

COMMUNICATION PROTOCOL

FOR COMMUNICATION WITH FIRST NATIONS AND FEDERALLY-RECOGNIZED TRIBES

I. Definitions. For purposes of this Protocol:

- A. “Aboriginal Community” means aboriginal communities located in Canada surrounding the Great Lakes - St. Lawrence river basin.
- B. “Aboriginal Organizations” means an organization that represents Aboriginal Communities or Aboriginal interests.
- C. “Agreement” means the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement.
- D. “Basin” means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivieres, Québec, within the jurisdiction of the Parties.
- E. “Compact” means the Great Lakes - St. Lawrence River Basin Water Resources Compact, Public Law 110–342, 122 Stat. 3739 (2008).
- F. “Compact Council” means the Great Lakes-St. Lawrence River Basin Water Resources Council, created by the Compact.
- G. “Indigenous Nation(s)” means, collectively, the Aboriginal Communities, Aboriginal Organizations and Tribes that Regional Body members have identified as being (i) located within Parties’ territories, (ii) located within or having rights within the Basin and (iii) appropriate entities for the purposes of this Protocol, as determined by the Parties.
- H. “Indigenous Nations Contact” or “Contact” means the person or persons designated pursuant to Section V.A to receive and convey communications on behalf of an Indigenous Nation under this Protocol.
- I. “Observer Agency” means an entity designated by an Indigenous Nation pursuant to Section V. B of this Protocol to receive contemporaneous copies of communications under this Communication Protocol and to be invited to attend meetings with that Indigenous Nation.
- J. “Party” means a State or Province that has entered into the Agreement or Compact, as appropriate.
- K. “Regional Body” means the Great Lakes-St. Lawrence River Water Resources Regional Body established by the Agreement.

- L. “Tribe” means an Indian government recognized by the Secretary of the United States Department of Interior, as published in the Federal Register,¹ and any entity newly-recognized by the Secretary provided the Secretary has published formal notice of such recognition in the Federal Register.

II. Communications Regarding Proposals for Withdrawal, Diversion or Consumptive Use of Water Subject to Regional Review

A. Originating Party Communications

1. Consultation shall occur between an Originating Party and the affected or potentially affected Tribes and First Nations within the Parties’ territories in the manner appropriate to the individual Proposal and the laws and policies of the Originating Party.
2. Such consultation shall occur before the Proposal is provided to the Regional Body or Compact Council by the Originating Party.
3. A record of such consultation shall be provided by the Originating Party to the Regional Body and Compact Council as part of the Originating Party’s Application forwarded to the Regional Body and Compact Council, with appropriate protection of confidential information provided by any Tribe or First Nation.

B. Opportunity to Comment Regarding Proposals for Withdrawal, Diversion or Consumptive Use of Water subject to Regional Review; Subsequent Declarations of Finding; and, Approvals, Approvals with Modifications, or Disapprovals of Proposals.

1. Where a Proposal is subject to Regional Review, the Regional Body and Compact Council shall provide reasonable notice, in writing, to all Indigenous Nations, as follows:
 - a. The principal purpose of the Notice will be to provide Indigenous Nations the opportunity to comment with respect to whether the Proposal meets the requirements of the Agreement’s Exception Standard or the Compact’s Standard of Review and Decision, as applicable.
 - b. Notice to Indigenous Nations will be provided to Indigenous Nations Contacts individually, separate from the notice provided to the general public.
 - c. The Regional Body and Compact Council shall endeavor to provide notice of a Proposal to the Indigenous Nations

¹ As published in *Indian Entities Recognized and Eligible To Receive Services From the Bureau of Indian Affairs*, 77 Fed. Reg. 47868 (Aug. 10, 2012), and subsequent updates of the same.

within ten (10) days of receipt of the Proposal from the Originating Party.

- d. The notice to Indigenous Nations shall include, to the extent available, the following:
 - i. Designation of a time reserved for Indigenous Nations to exercise the participatory rights described in paragraphs 2 and 3, below.
 - ii. The date and time as well as the logistics for attending any public briefing, public meeting and/or public hearing regarding the Proposal.
 - iii. A description of the Proposal and its purpose; the requested Water Withdrawal, Diversion and Consumptive Use amounts; the location(s) where copies of the Application and all other relevant documents, including the Originating Party's Proposed Declaration of Finding, are available for review; the timeframe for that availability; the time period, manner and recipient of any comments regarding the Proposal; the address, electronic mail address, and phone number of Regional Body and Compact Council members; and a copy of the Proposal Application and other documents submitted by the Applicant.
2. The Regional Body and Compact Council shall reserve a separate time for Indigenous Nations, before or after any public briefing or meeting, to discuss the Proposal with the Regional Body and Compact Council.
3. At any public hearing, representatives of Indigenous Nations shall be afforded the opportunity to make statements on the record before or after statements made by the public.
4. Indigenous Nations shall have the right to provide written comments addressing whether a Proposal meets the requirements of the Agreement's Exception Standard or the Compact's Standard of Review and Decision, as applicable.
5. The Regional Body and Compact Council shall forward all comments received from Indigenous Nations to the Originating Party and to the Regional Body or Compact Council Members before the Regional Body adopts a Declaration of Finding, or the Compact Council approves, approves with modifications, or disapproves a Proposal.

6. The Regional Body and Compact Council shall consider all comments received from Indigenous Nations before the Regional Body adopts a Declaration of Finding or the Compact Council approves, approves with modifications, or disapproves a Proposal.
7. Upon the Regional Body's adoption of a Declaration of Finding or the Compact Council's approval, approval with modifications, or disapproval of a Proposal, the Regional Body or Compact Council, as applicable, shall give notice to the Indigenous Nations in the same manner utilized to provide the notice and opportunity to comment on the Proposal. Such notice shall include the text of the Declaration of Finding or decision, and that text shall also be made publicly available.

III. Other Communications

A. Communications Regarding Water Use Information.

1. To the extent feasible, Water use information gathered by the Parties shall be developed in cooperation with Indigenous Nations. In particular, the Parties shall request Water use information from the relevant Indigenous Nations.
2. The Regional Body and Compact Council shall provide written notice to the identified Indigenous Nations Contacts when Water use information is made available to the public.

B. Other Ongoing Communications.

1. In order to facilitate ongoing dialogue, scientific and technical interaction and data exchange regarding matters subject to the Agreement and Compact, the Regional Body and Compact Council will provide to Indigenous Nations:
 - a. Notice and invitations to attend regularly scheduled semiannual meetings of the Regional Body and Compact Council and to meet separately with the Regional Body and Compact Council members prior to the commencement of these meetings.
 - b. Notice and invitations to attend Regional Body and Compact Council Advisory Committee meetings in addition to the separate meetings with Indigenous Nations.
 - c. Notice of scientific, technical, data, policy and other issues, including any proposed changes to the Agreement or Compact, that will be addressed at a Regional Body or Compact Council meeting or hearing, and invitation to attend such meeting or hearing.

2. Notices provided under this Subsection II.B will include copies of available pertinent documents.

IV. Confidentiality

- A. Information submitted to the Regional Body and Compact Council is generally considered to be public information.
- B. In extenuating circumstances the Regional Body or Compact Council will work collaboratively with Indigenous Nations to create mechanisms that, to the extent practicable and consistent with the terms of the Agreement and Compact, protect confidential information provided by such Indigenous Nations when a written request has been made to make such information confidential.

V. Designation of Contacts and Observer Agencies

A. Formal Indigenous Nations Contacts

1. The Regional Body and Compact Council shall direct communications under this Protocol to the Indigenous Nation Contacts designated by Indigenous Nations. Pending alternative designations by Indigenous Nations, the Regional Body and Compact Council shall communicate with the Indigenous Nations Contacts identified in the Regional Body and Compact Council June 2012 correspondence to the Indigenous Nations.
2. An Indigenous Nation may, at any time, remove, replace or add a Contact by so advising the Regional Body and Compact Council, in writing, including the name, phone, street address and email address of any new Contact.
3. In the event that the Regional Body and Compact Council establish electronic access to the Indigenous Nations Contact list, Indigenous Nations may change their Contacts electronically.

B. Observer Agencies

1. An Indigenous Nation may designate an Observer Agency to serve as their representative and receive contemporaneous copies of communications under this Protocol and to be invited to attend meetings with that Indigenous Nation by so advising the Regional Body and Compact Council, in writing, including the name, phone, street address and email address of the Observer Agency.

2. An Indigenous Nation may, at any time, remove, replace or add an Observer Agency by so advising the Regional Body and Compact Council, in writing, including the name, phone, street address and email address of any new Observer Agency.
 3. Only Indigenous Nations shall have the participatory rights described in Section II. B. (3) but an Indigenous Nation may adopt statements of an Observer Agency as its own.
- C. In the event of any dispute regarding the participation rights of an Indigenous Nation's Contact, designated Observer Agency or attendees, the Regional Body and Compact Council shall seek direction from the Indigenous Nation's highest elected government official and if there is none, the highest governmental body.
- D. Initial Communication. Within thirty (30) days of the adoption of this Communication Protocol, the Regional Body and Compact Council shall communicate to Indigenous Nations Contacts, in writing (a) the procedure for removing, replacing or adding Contacts and (b) the procedure for designating an Observer Agency.
- E. Communications to the Regional Body and Compact Council shall be made to the, Secretary, Great Lakes – St. Lawrence River Regional Body; and Executive Director, Great Lakes-St. Lawrence River Water Resources Council, 20 N. Wacker Drive, Suite 2700, Chicago, Illinois, 60606. Communications may also be sent via email, with such letter being attached to said email. Email addresses for the Secretary and Executive Director shall be available at <http://www.glsregionalbody.org> and <http://www.gslcompactcouncil.org>, respectively.