

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1301 Session of
2008

INTRODUCED BY KASUNIC, MUSTO, MELLOW, O'PAKE, LAVALLE,
C. WILLIAMS, BOSCOLA, COSTA, FERLO, FONTANA, KITCHEN,
WOZNIAK, WASHINGTON, TARTAGLIONE AND RAFFERTY, MARCH 7, 2008

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, MARCH 7, 2008

AN ACT

1 Authorizing the Commonwealth of Pennsylvania to join the Great
2 Lakes-St. Lawrence River Basin Water Resources Compact;
3 providing for the form of the compact; and imposing
4 additional powers and duties on the Governor, the Secretary
5 of the Commonwealth and the Compact.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Great Lakes-
10 St. Lawrence River Basin Water Resources Compact.

11 Section 2. Authority to execute compact.

12 The Governor of Pennsylvania, on behalf of this State, is
13 hereby authorized to execute a compact in substantially the
14 following form with any one or more of the states of the United
15 States, and the General Assembly hereby signifies in advance its
16 approval and ratification of such compact.

17 THE GREAT LAKES-ST. LAWRENCE RIVER BASIN

18 WATER RESOURCES COMPACT

19 ARTICLE 1

1 SHORT TITLE, DEFINITIONS, PURPOSES AND

2 DURATION EXPLANATION

3 Section 1.1. Short title.

4 This act shall be known and may be cited as the "Great Lakes-
5 St. Lawrence River Basin Water Resources Compact."

6 Section 1.2. Definitions.

7 For the purposes of this compact, and of any supplemental or
8 concurring legislation enacted pursuant thereto, except as may
9 be otherwise required by the context:

10 "Adaptive management" means a water resources management
11 system that provides a systematic process for evaluation,
12 monitoring and learning from the outcomes of operational
13 programs and adjustment of policies, plans and programs based on
14 experience and the evolution of scientific knowledge concerning
15 water resources and water dependent natural resources.

16 "Agreement" means the Great Lakes-St. Lawrence River Basin
17 Sustainable Water Resources Agreement.

18 "Applicant" means a person who is required to submit a
19 proposal that is subject to management and regulation under this
20 compact. Application has a corresponding meaning.

21 "Basin or Great Lakes-St. Lawrence River Basin" means the
22 watershed of the Great Lakes and the St. Lawrence River upstream
23 from Trois-Rivieres, Quebec within the jurisdiction of the
24 parties.

25 "Basin ecosystem or Great Lakes-St. Lawrence River Basin
26 Ecosystem" means the interacting components of air, land, water
27 and living organisms, including humankind, within the basin.

28 "Community within a straddling county" means any incorporated
29 city, town or the equivalent thereof, that is located outside
30 the basin but wholly within a county that lies partly within the

1 basin and that is not a straddling community.

2 "Compact" means this compact.

3 "Consumptive use" means that portion of the water withdrawn
4 or withheld from the basin that is lost or otherwise not
5 returned to the basin due to evaporation, incorporation into
6 products or other processes.

7 "Council" means the Great Lakes-St. Lawrence River Basin
8 Water Resources Council, created by this compact.

9 "Council review" means the collective review by the council
10 members as described in Article 4 of this compact.

11 "County" means the largest territorial division for local
12 government in a state. The county boundaries shall be defined as
13 those boundaries that exist as of December 13, 2005.

14 "Cumulative impacts" mean the impact on the basin ecosystem
15 that results from incremental effects of all aspects of a
16 withdrawal, diversion or consumptive use in addition to other
17 past, present, and reasonably foreseeable future withdrawals,
18 diversions and consumptive uses regardless of who undertakes the
19 other withdrawals, diversions and consumptive uses. Cumulative
20 impacts can result from individually minor but collectively
21 significant withdrawals, diversions and consumptive uses taking
22 place over a period of time.

23 "Decision-making standard" means the decision-making standard
24 established by section 4.11 for proposals subject to management
25 and regulation in section 4.10.

26 "Diversion" means a transfer of water from the basin into
27 another watershed, or from the watershed of one of the Great
28 Lakes into that of another by any means of transfer, including
29 but not limited to, a pipeline, canal, tunnel, aqueduct,
30 channel, modification of the direction of a water course, a

1 tanker ship, tanker truck or rail tanker but does not apply to
2 water that is used in the basin or a Great Lake watershed to
3 manufacture or produce a product that is then transferred out of
4 the basin or watershed. "Divert" has a corresponding meaning.

5 "Environmentally sound and economically feasible water
6 conservation measures" mean those measures, methods,
7 technologies or practices for efficient water use and for
8 reduction of water loss and waste or for reducing a withdrawal,
9 consumptive use or diversion that (I) are environmentally
10 sound, (II) reflect best practices applicable to the water use
11 sector, (III) are technically feasible and available, (IV) are
12 economically feasible and cost effective based on an analysis
13 that considers direct and avoided economic and environmental
14 costs and (V) consider the particular facilities and processes
15 involved, taking into account the environmental impact, age of
16 equipment and facilities involved, the processes employed,
17 energy impacts and other appropriate factors.

18 "Exception" means a transfer of water that is excepted under
19 section 4.9 from the prohibition against diversions in section
20 4.8.

21 "Exception standard" means the standard for exceptions
22 established in section 4.9.4.

23 "Intra-basin transfer" means the transfer of water from the
24 watershed of one of the Great Lakes into the watershed of
25 another Great Lake.

26 "Measures" means any legislation, law, regulation, directive,
27 requirement, guideline, program, policy, administrative practice
28 or other procedure.

29 "New or increased diversion" means a new diversion, an
30 increase in an existing diversion, or the alternation of an

1 existing withdrawal so that it becomes a diversion.

2 "New or increased withdrawal or consumptive use" means a new
3 withdrawal or consumptive use or an increase in an existing
4 withdrawal or consumptive use.

5 "Originating party" means the party within whose jurisdiction
6 an application or registration is made or required.

7 "Party" means a state party to this compact.

8 "Person" means a human being or a legal person, including a
9 government or a non-governmental organization, including any
10 scientific, professional, business, non-profit, or public
11 interest organization or association that is neither affiliated
12 with, nor under the direction of a government.

13 "Product" means something produced in the basin by human or
14 mechanical effort or through agricultural processes and used in
15 manufacturing, commercial or other processes or intended for
16 intermediate or end use consumers. (I) Water used as part of
17 the packaging of a product shall be considered to be part of the
18 product. (II) Other than water used as part of the packaging of
19 a product, water that is used primarily to transport materials
20 in or out of the basin is not a product or part of a product.
21 (III) Except as provided in (I) above, water which is
22 transferred as part of a public or private supply is not a
23 product or part of a product. (IV) Water in its natural state
24 such as in lakes, rivers, reservoirs, aquifers, or water basins
25 is not a product.

26 "Proposal" means a withdrawal, diversion or consumptive use
27 of water that is subject to this compact.

28 "Province" means Ontario or Quebec.

29 "Public water supply purposes" means water distributed to the
30 public through a physically connected system of treatment,

1 storage and distribution facilities serving a group of largely
2 residential customers that may also serve industrial,
3 commercial, and other institutional operators. Water withdrawn
4 directly from the basin and not through such a system shall not
5 be considered to be used for public water supply purposes.

6 "Regional body" means the members of the council and the
7 premiers of Ontario and Quebec or their designee as established
8 by the agreement.

9 "Regional review" means the collective review by the regional
10 body as described in Article 4 of this compact.

11 "Source watershed" means the watershed from which a
12 withdrawal originates. If water is withdrawn directly from a
13 Great Lake or from the St. Lawrence River, then the source
14 watershed shall be considered to be the watershed of that Great
15 Lake or the watershed of the St. Lawrence River, respectively.
16 If water is withdrawn from the watershed of a stream that is a
17 direct tributary to a Great Lake or a direct tributary to the
18 St. Lawrence River, then the source watershed shall be
19 considered to be the watershed of that Great Lake or the
20 Watershed of the St. Lawrence River, respectively, with a
21 preference to the direct tributary stream watershed from which
22 it was withdrawn.

23 "Standard of review and decision" means the exception
24 standard, decision-making standard and reviews as outlined in
25 Article 4 of this compact.

26 "State" means one of the states of Illinois, Indiana,
27 Michigan, Minnesota, New York, Ohio or Wisconsin or the
28 Commonwealth of Pennsylvania.

29 "Straddling community" means any incorporated city, town or
30 the equivalent thereof, wholly within any county that lies

1 partly or completely within the basin, whose corporate boundary
2 existing as of the effective date of this compact, is partly
3 within the basin or partly within two Great Lakes watersheds.

4 "Technical review" means a detailed review conducted to
5 determine whether or not a proposal that requires regional
6 review under this compact meets the standard of review and
7 decision following procedures and guidelines as set out in this
8 compact.

9 "Water" means ground or surface water contained within the
10 basin.

11 "Water dependent natural resources" means the interacting
12 components of land, water and living organisms affected by the
13 waters of the basin.

14 "Waters of the basin" or "basin water" means the Great Lakes
15 and all streams, rivers, lakes, connecting channels and other
16 bodies of water, including tributary groundwater, within the
17 basin.

18 "Withdrawal" means the taking of water from surface water or
19 groundwater. "Withdraw" has a corresponding meaning.

20 Section 1.3. Findings and purposes.

21 The legislative bodies of the respective parties hereby find
22 and declare:

23 1. Findings:

24 A. the waters of the basin are precious public natural
25 resources shared and held in trust by the states;

26 B. the waters of the basin are interconnected and part of a
27 single hydrologic system;

28 C. the waters of the basin can concurrently serve multiple
29 uses. Such multiple uses include municipal, public, industrial,
30 commercial, agriculture, mining, navigation, energy development

1 and production, recreation, the subsistence, economic and
2 cultural activities of native peoples, water quality
3 maintenance, and the maintenance of fish and wildlife habitat
4 and a balanced ecosystem. And, other purposes are encouraged,
5 recognizing that such uses are interdependent and must be
6 balanced;

7 D. future diversions and consumptive uses of basin water
8 resources have the potential to significantly impact the
9 environment, economy and welfare of the Great Lakes-St. Lawrence
10 River region;

11 E. continued sustainable, accessible and adequate water
12 supplies for the people and economy of the basin are of vital
13 importance; and

14 F. the parties have a shared duty to protect, conserve,
15 restore, improve and manage the renewable but finite waters of
16 the basin for the use, benefit and enjoyment of all their
17 citizens, including generations yet to come. The most effective
18 means of protecting, conserving, restoring, improving and
19 managing the basin waters is through the joint pursuit of
20 unified and cooperative principles, policies and programs
21 mutually agreed upon, enacted and adhered to by all parties.

22 2. Purposes:

23 A. to act together to protect, conserve, restore, improve
24 and effectively manage the waters and water dependent natural
25 resources of the basin under appropriate arrangements for
26 intergovernmental cooperation and consultation because current
27 lack of full scientific certainty should not be used as a reason
28 for postponing measures to protect the basin ecosystem;

29 B. to remove causes of present and future controversies;

30 C. to provide for cooperative planning and action by the

1 parties with respect to such water resources;

2 D. to facilitate consistent approaches to water management
3 across the basin while retaining state management authority over
4 water management decisions within the basin;

5 E. to facilitate the exchange of data, strengthen the
6 scientific information base upon which decisions are made and
7 engage in consultation on the potential effects of proposed
8 withdrawals and losses on the waters and water dependent natural
9 resources of the basin;

10 F. to prevent significant adverse impacts of withdrawals and
11 losses on the basin's ecosystems and watersheds;

12 G. to promote interstate and state-provincial comity; and

13 H. to promote an adaptive management approach to the
14 conservation and management of basin water resources, which
15 recognizes, considers and provides adjustments for the
16 uncertainties in, and evolution of, scientific knowledge
17 concerning the basin's waters and water dependent natural
18 resources.

19 Section 1.4. Science.

20 1. The parties commit to provide leadership for the
21 development of a collaborative strategy with other regional
22 partners to strengthen the scientific basis for sound water
23 management decision making under this compact.

24 2. The strategy shall guide the collection and application
25 of scientific information to support:

26 A. an improved understanding of the individual and
27 cumulative impacts of withdrawals from various locations and
28 water sources on the basin ecosystem and to develop a mechanism
29 by which impacts of withdrawals may be assessed;

30 B. the periodic assessment of cumulative impacts of

1 withdrawals, diversions and consumptive uses on a Great Lake and
2 St. Lawrence River watershed basis;

3 C. improved scientific understanding of the waters of the
4 basin;

5 D. improved understanding of the role of groundwater in
6 basin water resources management; and,

7 E. the development, transfer and application of science and
8 research related to water conservation and water use efficiency.

9 ARTICLE 2

10 ORGANIZATION

11 Section 2.1. Council created.

12 The Great Lakes-St Lawrence River Basin Water Resources
13 Council is hereby created as a body politic and corporate, with
14 succession for the duration of this compact, as an agency and
15 instrumentality of the governments of the respective parties.

16 Section 2.2. Council membership.

17 The council shall consist of the governors of the parties, ex
18 officio.

19 Section 2.3. Alternates.

20 Each member of the council shall appoint at least one
21 alternate who may act in his or her place and stead, with
22 authority to attend all meetings of the council and with power
23 to vote in the absence of the member, unless otherwise provided
24 by law of the party for which he or she is appointed, each
25 alternate shall serve during the term of the member appointing
26 him or her, subject to removal at the pleasure of the member. In
27 the event of a vacancy in the Office of Alternate, it shall be
28 filled in the same manner as an original appointment for the
29 unexpired term only.

30 Section 2.4. Voting.

1 1. Each member is entitled to one vote on all matters that
2 may come before the council.

3 2. Unless otherwise stated, the rule of decision shall be by
4 a simple majority.

5 3. The council shall annually adopt a budget for each fiscal
6 year and the amount required to balance the budget shall be
7 apportioned equitably among the parties by unanimous vote of the
8 council. The appropriation of such amounts shall be subject to
9 such review and approval as may be required by the budgetary
10 processes of the respective parties.

11 4. The participation of council members from a majority of
12 the parties shall constitute a quorum for the transaction of
13 business at any meeting of the council.

14 Section 2.5. Organization and procedure.

15 The council shall provide for its own organization and
16 procedure, and may adopt rules and regulations governing its
17 meetings and transactions, as well as the procedures and
18 timeline for submission, review and consideration of proposals
19 that come before the council for its review and action. The
20 council shall organize, annually, by the election of a chair and
21 vice chair from among its members. Each member may appoint an
22 advisor, who may attend all meetings of the council and its
23 committees, but shall not have voting power. The council may
24 employ or appoint professional and administrative personnel,
25 including an executive director, as it may deem advisable, to
26 carry out the purposes of this compact.

27 Section 2.6. Use of existing offices and agencies.

28 It is the policy of the parties to preserve and utilize the
29 functions, powers and duties of existing offices and agencies of
30 government to the extent consistent with this compact. Further,

1 the council shall promote and aid the coordination of the
2 activities and programs of the parties concerned with water
3 resources management in the basin. To this end, but without
4 limitation, the council may:

5 1. advise, consult, contract, assist or otherwise cooperate
6 with any and all such agencies;

7 2. employ any other agency or instrumentality of any of the
8 parties for any purpose; and

9 3. develop and adopt plans consistent with the water
10 resources plans of the parties.

11 Section 2.7. Jurisdiction.

12 The council shall have, exercise and discharge its functions,
13 powers and duties within the limits of the basin. Outside the
14 basin, it may act in its discretion, but only to the extent such
15 action may be necessary or convenient to effectuate or implement
16 its powers or responsibilities within the basin and subject to
17 the consent of the jurisdiction wherein it proposes to act.

18 Section 2.8. Status, immunities and privileges.

19 1. The council, its members and personnel in their official
20 capacity and when engaged directly in the affairs of the
21 council, its property and its assets, wherever located and by
22 whomsoever held, shall enjoy the same immunity from suit and
23 every form of judicial process as is enjoyed by the parties,
24 except to the extent that the council may expressly waive its
25 immunity for the purposes of any proceedings or by the terms of
26 any contract.

27 2. The property and assets of the council, wherever located
28 and by whomsoever held, shall be considered public property and
29 shall be immune from search, requisition, confiscation,
30 expropriation or any other form of taking or foreclosure by

1 executive or legislative action.

2 3. The council, its property and its assets, income and the
3 operations it carries out pursuant to this compact shall be
4 immune from all taxation by or under the authority of any of the
5 parties or any political subdivision thereof; provided, however,
6 that in lieu of property taxes the council may make reasonable
7 payments to local taxing districts in annual amounts which shall
8 approximate the taxes lawfully assessed upon similar property.

9 Section 2.9. Advisory committees.

10 The council may constitute and empower advisory committees,
11 which may be comprised of representatives of the public and of
12 Federal, state, tribal, county and local governments, water
13 resources agencies, water-using industries and sectors, water-
14 interest groups and academic experts in related fields.

15 ARTICLE 3

16 GENERAL POWERS AND DUTIES

17 Section 3.1. General.

18 The waters and water dependent natural resources of the basin
19 are subject to the sovereign right and responsibilities of the
20 parties, and it is the purpose of this compact to provide for
21 joint exercise of such powers of sovereignty by the council in
22 the common interests of the people of the region, in the manner
23 and to the extent provided in this compact. The council and the
24 parties shall use the standard of review and decision and
25 procedures contained in or adopted pursuant to this compact as
26 the means to exercise their authority under this compact.

27 The council may revise the standard of review and decision,
28 after consultation with the provinces and upon unanimous vote of
29 all council members, by regulation duly adopted in accordance
30 with section 3.3 of this compact and in accordance with each

1 party's respective statutory authorities and applicable
2 procedures.

3 The council shall identify priorities and develop plans and
4 policies relating to basin water resources. It shall adopt and
5 promote uniform and coordinated policies for water resources
6 conservation and management in the basin.

7 Section 3.2. Council powers.

8 The council may: plan; conduct research and collect,
9 compile, analyze, interpret, report and disseminate data on
10 water resources and uses; forecast water levels; conduct
11 investigations; institute court actions; design, acquire,
12 construct, reconstruct, own, operate, maintain, control, sell
13 and convey real and personal property and any interest therein
14 as it may deem necessary, useful or convenient to carry out the
15 purposes of this compact; make contracts; receive and accept
16 such payments, appropriations, grants, gifts, loans, advances
17 and other funds, properties and services as may be transferred
18 or made available to it by any party or by any other public or
19 private agency, corporation or individual; and, exercise such
20 other and different powers as may be delegated to it by this
21 compact or otherwise pursuant to law, and have and exercise all
22 powers necessary or convenient to carry out its express powers
23 or which may be reasonably implied therefrom.

24 Section 3.3. Rules and regulations.

25 1. The council may promulgate and enforce such rules and
26 regulations as may be necessary for the implementation and
27 enforcement of this compact. The council may adopt by
28 regulation, after public notice and public hearing, reasonable
29 application fees with respect to those proposals for exceptions
30 that are subject to council review under section 4.9. any rule

1 or regulation of the council, other than one which deals solely
2 with the internal management of the council or its property,
3 shall be adopted only after public notice or hearing.

4 2. Each party, in accordance with its respective statutory
5 authorities and applicable procedures, may adopt and enforce
6 rules and regulations to implement and enforce this compact and
7 the programs adopted by such party to carry out the management
8 programs contemplated by this compact.

9 Section 3.4. Program review and findings.

10 1. Each party shall submit a report to the council and the
11 regional body detailing its water management and conservation
12 and efficiency programs that implement this compact. The report
13 shall set out the manner in which water withdrawals are managed
14 by sector, water source, quantity or any other means, and how
15 the provisions of the standard of review and decision and
16 conservation and efficiency programs are implemented. The first
17 report shall be provided by each party one year from the
18 effective date of this compact and thereafter every 5 years.

19 2. The council, in cooperation with the provinces, shall
20 review its water management and conservation and efficiency
21 programs and those of the parties that are established in this
22 compact and make findings on whether the water management
23 program provisions in this compact are being met, and if not,
24 recommend options to assist the parties in meeting the
25 provisions of this compact. Such review shall take place:

26 A. 30 days after the first report is submitted by all
27 parties; and,

28 B. every five years after the effective date of this
29 compact; and,

30 C. at any other time at the request of one of the parties.

3. As one of its duties and responsibilities, the council may recommend a range of approaches to the parties with respect to the development, enhancement and application of water management and conservation and efficiency programs to implement the standard of review and decision reflecting improved scientific understanding of the waters of the basin, including groundwater, and the impacts of withdrawals on the basin ecosystem.

ARTICLE 4

WATER MANAGEMENT AND REGULATIONS

Section 4.1. Water resources inventory, registration and reporting.

1. Within five years of the effective date of this compact, each party shall develop and maintain a water resources inventory for the collection, interpretation, storage, retrieval, exchange, and dissemination of information concerning the water resources of the party, including, but not limited to, information on the location, type, quantity, and use of those resources and the location, type, and quantity of withdrawals, diversions and consumptive uses. To the extent feasible, the water resources inventory shall be developed in cooperation with local, State, Federal, tribal and other private agencies and entities, as well as the council. Each party's agencies shall cooperate with that party in the development and maintenance of the inventory.

2. The council shall assist each party to develop a common base of data regarding the management of the water resources of the basin and to establish systematic arrangements for the exchange of those data with other states and provinces.

3. To develop and maintain a compatible base of water use

1 information, within five years of the effective date of this
2 compact any person who withdraws water in an amount of 100,000
3 gallons per day or greater average in any 30-day period
4 (including consumptive uses) from all sources, or diverts water
5 of any amount, shall register the withdrawal or diversion by a
6 date set by the council unless the person has previously
7 registered in accordance with an existing state program. The
8 person shall register the withdrawal or diversion with the
9 originating party using a form prescribed by the originating
10 party that shall include, at a minimum and without limitation:
11 the name and address of the registrant and date of registration;
12 the locations and sources of the withdrawal or diversion; the
13 capacity of the withdrawal or diversion per day and the amount
14 withdrawn or diverted from each source; the uses made of the
15 water; places of use and places of discharge; and, such other
16 information as the originating party may require. All
17 registrations shall include an estimate of the volume of the
18 withdrawal or diversion in terms of gallons per day average in
19 any 30-day period.

20 4. All registrants shall annually report the monthly volumes
21 of the withdrawal, consumptive use and diversion in gallons to
22 the originating party and any other information requested by the
23 originating party.

24 5. Each party shall annually report the information gathered
25 pursuant to this section to a Great Lakes-St. Lawrence River
26 water use data base repository and aggregated information shall
27 be made publicly available, consistent with the confidentiality
28 requirements in section 8.3.

29 6. Information gathered by the parties pursuant to this
30 section shall be used to improve the sources and applications of

1 scientific information regarding the waters of the basin and the
2 impacts of the withdrawals and diversions from various locations
3 and water sources on the basin ecosystem, and to better
4 understand the role of groundwater in the basin. The council and
5 the parties shall coordinate the collection and application of
6 scientific information to further develop a mechanism by which
7 individual and cumulative impacts of withdrawals, consumptive
8 uses and diversions shall be assessed.

9 Section 4.2. Water conservation and efficiency programs.

10 1. The council commits to identify, in cooperation with the
11 provinces, basin-wide water conservation and efficiency
12 objectives to assist the parties in developing their water
13 conservation and efficiency program. These objectives are based
14 on the goals of:

15 A. ensuring improvement of the waters and water dependent
16 natural resources;

17 B. protecting and restoring the hydrologic and ecosystem
18 integrity of the basin;

19 C. retaining the quantity of surface water and groundwater
20 in the basin;

21 D. ensuring sustainable use of waters of the basin; and,

22 E. promoting the efficiency of use and reducing losses and
23 waste of water.

24 2. Within two years of the effective date of this compact,
25 each party shall develop its own water conservation and
26 efficiency goals and objectives consistent with the basin-wide
27 goals and objectives, and shall develop and implement a water
28 conservation and efficiency program, either voluntary or
29 mandatory, within its jurisdiction based on the party's goals
30 and objectives. Each party shall annually assess its programs in

1 meeting the party's goals and objectives, report to the council
2 and the regional body and make this annual assessment available
3 to the public.

4 3. Beginning five years after the effective date of this
5 compact, and every five years thereafter, the council, in
6 cooperation with the provinces, shall review and modify as
7 appropriate the basin-wide objectives, and the parties shall
8 have regard for any such modifications in implementing their
9 programs. This assessment will be based on examining new
10 technologies, new patterns of water use, new resource demands
11 and threats, and cumulative impact assessment under section
12 4.15.

13 4. Within two years of the effective date of this compact,
14 the parties commit to promote environmentally sound and
15 economically feasible water conservation measures such as:

- 16 A. measures that promote efficient use of water;
- 17 B. identification and sharing of best management practices
18 and state of the art conservation and efficiency technologies;
- 19 C. application of sound planning principles;
- 20 D. demand-side and supply-side measures or incentives; and,
- 21 E. development, transfer and application of science and
22 research.

23 5. Each party shall implement in accordance with paragraph 2
24 a voluntary or mandatory water conservation program for all,
25 including existing, basin water users. Conservation programs
26 need to adjust to new demands and the potential impacts of
27 cumulative effects and climate.

28 Section 4.3. Party powers and duties.

29 1. Each party, within its jurisdiction, shall manage and
30 regulate new or increased withdrawals, consumptive uses and

1 diversions, including exceptions, in accordance with this
2 compact.

3 2. Each party shall require an applicant to submit an
4 application in such manner and with such accompanying
5 information as the party shall prescribe.

6 3. No party may approve a proposal if the party determines
7 that the proposal is inconsistent with this compact or the
8 standard of review and decision or any implementing rules or
9 regulations promulgated thereunder. The party may approve,
10 approve with modifications or disapprove any proposal depending
11 on the proposal's consistency with this compact and the standard
12 of review and decision.

13 4. Each party shall monitor the implementation of any
14 approved proposal to ensure consistency with the approval and
15 may take all necessary enforcement actions.

16 5. No party shall approve a proposal subject to council or
17 regional review, or both, pursuant to this compact unless it
18 shall have been first submitted to and reviewed by either the
19 council or regional body, or both, and approved by the council,
20 as applicable. Sufficient opportunity shall be provided for
21 comment on the proposal's consistency with this compact and the
22 standard of review and decision. All such comments shall become
23 part of the party's formal record of decision, and the party
24 shall take into consideration any such comments received.

25 Section 4.4. Requirement for originating party approval.

26 No proposal subject to management and regulation under this
27 compact shall hereafter be undertaken by any person unless it
28 shall have been approved by the originating party.

29 Section 4.5. Regional review.

30 1. General.

1 A. It is the intention of the parties to participate in
2 regional review of proposals with the provinces, as described in
3 this compact and the agreement.

4 B. Unless the applicant or the originating party otherwise
5 requests, it shall be the goal of the regional body to conclude
6 its review no later than 90 days after notice under section
7 4.5.2 of such proposal is received from the originating party.

8 C. Proposals for exceptions subject to regional review shall
9 be submitted by the originating party to the regional body for
10 regional review, and where applicable, to the council for
11 concurrent review.

12 D. The parties agree that the protection of the integrity of
13 the Great Lakes - St. Lawrence River Basin ecosystem shall be
14 the overarching principle for reviewing proposals subject to
15 regional review, recognizing uncertainties with respect to
16 demands that may be placed on basin water, including
17 groundwater, levels and flows of the Great Lakes and the St.
18 Lawrence River, future changes in environmental conditions, the
19 reliability of existing data and the extent to which diversions
20 may harm the integrity of the basin ecosystem.

21 E. The originating party shall have lead responsibility for
22 coordinating information for resolution of issues related to
23 evaluation of a proposal, and shall consult with the applicant
24 throughout the regional review process.

25 F. A majority of the members of the regional body may
26 request regional review of a regionally significant or
27 potentially precedent setting proposal. Such regional review
28 must be conducted, to the extent possible, within the time
29 frames set forth in this section. Any such regional review shall
30 be undertaken only after consulting the applicant.

2. Notice from originating party to the regional body.

A. The originating party shall determine if a proposal is subject to regional review. If so, the originating party shall provide timely notice to the regional body and the public.

B. Such notice shall not be given unless and until all information, documents and the originating party's technical review needed to evaluate whether the proposal meets the standard of review and decision have been provided.

C. An originating party may:

I. provide notice to the regional body of an application, even if notification is not required; or

II. request regional review of an application, even if regional review is not required. Any such regional review shall be undertaken only after consulting the applicant.

D. An originating party may provide preliminary notice of a potential proposal.

3. Public participation.

A. To ensure adequate public participation, the regional body shall adopt procedures for the review of proposals that are subject to regional review in accordance with this article.

B. The regional body shall provide notice to the public of proposal undergoing regional review. Such notice shall indicate that the public has an opportunity to comment in writing to the regional body on whether the proposal meets the standard of review and decision.

C. The regional body shall hold a public meeting in the state or province of the originating party in order to receive public comment on the issue of whether the proposal under consideration meets the standard of review and decision.

D. The regional body shall consider the comments received

1 before issuing a declaration of finding.

2 E. The regional body shall forward the comments it receives
3 to the originating party.

4 4. Technical review.

5 A. The originating party shall provide the regional body
6 with its technical review of the proposal under consideration.

7 B. The originating party's technical review shall thoroughly
8 analyze the proposal and provide an evaluation of the proposal
9 sufficient for a determination of whether the proposal meets the
10 standard of review and decision.

11 C. Any member of the regional body may conduct their own
12 technical review of any proposal subject to regional review.

13 D. At the request of the majority of its members, the
14 regional body shall make such arrangements as it considers
15 appropriate for an independent technical review of a proposal.

16 E. All parties shall exercise their best efforts to ensure
17 that a technical review undertaken under sections 4.5.4.C and
18 4.5.4.D does not unnecessarily delay the decision by the
19 originating party on the application. Unless the applicant or
20 the originating party otherwise requests, all technical reviews
21 shall be completed no later than 60 days after the date the
22 notice of the proposal was given to the regional body.

23 5. Declaration of finding.

24 A. The regional body shall meet to consider a proposal. The
25 applicant shall be provided with an opportunity to present the
26 proposal to the regional body at such time.

27 B. The regional body, having considered the notice, the
28 originating party's technical review, any other independent
29 technical review that is made, any comments or objections
30 including the analysis of comments made by the public, first

1 nations and federally recognized tribes, and any other
2 information that is provided under this compact shall issue a
3 declaration of finding that the proposal under consideration:

4 I. meets the standard of review and decision;

5 II. does not meet the standard of review and decision; or

6 III. would meet the standard of review and decision if
7 certain conditions were met.

8 C. An originating party may decline to participate in a
9 declaration of finding made by the regional body.

10 D. The parties recognize and affirm that it is preferable
11 for all members of the regional body to agree whether the
12 proposal meets the standard of review and decision.

13 E. If the members of the regional body who participate in
14 the declaration of finding all agree, they shall issue a written
15 declaration of finding with consensus.

16 F. In the event that the members cannot agree, the regional
17 body shall make every reasonable effort to achieve consensus
18 within 25 days.

19 G. Should consensus not be achieved, the regional body may
20 issue a declaration of finding that presents different points of
21 view and indicates each party's conclusions.

22 H. The regional body shall release the declarations of
23 finding to the public.

24 I. The originating party and the council shall consider the
25 declaration of finding before making a decision on the proposal.

26 Section 4.6. Proposals subject to prior notice.

27 1. Beginning no later than five years of the effective date
28 of this compact, the originating party shall provide all parties
29 and the provinces with detailed and timely notice and an
30 opportunity to comment within 90 days on any proposal for a new

1 or increased consumptive use of 5 million gallons per day or
2 greater average in any 90-day period. Comments shall address
3 whether or not the proposal is consistent with the standard of
4 review and decision. The originating party shall provide a
5 response to any such comment received from another party.

6 2. A party may provide notice, an opportunity to comment and
7 a response to comments even if this is not required under
8 paragraph 1 of this section. Any provision of such notice and
9 opportunity to comment shall be undertaken only after consulting
10 the applicant.

11 Section 4.7. Council actions.

12 1. Proposals for exceptions subject to council review shall
13 be submitted by the originating party to the council for council
14 review, and where applicable, to the regional body for
15 concurrent review.

16 2. The council shall review and take action on proposals in
17 accordance with this compact and the standard of review and
18 decision. The council shall not take action on a proposal
19 subject to regional review pursuant to this compact unless the
20 proposal shall have been first submitted to and reviewed by the
21 regional body. The council shall consider any findings resulting
22 from such review.

23 Section 4.8. Prohibition of new or increased diversions.

24 All new or increased diversions are prohibited, except as
25 provided for in this article.

26 Section 4.9. Exceptions to the prohibition of diversions.

27 1. Straddling communities. A proposal to transfer water to
28 an area within a straddling community but outside the basin or
29 outside the source Great Lake watershed shall be excepted from
30 the prohibition against diversions and be managed and regulated

1 by the originating party provided that, regardless of the volume
2 of water transferred, all the water so transferred shall be used
3 solely for public water supply purposes within the straddling
4 community; and:

5 A. All water withdrawn from the basin shall be returned,
6 either naturally or after use, to the source watershed less an
7 allowance for consumptive use. No surface water or groundwater
8 from outside the basin may be used to satisfy any portion of
9 this criterion except if it:

10 I. is part of a water supply or wastewater treatment system
11 that combines water from inside and outside of the basin;

12 II. is treated to meet applicable water quality discharge
13 standards and to prevent the introduction of invasive species
14 into the basin;

15 III. maximizes the portion of water returned to the source
16 watershed as basin water and minimizes the surface water or
17 groundwater from outside the basin;

18 B. If the proposal results from a new or increased
19 withdrawal of 100,000 gallons per day or greater average over
20 any 90-day period, the proposal shall also meet the exception
21 standard; and

22 C. If the proposal results in a new or increased consumptive
23 use of 5 million gallons per day or greater average over any 90-
24 day period, the proposal shall also undergo regional review.

25 2. Intra-basin transfer. A proposal for an intra-basin
26 transfer that would be considered a diversion under this
27 compact, and not already excepted pursuant to paragraph 1 of
28 this section, shall be excepted from the prohibition against
29 diversions, provided that:

30 A. If the proposal results from a new or increased

1 withdrawal less than 100,000 gallons per day average over any
2 90-day period, the proposal shall be subject to management and
3 regulation at the discretion of the originating party.

4 B. If the proposal results from a new or increased
5 withdrawal 100,000 gallons per day or greater average over any
6 90-day period and if the consumptive use resulting from the
7 withdrawal is less than five million gallons per day average
8 over any 90-day period:

9 I. the proposal shall meet the exception standard and be
10 subject to management and regulation by the originating party,
11 except that the water may be returned to another Great Lake
12 watershed rather than the source watershed;

13 II. the applicant shall demonstrate that there is no
14 feasible, cost effective, and environmentally sound water supply
15 alternative within the Great Lake watershed to which the water
16 will be transferred, including conservation of existing water
17 supplies; and,

18 III. the originating party shall provide notice to the other
19 parties prior to making any decision with respect to the
20 proposal.

21 C. If the proposal results in a new or increased consumptive
22 use of 5 million gallons per day or greater average over any 90-
23 day period:

24 I. the proposal shall be subject to management and
25 regulation by the originating party and shall meet the exception
26 standard, ensuring that water withdrawn shall be returned to the
27 source watershed;

28 II. the applicant shall demonstrate that there is no
29 feasible, cost effective, and environmentally sound water supply
30 alternative within the Great Lake watershed to which the water

1 will be transferred, including conservation of existing water
2 supplies;

3 III. the proposal undergoes regional review; and,

4 IV. the proposal is approved by the council. Council
5 approval shall be given unless one or more council members vote
6 to disapprove.

7 3. Straddling counties. A proposal to transfer water to a
8 community within a straddling county that would be considered a
9 diversion under this compact shall be excepted from the
10 prohibition against diversions, provided that it satisfies all
11 of the following conditions:

12 A. the water shall be used solely for the public water
13 supply purposes of the community within a straddling county that
14 is without adequate supplies of potable water;

15 B. the proposal meets the exception standard, maximizing the
16 portion of water returned to the source watershed as basin water
17 and minimizing the surface water or groundwater from outside the
18 basin;

19 C. the proposal shall be subject to management and
20 regulation by the originating party, regardless of its size;

21 D. there is no reasonable water supply alternative within
22 the basin in which the community is located, including
23 conservation of existing water supplies;

24 E. caution shall be used in determining whether or not the
25 proposal meets the conditions for this exception. This exception
26 should not be authorized unless it can be shown that it will not
27 endanger the integrity of the basin ecosystem;

28 F. the proposal undergoes regional review; and,

29 G. the proposal is approved by the council. Council approval
30 shall be given unless one or more council members vote to

1 disapprove.

2 A proposal must satisfy all of the conditions listed above.

3 Further, substantive consideration will also be given to whether
4 or not the proposal can provide sufficient scientifically based
5 evidence that the existing water supply is derived from
6 groundwater that is hydrologically interconnected to waters of
7 the basin.

8 4. Exception standard. Proposals subject to management and
9 regulation in this section shall be declared to meet this
10 exception standard and may be approved as appropriate only when
11 the following criteria are met:

12 A. the need for all or part of the proposed exception cannot
13 be reasonably avoided through the efficient use and conservation
14 of existing water supplies;

15 B. the exception will be limited to quantities that are
16 considered reasonable for the purposes for which it is proposed;

17 C. all water withdrawn shall be returned, either naturally
18 or after use, to the source watershed less an allowance for
19 consumptive use. No surface water or groundwater from outside
20 the basin may be used to satisfy any portion of this criterion
21 except if it:

22 I. is part of a water supply or wastewater treatment system
23 that combines water from inside and outside of the basin;

24 II. is treated to meet applicable water quality discharge
25 standards and to prevent the introduction of invasive species
26 into the basin.

27 D. The exception will be implemented so as to ensure that it
28 will result in no significant individual or cumulative adverse
29 impacts to the quantity or quality of the waters and water
30 dependent natural resources of the basin with consideration

1 given to the potential cumulative impacts of any precedent-
2 setting consequences associated with the proposal;

3 E. the exception will be implemented so as to incorporate
4 environmentally sound and economically feasible water
5 conservation measures to minimize water withdrawals or
6 consumptive use;

7 F. the exception will be implemented so as to ensure that it
8 is in compliance with all applicable municipal, State or Federal
9 laws as well as regional interstate and international
10 agreements, including the Boundary Waters Treaty of 1909; and,

11 G. all other applicable criteria in section 4.9 have also
12 been met.

13 Section 4.10. Management and regulation of new or increased
14 withdrawals and consumptive uses.

15 1. Within five years of the effective date of this compact,
16 each party shall create a program for the management and
17 regulation of new or increased withdrawals and consumptive uses
18 by adopting and implementing measures consistent with the
19 decision-making standard. Each party, through a considered
20 process, shall set and may modify threshold levels for the
21 regulation of new or increased withdrawals in order to assure an
22 effective and efficient water management program that will
23 ensure that uses overall are reasonable, that withdrawals
24 overall will not result in significant impacts to the waters and
25 water dependent natural resources of the basin, determined on
26 the basis of significant impacts to the physical, chemical, and
27 biological integrity of source watersheds, and that all other
28 objectives of the compact are achieved. Each party may determine
29 the scope and thresholds of its program, including which new or
30 increased withdrawals and consumptive uses will be subject to

1 the program.

2 2. Any party that fails to set threshold levels that comply
3 with section 4.10.1 any time before 10 years after the effective
4 date of this compact shall apply a threshold level for
5 management and regulation of all new or increased withdrawals of
6 100,000 gallons per day or greater average in any 90-day period.

7 3. The parties intend programs for new or increased
8 withdrawals and consumptive uses to evolve as may be necessary
9 to protect basin waters. Pursuant to section 3.4, the council,
10 in cooperation with the provinces, shall periodically assess the
11 water management programs of the parties. Such assessments may
12 produce recommendations for the strengthening of the programs,
13 including without limitation, establishing lower thresholds for
14 management and regulation in accordance with the decision-making
15 standard.

16 Section 4.11. Decision-making standard.

17 Proposals subject to management and regulations in section
18 4.10 shall be declared to meet this decision-making standard and
19 may be approved as appropriate only when the following criteria
20 are met:

21 1. all water withdrawn shall be returned, either naturally
22 or after use, to the source watershed less an allowance for
23 consumptive use;

24 2. the withdrawal or consumptive use will be implemented so
25 as to ensure that the proposal will result in no significant
26 individual or cumulative adverse impacts to the quantity or
27 quality of the waters and water dependent natural resources and
28 the applicable source watershed;

29 3. the withdrawal or consumptive use will be implemented so
30 as to incorporate environmentally sound and economically

1 feasible water conservation measures;

2 4. the withdrawal or consumptive use will be implemented so
3 as to ensure that it is in compliance with all applicable
4 municipal, State and Federal laws as well as regional interstate
5 and international agreements, including the Boundary Waters
6 Treaty of 1909;

7 5. the proposed use is reasonable, based upon a
8 consideration of the following factors:

9 A. whether the proposed withdrawal or consumptive use is
10 planned in a fashion that provides for efficient use of the
11 water, and will avoid or minimize the waste of water;

12 B. if the proposal is for an increased withdrawal or
13 consumptive use, whether efficient use is made of existing water
14 supplies;

15 C. the balance between economic development, social
16 development and environmental protection of the proposed
17 withdrawal and use and other existing or planned withdrawals and
18 water uses sharing the water source;

19 D. the supply potential of the water source, considering
20 quantity, quality, and reliability and safe yield of
21 hydrologically interconnected water sources;

22 E. the probable degree and duration of any adverse impacts
23 caused or expected to be caused by the proposed withdrawal and
24 use under foreseeable conditions, to other lawful consumptive or
25 non-consumptive uses of water or to the quantity or quality of
26 the waters and water dependent natural resources of the basin,
27 and the proposed plans and arrangements for avoidance or
28 mitigation of such impacts; and,

29 F. if a proposal includes restoration of hydrologic
30 conditions and functions of the source watershed, the party may

1 consider that.

2 Section 4.12. Applicability.

3 1. Minimum standard. This standard of review and decision
4 shall be used as a minimum standard. Parties may impose a more
5 restrictive decision-making standard for withdrawals under their
6 authority. It is also acknowledged that although a proposal
7 meets the standards of review and decision it may not be
8 approved under the laws of the originating party that has
9 implemented more restrictive measures.

10 2. Baseline. A. To establish a baseline for determining a
11 new or increased diversion, consumptive use or withdrawal, each
12 party shall develop either or both of the following lists for
13 their jurisdiction:

14 I. a list of existing withdrawal approvals as of the
15 effective date of the compact;

16 II. a list of the capacity of existing systems as of the
17 effective date of this compact. The capacity of the existing
18 systems should be presented in terms of withdrawal capacity,
19 treatment capacity, distribution capacity, or other capacity
20 limiting factors. The capacity of the existing systems must
21 represent the state of the systems. Existing capacity
22 determinations shall be based upon approval limits or the most
23 restrictive capacity information.

24 B. For all purposes of this compact, volumes of diversions,
25 consumptive uses, or withdrawals of water set forth in the
26 list(s) prepared by each party in accordance with this section,
27 shall constitute the baseline volume.

28 C. The list(s) shall be furnished to the regional body and
29 the council within one year of the effective date of this
30 compact.

1 3. Timing of additional applications. Applications for new
2 or increased withdrawals, consumptive uses or exceptions shall
3 be considered cumulatively within ten years of any application.

4 4. Change of ownership. Unless a new owner proposes a
5 project that shall result in a proposal for a new or increased
6 diversion or consumptive use subject to regional review or
7 council approval, the change of ownership in and of itself shall
8 not require regional review or council approval.

9 5. Groundwater. The basin surface water divide shall be
10 used for the purpose of managing and regulating new or increased
11 diversions, consumptive uses or withdrawals of surface water and
12 groundwater.

13 6. Withdrawal systems. The total volume of surface water
14 and groundwater resources that supply a common distribution
15 system shall determine the volume of a withdrawal, consumptive
16 use or diversion.

17 7. Connecting channels. The watershed of each Great Lake
18 shall include its upstream and downstream connecting channels.

19 8. Transmission in water lines. Transmission of water
20 within a line that extends outside the basin as it conveys water
21 from one point to another within the basin shall not be
22 considered a diversion if none of the water is used outside the
23 basin.

24 9. Hydrologic units. The Lake Michigan and Lake Huron
25 watersheds shall be considered to be a single hydrologic unit
26 and watershed.

27 10. Bulk water transfer. A proposal to withdraw water and
28 to remove it from the basin in any container greater than 5.7
29 gallons shall be treated under this compact in the same manner
30 as a proposal for a diversion. Each party shall have the

1 discretion, within its jurisdiction, to determine the treatment
2 of proposals to withdraw water and to remove it from the basin
3 in any container of 5.7 gallons or less.

4 Section 4.13. Exemptions.

5 Withdrawals from the basin for the following purposes are
6 exempt from the requirements of Article 4.

7 1. To supply vehicles, including vessels and aircraft,
8 whether for the needs of the persons or animals being
9 transported or for ballast or other needs related to the
10 operation of the vehicles.

11 2. To use in a non-commercial project on a short-term basis
12 for firefighting, humanitarian or emergency response purposes.

13 Section 4.14. U.S. Supreme Court Decree: Wisconsin et al. v.
14 Illinois et al.

15 1. Notwithstanding any terms of this compact to the
16 contrary, with the exception of paragraph 5 of this section,
17 current, new or increased withdrawals, consumptive uses and
18 diversions of basin water by the State of Illinois shall be
19 governed by the terms of the United States Supreme Court decree
20 in Wisconsin et al. v. Illinois et al. and shall not be subject
21 to the terms of this compact nor any rules or regulations
22 promulgated pursuant to this compact. This means that, with the
23 exception of paragraph 5 of this section, for purposes of this
24 compact, current, new or increased withdrawals, consumptive uses
25 and diversions of basin water within the State of Illinois shall
26 be allowed unless prohibited by the terms of the United States
27 Supreme Court decree in Wisconsin et al. v. Illinois et al.

28 2. The parties acknowledge that the United States Supreme
29 Court decree in Wisconsin et al. v. Illinois et al. shall
30 continue in full force and effect, that this compact shall not

1 modify any terms thereof, and that this compact shall grant the
2 parties no additional rights, obligations, remedies or defenses
3 thereto. The parties specifically acknowledge that this compact
4 shall not prohibit or limit the State of Illinois in any manner
5 from seeking additional basin water as allowed under the terms
6 of the United States Supreme Court decree in Wisconsin et al. v.
7 Illinois et al., any other party from objecting to any request
8 by the State of Illinois for additional basin water under the
9 terms of said decree, or any party from seeking any other type
10 of modification to said decree. If an application is made by any
11 party to the Supreme Court of the United States to modify said
12 decree, the parties to this compact who are also parties to the
13 decree shall seek formal input from the Canadian provinces of
14 Ontario and Quebec, with respect to the proposed modification,
15 use best efforts to facilitate the appropriate participation of
16 said provinces in the proceedings to modify the decree, and
17 shall not unreasonably impede or restrict such participation.

18 3. With the exception of paragraph 5 of this section,
19 because current, new or increased withdrawals, consumptive uses
20 and diversions of basin water by the State of Illinois are not
21 subject to the terms of this compact, the State of Illinois is
22 prohibited from using any term of this compact, including
23 section 4.9, to seek new or increased withdrawals, consumptive
24 uses or diversions of basin water.

25 4. With the exception of paragraph 5 of this section,
26 because sections 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11,
27 4.12 (paragraphs 1, 2, 3, 4, 6 and 10 only), and 4.13 of this
28 compact all relate to current, new or increased withdrawals,
29 consumptive uses and diversions of basin waters, said provisions
30 do not apply to the State of Illinois. All other provisions of

1 this compact not listed in the preceding sentence shall apply to
2 the State of Illinois, including the water conservation programs
3 provisions of section 4.2.

4 5. In the event of a proposal for a diversion of basin water
5 for use outside the territorial boundaries of the parties to
6 this compact, decisions by the State of Illinois regarding such
7 a proposal would be subject to all terms of this compact, except
8 paragraphs 1, 3 and 4 of this section.

9 6. For purposes of the State of Illinois' participation in
10 this compact, the entirety of this section 4.14 is necessary for
11 the continued implementation of this compact and, if severed,
12 this compact shall no longer be binding on or enforceable by or
13 against the State of Illinois.

14 Section 4.15. Assessment of cumulative impacts.

15 1. The parties in cooperation with the provinces shall
16 collectively conduct within the basin, on a lake watershed and
17 St. Lawrence River Basin basis, a periodic assessment of the
18 cumulative impacts of withdrawals, diversions and consumptive
19 uses from the waters of the basin, every 5 years or each time
20 incremental basin water losses reach 50 million gallons per day
21 average in any 90-day period in excess of the quantity at the
22 time of the most recent assessment, whichever comes first, or at
23 the request of one or more of the parties. The assessment shall
24 form the basis for a review of the standard of review and
25 decision, council and party regulations and their application.
26 This assessment shall:

27 A. utilize the most current and appropriate guidelines for
28 such a review, which may include but not be limited to council
29 on environmental quality and Environment Canada guidelines;

30 B. give substantive consideration to climate change or other

1 significant threats to basin waters and take into account the
2 current state of scientific knowledge, or uncertainty, and
3 appropriate measures to exercise caution in cases of uncertainty
4 if serious damage may result;

5 C. consider adaptive management principles and approaches,
6 recognizing, considering and providing adjustments for the
7 uncertainties in, and evolution of science concerning the
8 basin's water resources, watersheds and ecosystems, including
9 potential changes to basin-wide processes, such as lake level
10 cycles and climate.

11 2. The parties have the responsibility of conducting this
12 cumulative impact assessment. Applicants are not required to
13 participate in this assessment.

14 3. Unless required by other statutes, applicants are not
15 required to conduct a separate cumulative impact assessment in
16 connection with an application but shall submit information
17 about the potential impacts of a proposal to the quantity or
18 quality of the waters and water dependent natural resources of
19 the applicable source watershed. An applicant may, however,
20 provide an analysis of how their proposal meets the no
21 significant adverse cumulative impact provision of the standard
22 of review and decision.

23 ARTICLE 5

24 TRIBAL CONSULTATION

25 Section 5.1. Consultation with tribes.

26 1. In addition to all other opportunities to comment
27 pursuant to section 6.2, appropriate consultations shall occur
28 with federally recognized tribes in the originating party for
29 all proposals subject to council or regional review pursuant to
30 this compact. Such consultations shall be organized in the

1 manner suitable to the individual proposal and the laws and
2 policies of the originating party.

3 2. All federally recognized tribes within the basin shall
4 receive reasonable notice indicating that they have an
5 opportunity to comment in writing to the council or the regional
6 body, or both, and other relevant organizations on whether the
7 proposal meets the requirements of the standard of review and
8 decision when a proposal is subject to regional review or
9 council approval. Any notice from the council shall inform the
10 tribes of any meeting or hearing that is to be held under
11 section 6.2 and invite them to attend. The parties and the
12 council shall consider the comments received under this section
13 before approving, approving with modifications or disapproving
14 any proposal subject to council or regional review.

15 3. In addition to the specific consultation mechanisms
16 described above, the council shall seek to establish mutually
17 agreed upon mechanisms or processes to facilitate dialogue with,
18 and input from federally recognized tribes on matters to be
19 dealt with by the council; and, the council shall seek to
20 establish mechanisms and processes with federally recognized
21 tribes designed to facilitate on-going scientific and technical
22 interaction and data exchange regarding matters falling within
23 the scope of this compact. This may include participation of
24 tribal representatives on advisory committees established under
25 this compact or such other processes that are mutually agreed
26 upon with federally recognized tribes individually or through
27 duly authorized intertribal agencies or bodies.

28 ARTICLE 6

29 PUBLIC PARTICIPATION

30 Section 6.1. Meetings, public hearings and records.

1 1. The parties recognize the importance and necessity of
2 public participation in promoting management of the water
3 resources of the basin. Consequently, all meetings of the
4 council shall be open to the public, except with respect to
5 issues of personnel.

6 2. The minutes of the council shall be a public record open
7 to inspection at its offices during regular business hours.

8 Section 6.2. Public participation.

9 It is the intent of the council to conduct public
10 participation processes concurrently and jointly with processes
11 undertaken by the parties and through regional review. To ensure
12 adequate public participation, each party or the council shall
13 ensure procedures for the review of proposals subject to the
14 standard of review and decision consistent with the following
15 requirements:

16 1. Provide public notification of receipt of all
17 applications and a reasonable opportunity for the public to
18 submit comments before applications are acted upon.

19 2. Assure public accessibility to all documents relevant to
20 an application, including public comment received.

21 3. Provide guidance on standards for determining whether to
22 conduct a public meeting(s) or hearing(s) for an application,
23 time and place of such a meeting or hearing, and procedures for
24 conducting of the same.

25 4. Provide the record of decision for public inspection
26 including comments, objections, responses and approvals,
27 approvals with conditions and disapprovals.

28 ARTICLE 7

29 DISPUTE RESOLUTION AND ENFORCEMENT

30 Section 7.1. Good faith implementation.

1 Each of the parties pledges to support implementation of all
2 provisions of this compact, and covenants that its officers and
3 agencies shall not hinder, impair or prevent any other party
4 carrying out any provision of this compact.

5 Section 7.2. Alternative dispute resolution.

6 1. Desiring that this compact be carried out in full, the
7 parties agree that disputes between the parties regarding
8 interpretation, application and implementation of this compact
9 shall be settled by alternative dispute resolution.

10 2. The council, in consultation with the provinces, shall
11 provide by rule procedures for the resolution of disputes
12 pursuant to this section.

13 Section 7.3. Enforcement.

14 1. Any person aggrieved by any action taken by the council
15 pursuant to the authorities contained in this compact shall be
16 entitled to a hearing before the council. Any person aggrieved
17 by a party action shall be entitled to a hearing pursuant to the
18 relevant party's administrative procedures and laws. After
19 exhaustion of such administrative procedures and laws. After
20 exhaustion of such administrative remedies, (I) any aggrieved
21 person shall have the right to judicial review of a council
22 action in the United States District Courts for the District of
23 Columbia or the district court in which the council maintains
24 offices, provided such action is commenced within 90 days; and,
25 (II) any aggrieved person shall have the right to judicial
26 review of a party's action in the relevant party's court of
27 competent jurisdiction, provided that an action or proceeding
28 for such review is commenced within the time frames provided for
29 the by the party's law. For the purposes of this paragraph, a
30 state or province is deemed to be an aggrieved person with

1 respect to any party action pursuant to this compact.

2 2. A. Any party or the council may initiate actions to
3 compel compliance with the provisions of this compact, and the
4 rules and regulations promulgated hereunder by the council.
5 Jurisdiction over such actions is granted to the court of the
6 relevant party, as well as the United States District Courts for
7 the District of Columbia and the district court in which the
8 council maintains offices. The remedies available to any such
9 court shall include, but not be limited to, equitable relief and
10 civil penalties.

11 B. Each party may issue orders within its respective
12 jurisdiction and may initiate actions to compel compliance with
13 the provisions of its respective statutes and regulations
14 adopted to implement the authorities contemplated by this
15 compact in accordance with the provisions of the laws adopted in
16 each party's jurisdiction.

17 3. Any aggrieved person, party or the council may commence a
18 civil action in the relevant party's courts and administrative
19 systems to compel any person to comply with this compact should
20 any such person, without approval having been given, undertake a
21 new or increased withdrawal, consumptive use or diversion that
22 is prohibited or subject to approval pursuant to this compact.

23 A. No action under this subsection may be commenced if:

24 I. the originating party or council approval for the new or
25 increased withdrawal, consumptive use or diversion has been
26 granted; or,

27 II. the originating party or council has found that the new
28 or increased withdrawal, consumptive use or diversion is not
29 subject to approval pursuant to this compact.

30 B. No action under this subsection may be commenced unless:

I. a person commencing such action has first given 60 days prior notice to the originating party, the council and person alleged to be in noncompliance; and,

II. neither the originating party nor the council has commenced and is diligently prosecuting appropriate enforcement actions to compel compliance with this compact.

The available remedies shall include equitable relief, and the prevailing or substantially prevailing party may recover the costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines that such an award is appropriate.

4. Each of the parties may adopt provisions providing additional enforcement mechanisms and remedies including equitable relief and civil penalties applicable within its jurisdiction to assist in the implementation of this compact.

ARTICLE 8

ADDITIONAL PROVISIONS

Section 8.1. Effect on existing rights.

1. Nothing in this compact shall be construed to affect, limit, diminish or impair any rights validly established and existing as of the effective date of this compact under Federal or state law governing the withdrawal of waters of the basin.

2. Nothing contained in this compact shall be construed as affecting or intending to affect or in any way to interfere with the law of the respective parties relating to common law water rights.

3. Nothing in this compact is intended to abrogate or derogate from treaty rights or rights held by any tribe recognized by the Federal Government of the United States based upon its status as a tribe recognized by the Federal Government

1 of the United States.

2 4. An approval by a party or the council under this compact
3 does not give any property rights, nor any exclusive privileges,
4 nor shall it be construed to grant or confer any right, title,
5 easement, or interest in, to or over any land belonging to or
6 held in trust by a party; neither does it authorize any injury
7 to private property or invasion of private rights, nor
8 infringement of Federal, state or local laws or regulations; nor
9 does it obviate the necessity of obtaining Federal assent when
10 necessary.

11 Section 8.2. Relationship to agreements concluded by the United
12 States of America.

13 1. Nothing in this compact is intended to provide nor shall
14 be construed to provide, directly or indirectly, to any person
15 any right, claim or remedy under any treaty or international
16 agreement nor is it intended to derogate any right, claim or
17 remedy that already exists under any treaty or international
18 agreement.

19 2. Nothing in this compact is intended to infringe nor shall
20 be construed to infringe upon the treaty power of the United
21 States of America, nor shall any term hereof be construed to
22 alter or amend any treaty or term thereof that has been or may
23 hereafter be executed by the United States of America.

24 3. Nothing in this compact is intended to affect nor shall
25 be construed to affect the application of the Boundary Waters
26 Treaty of 1909 whose requirements continue to apply in addition
27 to the requirements of this compact.

28 Section 8.3. Confidentiality.

29 1. Nothing in this compact requires a party to breach
30 confidentiality obligations or requirements prohibiting

1 disclosure, or to compromise security of commercially sensitive
2 or proprietary information.

3 2. A party may take measures, including but not limited to
4 deletion and redaction, deemed necessary to protect any
5 confidential, proprietary or commercially sensitive information
6 when distributing information to other parties. The party shall
7 summarize or paraphrase any such information in a manner
8 sufficient for the council to exercise its authorities contained
9 in this compact.

10 Section 8.4. Additional laws.

11 Nothing in this compact shall be construed to repeal, modify
12 or qualify the authority of any party to enact any legislation
13 or enforce any additional conditions and restrictions regarding
14 the management and regulation of waters within its jurisdiction.

15 Section 8.5. Amendments and supplements.

16 The provisions of this compact shall remain in full force and
17 effect until amended by action of the governing bodies of the
18 parties and consented to and approved by any other necessary
19 authority in the same manner as this compact is required to be
20 ratified to become effective.

21 Section 8.6. Severability.

22 Should a court of competent jurisdiction hold any part of
23 this compact to be void or unenforceable, it shall be considered
24 severable from those portions of the compact capable of
25 continued implementation in the absence of the voided
26 provisions. All other provisions capable of continued
27 implementation shall continue in full force and effect.

28 Section 8.7. Duration of compact and termination.

29 Once effective, the compact shall continue in force and
30 remain binding upon each and every party unless terminated.

1 This compact may be terminated at any time by a majority vote
2 of the parties. In the event of such termination, all rights
3 established under it shall continued unimpaired.

4 ARTICLE 9

5 EFFECTUATION

6 Section 9.1. Repealer.

7 All acts and parts of acts inconsistent with this act are to
8 the extent of such inconsistency hereby repealed.

9 Section 9.2. Effectuation by chief executive.

10 The Governor is authorized to take such action as may be
11 necessary and proper in his or her discretion to effectuate the
12 compact and the initial organization and operation hereunder.

13 Section 9.3. Entire agreement.

14 The parties consider this compact to be complete and an
15 integral whole. Each provision of this compact is considered
16 material to the entire compact, and failure to implement or
17 adhere to any provision may be considered a material breach.
18 Unless otherwise noted in this compact, any change or amendment
19 made to the compact by any party in its implementing legislation
20 or by the United States Congress when giving its consent to this
21 compact is not considered effective unless concurred in by all
22 parties.

23 Section 9.4. Effective date and execution.

24 This compact shall become binding and effective when ratified
25 through concurring legislation by the States of Illinois,
26 Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and
27 the Commonwealth of Pennsylvania and consented to by the
28 Congress of the United States. This compact shall be signed and
29 sealed in nine identical original copies by the respective chief
30 executives of the signatory parties. One such copy shall be

1 filed with the Secretary of State of each of the signatory
2 parties or in accordance with the laws of the state in which the
3 filing is made, and one copy shall be filed and retained in the
4 archives of the council upon its organization. The signatures
5 shall be affixed and attested under the following form:

6 In witness whereof, and in evidence of the adoption and
7 enactment into law of this compact by the legislatures of the
8 signatory parties and consent by the Congress of the United
9 States, the respective Governors do hereby, in accordance with
10 the authority conferred by law, sign this compact in nine
11 duplicate original copies, attested by the respective
12 Secretaries of State, and have caused the seals of the
13 respective states to be hereunto affixed this _____ day of
14 (Month), (Year).

15 Section 3. When and how compact becomes operative.

16 (a) General rule.--When the following conditions occur:

17 (1) the Governor executes the Great Lakes-St. Lawrence
18 River Basin Water Resources Compact on behalf of this State
19 and files a verified copy thereof with the Secretary of the
20 Commonwealth;

21 (2) the compact is ratified by one or more other states;
22 and

23 (3) the Congress of the United States confers its
24 consent or approval to the compact,
25 then the compact shall become operative and effective between
26 this State and such other state or states. The Governor is
27 hereby authorized and directed to take such action as may be
28 necessary to complete the exchange of official documents between
29 this State and any other state ratifying the compact.

30 (b) Notice in Pennsylvania Bulletin.--The Secretary of the

1 Commonwealth shall publish a notice in the Pennsylvania Bulletin
2 when the conditions set forth in subsection (a) are satisfied
3 and shall include in the notice the date on which the Great
4 Lakes-St. Lawrence River Basin Water Resources Compact became
5 effective and operative between this State and any other state
6 or states in accordance with this act.

7 Section 4. Expiration.

8 (a) Notice in Pennsylvania Bulletin.--If the Congress of the
9 United States has failed to confer its consent and approval to
10 the compact authorized by this act as of January 1, 2011, then
11 the Secretary of the Commonwealth shall publish a notice in the
12 Pennsylvania Bulletin within 30 days after January 1, 2011,
13 stating such failure.

14 (b) Effect of publication.--This act shall expire
15 immediately upon publication of the notice under subsection (a).

16 Section 5. Effective date.

17 This act shall take effect immediately.