

DRAFT FOR PUBLIC COMMENT  
SEPTEMBER 10, 2018

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Sequence of Events for Consideration of Proposals for  
Exceptions to the Prohibition on Diversions that are subject to Regional Review.

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Before the Pre-Application Period, Proposal undergoes review by Originating Party to determine if the Proposal is subject to Regional Review by the Regional Body and/or review by the Council and to determine if it is administratively complete. The Originating Party also performs the technical review of the Proposal and provides an evaluation of the Proposal sufficient for a determination of whether the Proposal meets the relevant standards of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement and/or the Great Lakes-St. Lawrence River Water Resources Compact. During this time, the Originating Party, within their jurisdiction, also undertakes consultations with representatives of federally recognized Tribes in the U.S. as well as First Nations and provincially recognized Métis communities in Canada in the manner suitable to the individual Proposal and the laws and policies of the Originating Party, and includes any transcripts or meeting summaries of such meetings in any Application forwarded to the Regional Body and/or Council.

Pre-Application Period

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

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

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

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

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

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7. Regional Body and Compact Council provide notice to representatives of federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada and public of briefing (see Step 13) that will be open to the public. (Ideally 30 calendar days before the briefing.)

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Filing of Application

8. Originating Party provides notice to the Regional Body, Compact Council, federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada and public that it has determined that an Application to approve a Proposal is subject to Regional Review. [Agreement, Art. 501 and 504; Compact, Sec. 4.5.2 and 5.1.2]

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9. Originating Party submits Application to approve a Proposal, accompanied by the Technical Review and the “Originating Party’s Proposed Declaration of Finding”<sup>5</sup> to Regional Body and Compact Council, by submitting to the Executive Director one original, and one copy for distribution to the Regional Body and Compact Council in electronic form in a common format that allows public accessibility (e.g. Adobe Acrobat PDF format).

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Application Review Period

10. Regional Body and Compact Council provide the following notices of receipt of the Application to approve a Proposal (may be in electronic format, or noting where electronic documents may be accessed):

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- a. to federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada, including a copy of the Application to approve a Proposal and “Originating Party’s Proposed Declaration of Finding”; and

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- b. to the public, including posting by the Secretariat of the Application to approve a Proposal to Regional Body and Compact Council websites and a link to Originating Party’s website for further information, and notice to persons and groups that have registered as having an interest in receiving notice of the Application to approve a Proposal.

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These notices will indicate that the federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada and the public, including those that have registered, have an opportunity to comment on whether the Application meets the Exception Standard. [Agreement, Art. 501, 504; Compact, Sec. 5.1, 6.2]

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11. Regional Review and Compact Council Review begins.

12. Public comment period begins, with opportunity to provide comment electronically, hard copy or other means as appropriate.

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<sup>5</sup> If the Originating Party declines to participate in the decision, it need not prepare this Originating Party’s Proposed Declaration of Finding, which should instead be prepared as a “Chair’s” or “Presiding Officer’s Proposed Declaration of Finding.” The Chair or presiding officer may direct another Party to create this draft and later make any necessary modifications to such Declaration of Finding.

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13. Regional Body and Compact Council hold initial briefing on the Application to approve a Proposal via conference call/webinar that will be open to federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada and the public. Briefing includes:
- a. Secretariat review of sequence of events for entire decision-making process including opportunities for federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada and public participation.
  - b. Originating Party and Applicant review of the contents of the Application to approve a Proposal.
  - c. Originating Party presents Technical Review and “Originating Party’s Proposed Declaration of Finding.”
  - d. Regional Body and Compact Council announce and issue notice to federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada and public of Regional Body and Compact Council public information meeting and hearing (see Step 15 below) and of meeting with federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada (see Step 15.e below). As part of the notice, announce that questions to be addressed during the presentation at public meeting must be submitted in writing by a set date. Questions may still be asked at the public meeting, but will be addressed only as time permits.
  - e. Regional Body and Compact Council announce and issue notice to federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada and public of Regional Body public meeting to consider final Declaration of Finding (see Step 21 below).

14. Regional Body and Compact Council members review Application to approve a Proposal, Technical Review and “Originating Party’s Proposed Declaration of Finding.” and may individually submit a written request for additional information to the Originating Party in a format to be prepared by the Secretariat. A copy of all such questions should be shared with the Secretariat. The members of the Regional Body and Compact Council are encouraged to submit all such questions before the deadline for completion of all technical reviews (see Step 18).

All such questions received by the Secretariat should be shared with the other members of the Regional Body and Compact Council. The Originating Party should respond in writing as appropriate to individual requests, with a copy to the Secretariat. All such responses are to be shared with all Regional Body and Compact Council members and will be included as part of the administrative record.

All questions and answers will be incorporated into the administrative record and will be made available to the public at the Q&A/Hearing in Step 15.

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Public Meetings/Public Hearings

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

15. Regional Body and Compact Council public information meeting to be held in Originating Party's jurisdiction with Members of the Regional Body and Compact Council to be physically present. Efforts should be made to allow federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada as well as the public to remotely listen.

a. Part I—Public Information Meeting with Q&A. Regional Body/Compact Council members present, Chair(s) preside(s). No recording or transcript must be taken of the event.

i. Secretariat reviews sequence of events for entire decision-making process including opportunities federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada and public participation (10 minutes).

ii. Originating Party and Applicant review contents of Application to approve a Proposal, Technical Review and "Originating Party's Proposed Declaration of Finding", during presentation address written questions received prior to the meeting (estimate approximately 20 minutes, but may change based on number of written questions received).

iii. Members, federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada and public ask questions (preferably in writing) and receive verbal responses from Originating Party and Applicant on Application to approve a Proposal, Technical Review and "Originating Party's Proposed Declaration of Finding." Total question and answer period up to 90 minutes.

b. Optional Part IIA.—members of the Regional Body and Compact Council take tour of sites relevant to consideration of the Application. The tour is open to the public and a record of the tour is created and made available to the public.

c. Optional Part IIB.—pre-meeting Regional Body and Compact Council discussions (including Q&A with Applicant) on key issues. The pre-meeting is open to the public and a record of the meeting is created and made available to the public.

d. Optional Part IIC.—Application and Technical Review materials and other materials to be incorporated in the record are made available for inspection prior to the meeting.

e. Part III—Meeting federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada. Regional Body/Compact Council members physically present. The Regional Body/Compact Council members hear from representatives from federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada on the Application to approve a Proposal.

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~~Deleted: <#>Optional—pre-meeting small group informal discussions (including Q&A) on key issues.¶  
<#>Optional—Application and Technical Review materials and other materials to be incorporated in the record can be made available for inspection prior to the meeting.¶~~

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Technical Review and “Originating Party’s Proposed Declaration of Finding.” Issues specific to each participating federally recognized Tribe as well as First Nation and provincially recognized Métis and community in Canada may be raised during this session. This session is recorded, and a transcript will be provided to the Regional Body and Compact Council members, as well as made available to the public.

- f. Part IV—Public Hearing<sup>7</sup>. Regional Body/Compact Council members physically present. A Hearing Officer presides. This session is recorded, and a transcript will be provided to the Regional Body and Compact Council members, as well as made available to the public.
- i. Application to approve a Proposal, Technical Review, “Originating Party’s Proposed Declaration of Finding” and any written requests and responses received will be incorporated into and made a part of the record.
  - ii. federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada and public opportunity to make oral statements or present written statements for the record.
  - iii. Those who pre-register are limited to five minutes for oral statements/comment, and those registering on-site are limited to three minutes, unless otherwise extended by the Hearing Officer. Organizations wishing to make oral statements/comments will be limited to one speaker.
  - iv. Announcement of timeframe for submission of additional written materials and comments for the administrative record via electronic submission and hard copy.

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16. Each member of the Regional Body and Compact Council may determine if there is sufficient public interest to hold an additional public meeting or public hearing within its jurisdiction. Based on such determination, at the request of a member the Regional Body and Compact Council may also hold either a public meeting or public hearing (the format of which will be at the host jurisdiction’s discretion) within the jurisdiction. If such a meeting is organized, only a representative of the host jurisdiction will be required to participate in such event. If a transcript or summary of oral comments received is created, it will be shared with the other members of the Regional Body and Compact Council. Regardless, each Party will also take actions to ensure that the public within their jurisdiction has an opportunity to comment during the public comment period. Such actions may include providing direction to the members of that jurisdiction’s public on how to submit comments to the Council, or hosting a public meeting or hearing as described in Step 15.

Post-Hearing<sup>8</sup> Review and Decision Process

<sup>7</sup> If the Originating Party is a Province, this session will be a Public Meeting only, and will be run accordingly (e.g. no Hearing Officer.) [Agreement, Art. 503; Compact Interim Guidance, Sec. 201.3]

<sup>8</sup> If a Public Meeting is held instead of a Public Hearing, then this part of the sequence of events should equally apply to the Public Meeting.

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[Agreement, Art. 506; Compact Sec. 4.5.5]

17. ~~Deadline for submission of written comments from the public to the Regional Body and Compact Council secretariat(s) for the administrative record via electronic submission and hard copy. Each Party to the Agreement or Compact should forward all written comments they have directly received as part of the Hearing to the Regional Body and Compact Council secretariat(s) to be incorporated into the administrative record.~~

18. ~~Deadline for submission of any additional Technical Reviews by the Members (60 calendar days after submission of Application to approve a Proposal).~~

19. ~~As appropriate, Originating Party, or another Party designated by the Chair or presiding officer if the Originating Party declines to participate, revises “Originating Party’s Proposed Declaration of Finding” based upon all input received through deadlines for submission of comments and Technical Reviews.~~

20. ~~Final “Originating Party’s Proposed Declaration of Finding” posted by the Secretariat to Regional Body website 14 calendar days before public meeting of Regional Body.~~

21. ~~Regional Body meeting<sup>10</sup>. [Agreement, Art. 506; Compact, Sec. 4.5.5]~~

a. ~~Originating Party presents Application to approve a Proposal and Technical Review.~~

b. ~~A motion is made to adopt “Originating Party’s Proposed Declaration of Finding.” Motions to amend (including substitution motions) may be made and considered. The members of the Regional Body should endeavor to submit all such motions to amend to the other members of the Regional Body, copying the Secretariat, one week before the meeting of the Regional Body. The Secretariat should make all such motions available to the public upon receipt.~~

c. ~~The Regional Body, having considered the notice, Application to approve a Proposal, Originating Party’s Technical Review, any other Independent Technical Reviews, comments, questions and objections, including comments by the public and federally recognized Tribes, as well as First Nations and provincially recognized Métis communities in Canada, and all other information in the record, considers motion to adopt proposed “Originating Party’s Proposed Declaration of Finding.” If all members agree, then Declaration of Finding with consensus to be considered for adoption. If no consensus is reached, then the Regional Body should work to achieve consensus within 25 days; if consensus still cannot be reached, the Regional Body may consider a Declaration of Finding that presents different points of view and indicates each Party’s conclusions.~~

22. ~~Notification of Final Regional Body Declaration of Finding should be sent by the Secretariat to Originating Party, Compact Council,<sup>11</sup> Applicant, federally recognized Tribes, as well as First Nations and provincially recognized Métis~~

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~~Deleted: <#>Post-Hearing Briefing discussion (face to face) among Regional Body and Compact Council members, to be held the morning following the public hearing. ¶~~

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<sup>10</sup> Meetings may be held face to face, via conference call or web as appropriate.

<sup>11</sup> If Originating Party is not a Province.

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communities in Canada and members of the public who have registered their participation in the Application review process.

23. Compact Council Chair issues draft Council Decision with any conditions. Council's goal is for the draft to be issued within sixty (60) days of receiving the Final Regional Body Declaration of Finding and at least fourteen (14) days prior to the meeting of the Council to issue the Council Decision. If the Chair's draft contains provisions or conditions not previously published for public comment and that are not a logical outgrowth of the subjects previously published for public comment, then the Compact Council will hold a 30-day public comment period on such provisions or conditions included in the Chair's draft. Comments may only be submitted in writing, electronically or in hard copy.

24. Compact Council Secretariat gives notice to federally recognized Tribes as well as First Nations and provincially recognized Métis communities in Canada and public of Compact Council meeting to be held at least 30 calendar days after such notice is given (at least 7 days after the conclusion of any public comment period as per Step 23.)

25. <sup>12</sup>Compact Council meeting to be held<sup>14</sup>.

a. Originating Party presents Application to approve a Proposal, Technical Review, and Regional Body Declaration of Finding(s). A motion is made to adopt the "Compact Council Chair's Proposed Final Decision." The Compact Council Chair's Proposed Final Decision should include a "comment and response" section.

b. Motions to amend (including substitution motions) may be made and considered. The members of the Compact Council should endeavor to submit all such motions to amend to the other members of the Compact Council, copying the Secretariat, one week before the meeting of the Compact Council. The Secretariat should make all such motions available to the public upon receipt.

c. Compact Council, having considered the notice, Application, Originating Party's Technical Review, any other Independent Technical Reviews, comments, questions and objections, including comments by the public and federally recognized Tribes, as well as First Nations and provincially recognized Métis communities in Canada, Regional Body Declaration of Finding, and all other information in the record considers approval of Proposal. Approval shall be given unless one or more members vote to disapprove.

26. Decision is certified by Compact Council Secretariat and forwarded to Originating Party, notice of decision to Applicant, Regional Body and Compact Council members, federally recognized Tribes, as well as First Nations and provincially recognized Métis communities in Canada, and members of the public who have registered their participation in the Application review process.

27. Originating Party takes action pursuant to Regional Body Declaration of Finding and Compact Council action as appropriate.

<sup>12</sup> If the Originating Party is a Province, steps 23-27 are not applicable.

<sup>14</sup> Meetings may be held face to face, via conference call or web as appropriate.

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28. The Secretariat should develop and make available to the public a complete administrative record that should include but not be limited to the following:
- a. The entirety of the Application forwarded by the Originating Party to the Regional Body and Compact Council.
  - b. All public comments received.
  - c. All public notices provided by the Regional Body and Compact Council.
  - d. All transcripts created during the Regional Review and Compact Council review process.
  - e. All drafts of documents made available to the public
  - f. All questions on the Application submitted to the Originating Party from the members of the Regional Body and Compact Council as well as any responses received from the Originating Party.
  - g. Any other document relied upon or otherwise considered by the members of the Regional Body and Compact Council when reviewing the Application.