categories of requested information
 - Basic Information
 - Information that will allow determination of whether the Proposal meets the relevant Exception Standard Criteria
 - Information that will allow determination of whether the Proposal meets the relevant criteria that must be met that is specific to this exception.

Section 200.6.2 Contents of Application for Regional Review and Council Approval for a "Intra-Basin Transfer" Exception to the Prohibition against Diversions

- This sub-provision describes all of the information that should be included in an application for a "Intra-Basin Transfer" Exception to the Prohibition against Diversions.
- The Section is broken into three categories of requested information
 - Basic Information
 - Information that will allow determination of whether the Proposal meets the relevant Exception Standard Criteria
 - Information that will allow determination of whether the Proposal meets the relevant criteria that must be met that is specific to this exception.

Section 200.6.3 Contents of Application for Regional Review and Council Approval for a "Straddling County" Exception to the Prohibition against Diversions

- This sub-provision describes all of the information that should be included in an application for a "Straddling County" Exception to the Prohibition against Diversions.
- The Section is broken into three categories of requested information

SEPTEMBER 10, 2018

- Basic Information
- Information that will allow determination of whether the Proposal meets the relevant Exception Standard Criteria
- Information that will allow determination of whether the Proposal meets the relevant criteria that must be met that is specific to this exception.

Section 200.7 Notice of Receipt of Application; Technical Reviews

- Describes the responsibilities of the Secretariat Executive Director to determine administrative completeness of the Application, and what steps may be taken to cure deficiencies, including the granting of an extension of time.
- Describes the process by which additional Technical Reviews may be performed.

Section 200.8 Tribes Notice

- Describes how notice of receipt of an application as well as notice of how comment is to be submitted is to be given to First Nations, Provincially recognized Métis communities in Canada or federally recognized Tribes in the U.S., as appropriate.
- Describes the content to be included in such notices.

Section 200.9 General Notice and Opportunity to Comment

- Describes how notice of receipt of an application as well as notice of how comment is to be submitted is to be given to the public, as appropriate.
- Describes the content to be included in such notices.
- Includes a statement that the Council will hold a public hearing regarding Applications subject to its review, and that the Regional Body will hold a public meeting within the jurisdiction of the Originating Party.
- Allows for additional public hearings and public meetings to be held within the region under the authority of the Council and Regional Body, as appropriate.
- Includes a statement that the Regional Body and Council will consider public comments before issuing a Declaration of Finding or issuing a Council Decision, respectively.

Section 201.1 Public Meetings on Proposals

- Describes how public meetings are to be organized.

Section 201.2 Hearings on Proposals

- Describes how public hearings are to be organized and recorded.
- Describes how notices are to be issued announcing public hearings.
- Describes standard hearing procedure.

Section 201.3 Optional Joint Hearing or Public Meeting

- Allows the Regional Body and Council to host joint public meetings/hearings as appropriate.

Section 201.4 Process for Review of Proposals; Decisions on Proposals

- Describes the process for reviewing proposals.

SEPTEMBER 10, 2018

- For the Council Guidance, includes provisions for how a Council Decision is organized, including findings of fact, conclusions of law and responses to comments, and how it is disseminated.
- Provides for creation of an administrative record.

Section 202 Conditions and Terms of Council Approval

- Includes requirement that any Originating Party approval of a Proposal must include the terms and conditions of the Council's approval.
- Includes provision that Originating Party may include additional conditions above and beyond what is required by the Council.
- Provides for the Originating Party to enforce the Council's conditions.

Part III Summary of Proposed Council Rules of Practice and Procedures

The statements below provide general summaries of the proposed Council Rules of Practice and Procedure.

Section 100 Definitions

- Includes Definitions to be used when interpreting the Rules of Practice and Procedures.

Section 300 Scope

- States that the Council Rules of Practice and Procedures governs Appeal Hearings conducted pursuant to Section 7.3.1 of the Compact

Section 301 Use of Number and Gender

- Indicates that 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

- Describes the process to be used when requesting an Appeal Hearing to review a Council Decision, including a description of who may file for review, the deadlines, and in the contents of the petition.

Section 303 Responses to a petition for review

- Describes the deadline for responding to petitions for an Appeal Hearing on Council Decisions.
- Allows the Council to determine if the petitioner is an aggrieved person under Section 7.3 of the Compact.

Section 304 Content and form of briefs

- Describes the organization and contents of briefs submitted to the Council.

Section 305 Appearances

- Allows Hearing Participants or those requesting Appeal Hearing Participant status to be represented by legal counsel or certain officers of the Appeal Hearing Participant.

- Requires legal counsel to be licensed and in good standing in any State or Canadian Province.

Section 306 Burden of Proof

- Requires that the petitioner bear the burden of proving the challenged 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

- Allows the U.S., Canada, any Great Lakes-St. Lawrence Province, or any federally recognized Tribe or Canadian First Nation to file an amicus-curiae brief without leave of the Council.
- Allows others to file an amicus curiae brief upon leave of the Council.

Section 308 Administrative Record

- Describes what is included in the administrative record.
- Allows a Hearing Participant to move to supplement the administrative record.
- Allows the Council to supplement the administrative record on its own initiative.
- Requires the Council to make its final disposition of the appeal based on the administrative record (as supplemented) as well as any other materials upon which the Council takes official notice.
- Requires the Secretariat to make administrative record available to the public.

Section 309 Motions

- Describes the process, formats and deadlines for filing and responding to motions.
- Motions may include procedural orders; to extend time; to intervene; for reconsideration and clarification; or to postpone the effective date of a Council Decision.

Section 310 Filing and service requirements

- Describes how documents are to be filed and served.

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

- Allows the Council to withdraw a Council Decision and prepare a new Council Decision addressing the portions so withdrawn.
- Describes the votes necessary to effectuate the withdrawal of a Council Decision and the substitution of a new Council Decision.
- Requires a new public comment period if any new or modified Council Decision contains provisions or conditions that are not a logical outgrowth of the subjects previously published for public comment.

Section 312 Petitioner request for dismissal of petition

- Allow the Petitioner to dismiss their appeal, and provides that the dismissal shall be with prejudice, unless otherwise specified by the Council.

Section 313 Oral argument

SEPTEMBER 10, 2018

- Allows the Council to hold oral argument on an appeal.
- Includes a provision allowing an Appeal Hearing Participant to request oral argument, and to explain why oral argument should be permitted.
- Authorizes the Council to set the parameters for any such oral argument.
- Requires that a transcript of oral argument be created.
- Requires notice be provided to Tribes and the public of any such oral argument.

Section 314 Final disposition and judicial review

- Describes when exhaustion of administrative remedies occurs.
- Describes what actions the Council may take upon conclusion of the Appeal Hearing.
- Describes the votes that must be taken to open a Council Decision.
- Requires a public comment period if any new or modified Council Decision contains provisions or conditions that are not a logical outgrowth of the subjects previously published for public comment.
- Requires the Council to publish notice of its final disposition, and how such notices shall occur.

Section 315 Council authority

- Allows the Council during an Appeal Hearing to do all acts and take all measures necessary for the efficient, fair, and impartial adjudication of issues arising in an appeal.
- Such authorities include the authority to sanction Appeal Hearing Participants.

Section 316 Confidentiality of business information

- Describes the process to be used for requesting that documents submitted to the Council as part of an Appeal Hearing be made confidential.

Section 317 Computation of Time

- Describes how time will be computed for time periods described in the Rules of Practice and Procedures.

Section 318 Ex parte communications

- To help ensure that the Council renders its final disposition of an appeal based on the administrative record and any matters or materials of which the Council may take official notice, requires that the Members of the Council and any person likely to advise the members on the decision of the appeal not engage in ex parte communications regarding the merits of the appeal with any interested person outside the Council and Secretariat.

Section 319 Examination of documents filed

- Requires the Secretariat to maintain a copy of the documents filed during the Appeal Hearing.
- Allows the Secretariat to charge the cost of duplicating documents requested by any person.

Section 320 Consolidation and severance

- Allows the Council to consolidate or sever matters at issue in two or more appeals.

Section 321 Defense of Council Decision by State Agency Officials

- Allows the Secretariat to appoint one or more officials of any agency of a Basin State (with that State's consent) to participate as an Appeal Hearing Participant, assuming said State voted in favor of the Council's Final Decision.

Section 322 Settlement

- Authorizes the Council to schedule a settlement conference to resolve some or all of the issues on appeal.

Section 323 Assessment of Costs

- Authorizes the Council to equitably apportion costs associated with any Appeal Hearing among Appeal Hearing Participants.
- States that no costs may be assessed on any Appeal Hearing Participant in excess of its ability to pay.
- Describes the process for assessing costs and appealing assessments of costs.

Section 324 Conferences

- Authorizes the Council to require 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.
- Authorizes the Council to require Appeal Hearing Participants be represented by those with settlement authority.

Section 401. Types of Modifications

- Creates and describes three types of modifications to Council Final Decisions.
 - Material Modifications
 - Minor Modifications
 - Immaterial Modifications

Section 402. Preliminary Consultation

- Encourages the Originating Party to consult with the Council Chair and Secretariat as to what category of modification a proposed modification may fall under.

Section 403. Requests for Material Modifications and Minor Modifications.

- Describes the process to be used when an Originating Party seeks a Material or Minor Modification to a Council Final Decision.

Section 404. Immaterial Modifications.

- Describes the process to be used when an Originating Party will be making an immaterial modification to a Council Final Decision.
- Allows the Originating Party to seek confirmation from the Council that the proposed modification is in fact an immaterial modification.

Section 500 Rule-Making Initiation

- Authorizes the Council to initiate rulemaking on its own initiative, including upon recommendation of any Council Committee.

Section 501 Notice

- Describes the contents of a notice of rulemaking.
- Describes how notice of the proposed rulemaking shall be noticed (or done).

Section 502 Public Participation

- Requires that there be a public comment period on any proposed rulemaking.
- Requires the Council to consider comments received before adopting any proposed rule.
- Requires that when a hearing is held on the proposed rule making, persons may make an oral presentation on the proposed rule, and that all Hearings must be recorded.

Section 503 Availability of Records

- Requires that all records related to the rule making must be kept and made available to the public.
- The Secretariat may charge reasonable costs for providing copies of records to the public.

Section 504 Final Adoption

- Requires that the public comment period be completed before a Rule may be adopted by the Council.
- Confirms that Rules will be adopted by majority vote.
- Requires the Secretariat to give notice of final rulemaking along with a comment and response document.

Part IV Summary of Sequence of Events for Consideration of Proposals for Exceptions to the Prohibition on Diversions

The Sequence of Events for Consideration of Proposals for Exceptions to the Prohibition on Diversions describes the steps to be taken jointly and individually by the Regional Body and Council when reviewing such proposals.