

1 **AN ACT** *to amend* 281.98 (1); and *to create* 14.95 (1), (2), (3), and (4), 281.343 and
 2 281.344 of the statutes; **relating to:** ratifying and implementing the Great Lakes–St.
 3 Lawrence River Basin Water Resources Compact.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was developed by the joint legislative council’s special committee on great lakes water resources compact. The draft ratifies the Great Lakes–St. Lawrence River basin water resources compact (the “compact”) in s. 281.343 and implements and interprets the state’s duties under the compact in ss. 14.95 and 281.344 and in nonstatutory provisions.

[Additional detail to be added in a subsequent version of the draft.]

PREFATORY COMMENT:

The bill draft is composed of the text of WLC: 0141/P1, as amended by the committee at its July 18 and August 7, 2007 meetings, and LRB–0058/P1.

The bill draft contains notes and comments following specific provisions in the draft, as well as a prefatory note and a prefatory comment. All of the notes in this draft are notes under joint legislative rule 59. Under this rule, proposals introduced by the joint legislative council may include explanatory notes. Typically, these notes appear in the original version of the proposal and, if enacted, the session law or act, but not the statutes. The notes are only explanatory and do not constitute any part of the proposed act. Notes throughout this draft are used to indicate how and in which provisions in ss. 14.95 and 281.344 the committee is implementing and interpreting specific provisions in the compact.

The comments in the bill draft are temporary and are used by committee staff to communicate various types of information to the committee, including the origin of drafting instructions, questions from staff to the committee, responses to questions posed by the committee, and background information. All comments will be removed from the final version of the committee’s recommended bill draft.

Subsequent versions of the bill draft will maintain this distinction between notes and comments.

A list of issues relating to the implementation of the compact that have not yet been resolved by the committee is set forth in revised Memo No. 17, *Great Lakes–St. Lawrence River Basin Water Resources Compact Implementation Issues and Related Projects* (August 15, 2007). This Memo also identifies projects being undertaken by committee members and staff and agency liaisons to the committee on various issues and concerns relating to this draft.

In addition, this version of the bill draft does not contain provisions that reconcile requirements for registration and reporting of, and new approvals for, diversions, withdrawals, and consumptive uses required under s. 281.344, as created by this draft, with registration, reporting, and approvals for these activities required under existing law, including ss. 281.34 and 281.35. This version also does not contain appropriate references in existing law to the new statutes created by the draft.

1 **SECTION 1.** 14.95 (1), (2), (3), and (4) of the statutes are created to read:

2 14.95 (1) GREAT LAKES–ST. LAWRENCE RIVER BASIN WATER RESOURCES COUNCIL. There
3 is created a Great Lakes–St. Lawrence River basin water resources council under s. 281.343
4 (2) (a). The governor may take such actions as are necessary for the initial organization and
5 operation of the Great Lakes–St. Lawrence River basin water resources council.

NOTE: This provision implements s. 281.343 (2) (a) and (9) (b).

6 (2) The governor shall serve as this state’s representative on the Great Lakes–St.
7 Lawrence River basin water resources council. In discharging his or her responsibilities under
8 s. 281.343 (2) and (3), the governor may designate the secretary of natural resources, or the
9 secretary’s designee, as the governor’s alternate to attend all meetings of the Great Lakes–St.
10 Lawrence River basin water resources council and to vote at all meetings of the Great
11 Lakes–St. Lawrence River Basin Water Resources Council in the absence of the governor.
12 If the secretary chooses to specify a designee, the designee shall have knowledge of and
13 experience with great lakes water management issues. If the secretary of natural resources
14 chooses to specify a designee, his or her designee shall be nominated by the governor, and with
15 the advice and consent of the senate be appointed to serve at the pleasure of the governor.

NOTE: This provision implements s. 281.343 (2) (c).

1 **(3)** In discharging his or her responsibilities under s. 281.343 (2) and (3), the governor
2 may appoint an advisor to attend all meetings of the Great Lakes–St. Lawrence River Basin
3 Water Resources Council and its committees. The governor’s advisor may not vote at
4 meetings of the council. The advisor shall have knowledge of and experience with Great
5 Lakes water management issues. The advisor shall be nominated by the governor, and with
6 the advice and consent of the senate be appointed to serve at the pleasure of the governor.

NOTE: This section implements s. 281.343 (2) (e).

7 **(4)** The governor or the governor’s alternate may not vote on a resolution that revises
8 the decision–making standard or exception standard in the standard of review and decision
9 under s. 281.343 (1e) (rm) unless the legislature has adopted a [...] expressing the legislature’s
10 approval or disapproval of the resolution. The governor or the governor’s alternate may only
11 cast a vote in accordance with the [...].

NOTE: This provision implements s. 281.343 (3) (a) 2.

COMMENT: See Memo No. 18 for a discussion of alternative ways to structure the legislative oversight in this provision.

12 **SECTION 2.** 281.343 of the statutes is created to read:

13 **281.343 Great Lakes—St. Lawrence River Basin Water Resources Compact. (1)**

14 **RATIFICATION.** The Great Lakes—St. Lawrence River Basin Water Resources Compact,
15 contained in subs. (1e) to (9), is ratified and approved, as implemented and interpreted in ss.
16 14.95, 281.344, and **SECTION 5** of this act.

NOTE: This provision was amended to clarify the relationship between the compact and the implementing legislation.

17 **(1e) DEFINITIONS.** In this section, except as otherwise required by the context:

18 (a) “Adaptive management” means a water resources management system that provides
19 a systematic process for evaluation, monitoring, and learning from the outcomes of

1 operational programs and adjustment of policies, plans, and programs based on experience
2 and the evolution of scientific knowledge concerning water resources and water dependent
3 natural resources.

4 (am) “Agreement” means the Great Lakes—St. Lawrence River Basin Sustainable
5 Water Resources Agreement.

6 (b) “Applicant” means a person who is required to submit a proposal that is subject to
7 management and regulation under this compact. “Application” has a corresponding meaning.

8 (c) “Basin” or “Great Lakes—St. Lawrence River Basin” means the watershed of the
9 Great Lakes and the St. Lawrence River upstream from Trois–Rivieres, Quebec within the
10 jurisdiction of the parties.

11 (cm) “Basin ecosystem” or “Great Lakes—St. Lawrence River Basin ecosystem”
12 means the interacting components of air, land, water, and living organisms, including
13 humankind, within the basin.

14 (d) “Community within a straddling county” means any incorporated city, town, or the
15 equivalent thereof, that is located outside the basin but wholly within a county that lies partly
16 within the basin and that is not a straddling community.

17 (dm) “Compact” means this compact.

18 (e) “Consumptive use” means that portion of the water withdrawn or withheld from the
19 basin that is lost or otherwise not returned to the basin due to evaporation, incorporation into
20 products, or other processes.

21 (em) “Council” means the Great Lakes—St. Lawrence River Basin Water Resources
22 Council, created by this compact.

23 (f) “Council review” means the collective review by the council members as described
24 in subs. (4) to (4z).

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

3 (g) "Cumulative impacts" means the impact on the basin ecosystem that results from
4 incremental effects of all aspects of a withdrawal, diversion, or consumptive use in addition
5 to other past, present, and reasonably foreseeable future withdrawals, diversions, and
6 consumptive uses regardless of who undertakes the other withdrawals, diversions, and
7 consumptive uses. Cumulative impacts can result from individually minor but collectively
8 significant withdrawals, diversions, and consumptive uses taking place over a period of time.

9 (gm) "Decision-making standard" means the decision-making standard established by
10 sub. (4r) for proposals subject to management and regulation in sub. (4p).

11 (h) "Diversion" means a transfer of water from the basin into another watershed, or from
12 the watershed of one of the Great Lakes into that of another by any means of transfer, including
13 but not limited to a pipeline, canal, tunnel, aqueduct, channel, modification of the direction
14 of a water course, a tanker ship, tanker truck, or rail tanker but does not apply to water that
15 is used in the basin or a Great Lake watershed to manufacture or produce a product that is then
16 transferred out of the basin or watershed. "Divert" has a corresponding meaning.

17 (i) "Environmentally sound and economically feasible water conservation measures"
18 mean those measures, methods, technologies, or practices for efficient water use and for
19 reduction of water loss and waste or for reducing a withdrawal, consumptive use, or diversion
20 that are environmentally sound, reflect best practices applicable to the water use sector, are
21 technically feasible and available, are economically feasible and cost effective based on an
22 analysis that considers direct and avoided economic and environmental costs, and consider
23 the particular facilities and processes involved, taking into account the environmental impact,

1 age of equipment and facilities involved, the processes employed, energy impacts, and other
2 appropriate factors.

3 (im) "Exception" means a transfer of water that is excepted under sub. (4n) from the
4 prohibition against diversions in sub. (4m).

5 (j) "Exception standard" means the standard for exceptions established in sub. (4n) (d).

6 (jm) "Intra-basin transfer" means the transfer of water from the watershed of one of the
7 Great Lakes into the watershed of another Great Lake.

8 (k) "Measures" means any legislation, law, regulation, directive, requirement,
9 guideline, program, policy, administrative practice, or other procedure.

10 (km) "New or increased diversion" means a new diversion, an increase in an existing
11 diversion, or the alteration of an existing withdrawal so that it becomes a diversion.

12 (L) "New or increased withdrawal or consumptive use" means a new withdrawal or
13 consumptive use or an increase in an existing withdrawal or consumptive use.

14 (Lm) "Originating party" means the party within whose jurisdiction an application or
15 registration is made or required.

16 (n) "Party" means a state that is a party to this compact.

17 (nm) "Person" means a human being or a legal person, including a government or a
18 nongovernmental organization, including any scientific, professional, business, nonprofit, or
19 public interest organization or association that is neither affiliated with, nor under the direction
20 of a government.

21 (o) 1. "Product" means something produced in the basin by human or mechanical effort
22 or through agricultural processes and used in manufacturing, commercial, or other processes
23 or intended for intermediate or end use consumers.

1 2. Water used as part of the packaging of a product shall be considered to be part of the
2 product.

3 3. Other than water used as part of the packaging of a product, water that is used
4 primarily to transport materials in or out of the basin is not a product or part of a product.

5 4. Except as provided in subd. 2., water that is transferred as part of a public or private
6 supply is not a product or part of a product.

7 5. Water in its natural state such as in lakes, rivers, reservoirs, aquifers, or water basins
8 is not a product.

9 (om) “Proposal” means a withdrawal, diversion, or consumptive use of water that is
10 subject to this compact.

11 (p) “Province” means Ontario or Quebec.

12 (pm) “Public water supply purposes” means water distributed to the public through a
13 physically connected system of treatment, storage, and distribution facilities serving a group
14 of largely residential customers that may also serve industrial, commercial, and other
15 institutional operators. Water withdrawn directly from the basin and not through such a
16 system shall not be considered to be used for public water supply purposes.

17 (q) “Regional body” means the members of the council and the premiers of Ontario and
18 Quebec or their designee as established by the agreement.

19 (qm) “Regional review” means the collective review by the regional body as described
20 in sub. (4h).

21 (r) “Source watershed” means the watershed from which a withdrawal originates. If
22 water is withdrawn directly from a Great Lake or from the St. Lawrence River, then the source
23 watershed shall be considered to be the watershed of that Great Lake or the watershed of the
24 St. Lawrence River, respectively. If water is withdrawn from the watershed of a stream that

1 is a direct tributary to a Great Lake or a direct tributary to the St. Lawrence River, then the
2 source watershed shall be considered to be the watershed of that Great Lake or the watershed
3 of the St. Lawrence River, respectively, with a preference to the direct tributary stream
4 watershed from which it was withdrawn.

5 (rm) "Standard of review and decision" means the exception standard,
6 decision-making standard, and reviews as outlined in subs. (4) to (4z).

7 (s) "State" means one of the states of Illinois, Indiana, Michigan, Minnesota, New York,
8 Ohio, or Wisconsin or the Commonwealth of Pennsylvania.

9 (t) "Straddling community" means any incorporated city, town, or the equivalent
10 thereof, wholly within any county that lies partly or completely within the basin, whose
11 corporate boundary existing as of the effective date of this compact is partly within the basin
12 or partly within 2 Great Lakes watersheds.

13 (u) "Technical review" means a detailed review conducted to determine whether or not
14 a proposal that requires regional review under this compact meets the standard of review and
15 decision following procedures and guidelines as set out in this compact.

16 (v) "Water" means groundwater or surface water contained within the basin.

17 (w) "Water dependent natural resources" means the interacting components of land,
18 water, and living organisms affected by the waters of the basin.

19 (x) "Waters of the basin" or "basin water" means the Great Lakes and all streams, rivers,
20 lakes, connecting channels, and other bodies of water, including tributary groundwater, within
21 the basin.

22 (y) "Withdrawal" means the taking of water from surface water or groundwater.
23 "Withdraw" has a corresponding meaning.

1 **(1m)** FINDINGS AND PURPOSES. The legislative bodies of the respective parties hereby
2 find and declare:

3 (a) Findings:

4 1. The waters of the basin are precious public natural resources shared and held in trust
5 by the states;

6 2. The waters of the basin are interconnected and part of a single hydrologic system;

7 3. The waters of the basin can concurrently serve multiple uses. Such multiple uses
8 include municipal, public, industrial, commercial, agriculture, mining, navigation, energy
9 development and production, recreation, the subsistence, economic, and cultural activities of
10 native peoples, water quality maintenance, and the maintenance of fish and wildlife habitat
11 and a balanced ecosystem. And, other purposes are encouraged, recognizing that such uses
12 are interdependent and must be balanced;

13 4. Future diversions and consumptive uses of basin water resources have the potential
14 to significantly impact the environment, economy, and welfare of the Great Lakes—St.
15 Lawrence River region;

16 5. Continued sustainable, accessible, and adequate water supplies for the people and
17 economy of the basin are of vital importance; and

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

24 (b) Purposes:

1 1. To act together to protect, conserve, restore, improve, and effectively manage the
2 waters and water dependent natural resources of the basin under appropriate arrangements for
3 intergovernmental cooperation and consultation because current lack of full scientific
4 certainty should not be used as a reason for postponing measures to protect the basin
5 ecosystem;

6 2. To remove causes of present and future controversies;

7 3. To provide for cooperative planning and action by the parties with respect to such
8 water resources;

9 4. To facilitate consistent approaches to water management across the basin while
10 retaining state management authority over water management decisions within the basin;

11 5. To facilitate the exchange of data, strengthen the scientific information base upon
12 which decisions are made, and engage in consultation on the potential effects of proposed
13 withdrawals and losses on the waters and water dependent natural resources of the basin;

14 6. To prevent significant adverse impacts of withdrawals and losses on the basin's
15 ecosystems and watersheds;

16 7. To promote interstate and state-provincial comity; and

17 8. To promote an adaptive management approach to the conservation and management
18 of basin water resources that recognizes, considers, and provides adjustments for the
19 uncertainties in, and evolution of, scientific knowledge concerning the basin's waters and
20 water dependent natural resources.

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

1 (b) The strategy shall guide the collection and application of scientific information to
2 support:

3 1. An improved understanding of the individual and cumulative impacts of withdrawals
4 from various locations and water sources on the basin ecosystem and to develop a mechanism
5 by which impacts of withdrawals may be assessed;

6 2. The periodic assessment of cumulative impacts of withdrawals, diversions, and
7 consumptive uses on a Great Lake and St. Lawrence River watershed basis;

8 3. Improved scientific understanding of the waters of the basin;

9 4. Improved understanding of the role of groundwater in basin water resources
10 management; and

11 5. The development, transfer, and application of science and research related to water
12 conservation and water use efficiency.

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

17 (b) *Council membership.* The council shall consist of the governors of the parties, ex
18 officio.

19 (c) *Alternates.* Each member of the council shall appoint at least one alternate who may
20 act in his or her place and stead, with authority to attend all meetings of the council and with
21 power to vote in the absence of the member. Unless otherwise provided by law of the party
22 for which he or she is appointed, each alternate shall serve during the term of the member
23 appointing him or her, subject to removal at the pleasure of the member. In the event of a

1 vacancy in the office of alternate, it shall be filled in the same manner as an original
2 appointment for the unexpired term only.

3 (d) *Voting.* 1. Each member is entitled to one vote on all matters that may come before
4 the council.

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

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

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

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

21 (f) *Use of existing offices and agencies.* It is the policy of the parties to preserve and
22 utilize the functions, powers, and duties of existing offices and agencies of government to the
23 extent consistent with this compact. Further, the council shall promote and aid the

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

3 1. Advise, consult, contract, assist, or otherwise cooperate with any and all such
4 agencies;

5 2. Employ any other agency or instrumentality of any of the parties for any purpose;
6 and

7 3. Develop and adopt plans consistent with the water resources plans of the parties.

8 (g) *Jurisdiction.* The council shall have, exercise, and discharge its functions, powers,
9 and duties within the limits of the basin. Outside the basin, it may act in its discretion, but only
10 to the extent such action may be necessary or convenient to effectuate or implement its powers
11 or responsibilities within the basin and subject to the consent of the jurisdiction wherein it
12 proposes to act.

13 (h) *Status, immunities, and privileges.* 1. The council, its members and personnel in
14 their official capacity and when engaged directly in the affairs of the council, its property, and
15 its assets, wherever located and by whomsoever held, shall enjoy the same immunity from suit
16 and every form of judicial process as is enjoyed by the parties, except to the extent that the
17 council may expressly waive its immunity for the purposes of any proceedings or by the terms
18 of any contract.

19 2. The property and assets of the council, wherever located and by whomsoever held,
20 shall be considered public property and shall be immune from search, requisition,
21 confiscation, expropriation, or any other form of taking or foreclosure by executive or
22 legislative action.

23 3. The council, its property and its assets, income, and the operations it carries out
24 pursuant to this compact shall be immune from all taxation by or under the authority of any

1 of the parties or any political subdivision thereof; provided, however, that in lieu of property
2 taxes the council may make reasonable payments to local taxing districts in annual amounts
3 that shall approximate the taxes lawfully assessed upon similar property.

4 (i) *Advisory committees.* The council may constitute and empower advisory
5 committees, which may be comprised of representatives of the public and of federal, state,
6 tribal, county, and local governments, water resources agencies, water-using industries and
7 sectors, water-interest groups, and academic experts in related fields.

8 **(3) GENERAL POWERS AND DUTIES.** (a) *General.* 1. The waters and water dependent
9 natural resources of the basin are subject to the sovereign right and responsibilities of the
10 parties, and it is the purpose of this compact to provide for joint exercise of such powers of
11 sovereignty by the council in the common interests of the people of the region, in the manner
12 and to the extent provided in this compact. The council and the parties shall use the standard
13 of review and decision and procedures contained in or adopted pursuant to this compact as the
14 means to exercise their authority under this compact.

15 2. The council may revise the standard of review and decision, after consultation with
16 the provinces and upon unanimous vote of all council members, by regulation duly adopted
17 in accordance with par. (c) and in accordance with each party's respective statutory authorities
18 and applicable procedures.

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

22 (b) *Council powers.* The council may plan; conduct research and collect, compile,
23 analyze, interpret, report, and disseminate data on water resources and uses; forecast water
24 levels; conduct investigations; institute court actions; design, acquire, construct, reconstruct,

1 own, operate, maintain, control, sell, and convey real and personal property and any interest
2 therein as it may deem necessary, useful, or convenient to carry out the purposes of this
3 compact; make contracts; receive and accept such payments, appropriations, grants, gifts,
4 loans, advances, and other funds, properties, and services as may be transferred or made
5 available to it by any party or by any other public or private agency, corporation, or individual;
6 and exercise such other and different powers as may be delegated to it by this compact or
7 otherwise pursuant to law, and have and exercise all powers necessary or convenient to carry
8 out its express powers or that may be reasonably implied therefrom.

9 (c) *Rules and regulations.* 1. The council may promulgate and enforce such rules and
10 regulations as may be necessary for the implementation and enforcement of this compact. The
11 council may adopt by regulation, after public notice and public hearing, reasonable
12 application fees with respect to those proposals for exceptions that are subject to council
13 review under sub. (4n). Any rule or regulation of the council, other than one that deals solely
14 with the internal management of the council or its property, shall be adopted only after public
15 notice and hearing.

16 2. Each party, in accordance with its respective statutory authorities and applicable
17 procedures, may adopt and enforce rules and regulations to implement and enforce this
18 compact and the programs adopted by such party to carry out the management programs
19 contemplated by this compact.

20 (d) *Program review and findings.* 1. Each party shall submit a report to the council and
21 the regional body detailing its water management and conservation and efficiency programs
22 that implement this compact. The report shall set out the manner in which water withdrawals
23 are managed by sector, water source, quantity, or any other means, and how the provisions of
24 the standard of review and decision and conservation and efficiency programs are

1 implemented. The first report shall be provided by each party one year from the effective date
2 of this compact and thereafter every 5 years.

3 2. The council, in cooperation with the provinces, shall review its water management
4 and conservation and efficiency programs and those of the parties that are established in this
5 compact and make findings on whether the water management program provisions in this
6 compact are being met, and if not, recommend options to assist the parties in meeting the
7 provisions of this compact. Such review shall take place:

- 8 a. Thirty days after the first report is submitted by all parties; and
9 b. Every 5 years after the effective date of this compact; and
10 c. At any other time at the request of one of the parties.

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

16 **(4) WATER MANAGEMENT AND REGULATION; WATER RESOURCES INVENTORY, REGISTRATION,
17 AND REPORTING.** (a) Within 5 years of the effective date of this compact, each party shall
18 develop and maintain a water resources inventory for the collection, interpretation, storage,
19 retrieval, exchange, and dissemination of information concerning the water resources of the
20 party, including but not limited to information on the location, type, quantity, and use of those
21 resources and the location, type, and quantity of withdrawals, diversions, and consumptive
22 uses. To the extent feasible, the water resources inventory shall be developed in cooperation
23 with local, state, federal, tribal, and other private agencies and entities, as well as the council.

1 Each party's agencies shall cooperate with that party in the development and maintenance of
2 the inventory.

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

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

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

22 (e) Each party shall annually report the information gathered pursuant to this subsection
23 to a Great Lakes—St. Lawrence River water use data base repository and aggregated

1 information shall be made publicly available, consistent with the confidentiality requirements
2 in sub. (8) (c).

3 (f) Information gathered by the parties pursuant to this subsection shall be used to
4 improve the sources and applications of scientific information regarding the waters of the
5 basin and the impacts of the withdrawals and diversions from various locations and water
6 sources on the basin ecosystem and to better understand the role of groundwater in the basin.
7 The council and the parties shall coordinate the collection and application of scientific
8 information to further develop a mechanism by which individual and cumulative impacts of
9 withdrawals, consumptive uses, and diversions shall be assessed.

10 **(4b)** WATER MANAGEMENT AND REGULATION; WATER CONSERVATION AND EFFICIENCY
11 PROGRAMS. (a) The council commits to identify, in cooperation with the provinces,
12 basin-wide water conservation and efficiency objectives to assist the parties in developing
13 their water conservation and efficiency programs. These objectives are based on the goals of:

- 14 1. Ensuring improvement of the waters and water dependent natural resources;
- 15 2. Protecting and restoring the hydrologic and ecosystem integrity of the basin;
- 16 3. Retaining the quantity of surface water and groundwater in the basin;
- 17 4. Ensuring sustainable use of waters of the basin; and
- 18 5. Promoting the efficiency of use and reducing losses and waste of water.

19 (b) Within 2 years of the effective date of this compact, each party shall develop its own
20 water conservation and efficiency goals and objectives consistent with the basin-wide goals
21 and objectives and shall develop and implement a water conservation and efficiency program,
22 either voluntary or mandatory, within its jurisdiction based on the party's goals and objectives.
23 Each party shall annually assess its programs in meeting the party's goals and objectives,

1 report to the council and the regional body, and make this annual assessment available to the
2 public.

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

9 (d) Within 2 years of the effective date of this compact, the parties commit to promote
10 environmentally sound and economically feasible water conservation measures such as:

- 11 1. Measures that promote efficient use of water;
- 12 2. Identification and sharing of best management practices and state of the art
13 conservation and efficiency technologies;
- 14 3. Application of sound planning principles;
- 15 4. Demand-side and supply-side measures or incentives; and
- 16 5. Development, transfer, and application of science and research.

17 (e) Each party shall implement in accordance with par. (b) a voluntary or mandatory
18 water conservation program for all, including existing, basin water users. Conservation
19 programs need to adjust to new demands and the potential impacts of cumulative effects and
20 climate.

21 **(4d) WATER MANAGEMENT AND REGULATION; PARTY POWERS AND DUTIES.** (a) Each party,
22 within its jurisdiction, shall manage and regulate new or increased withdrawals, consumptive
23 uses, and diversions, including exceptions, in accordance with this compact.

1 (b) Each party shall require an applicant to submit an application in such manner and
2 with such accompanying information as the party shall prescribe.

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

8 (d) Each party shall monitor the implementation of any approved proposal to ensure
9 consistency with the approval and may take all necessary enforcement actions.

10 (e) No party shall approve a proposal subject to council or regional review, or both,
11 pursuant to this compact unless it shall have been first submitted to and reviewed by either the
12 council or regional body, or both, and approved by the council, as applicable. Sufficient
13 opportunity shall be provided for comment on the proposal's consistency with this compact
14 and the standard of review and decision. All such comments shall become part of the party's
15 formal record of decision, and the party shall take into consideration any such comments
16 received.

17 **(4f)** WATER MANAGEMENT AND REGULATION; REQUIREMENT FOR ORIGINATING PARTY
18 APPROVAL. No proposal subject to management and regulation under this compact shall
19 hereafter be undertaken by any person unless it shall have been approved by the originating
20 party.

21 **(4h)** WATER MANAGEMENT AND REGULATION; REGIONAL REVIEW. (a) *General.* 1. It is the
22 intention of the parties to participate in regional review of proposals with the provinces, as
23 described in this compact and the agreement.

1 2. Unless the applicant or the originating party otherwise requests, it shall be the goal
2 of the regional body to conclude its review no later than 90 days after notice under par. (b) of
3 such proposal is received from the originating party.

4 3. Proposals for exceptions subject to regional review shall be submitted by the
5 originating party to the regional body for regional review and, where applicable, to the council
6 for concurrent review.

7 4. The parties agree that the protection of the integrity of the Great Lakes—St.
8 Lawrence River Basin ecosystem shall be the overarching principle for reviewing proposals
9 subject to regional review, recognizing uncertainties with respect to demands that may be
10 placed on basin water, including groundwater, levels and flows of the Great Lakes and the St.
11 Lawrence River, future changes in environmental conditions, the reliability of existing data,
12 and the extent to which diversions may harm the integrity of the basin ecosystem.

13 5. The originating party shall have lead responsibility for coordinating information for
14 resolution of issues related to evaluation of a proposal and shall consult with the applicant
15 throughout the regional review process.

16 6. A majority of the members of the regional body may request regional review of a
17 regionally significant or potentially precedent setting proposal. Such regional review must
18 be conducted, to the extent possible, within the time frames set forth in this subsection. Any
19 such regional review shall be undertaken only after consulting the applicant.

20 (b) *Notice from originating party to the regional body.* 1. The originating party shall
21 determine if a proposal is subject to regional review. If so, the originating party shall provide
22 timely notice to the regional body and the public.

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

4 3. An originating party may:

5 a. Provide notice to the regional body of an application, even if notification is not
6 required; or

7 b. Request regional review of an application, even if regional review is not required.

8 Any such regional review shall be undertaken only after consulting the applicant.

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

10 (c) *Public participation.* 1. To ensure adequate public participation, the regional body
11 shall adopt procedures for the review of proposals that are subject to regional review in
12 accordance with subs. (4) to (4z).

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

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

19 4. The regional body shall consider the comments received before issuing a declaration
20 of finding.

21 5. The regional body shall forward the comments it receives to the originating party.

22 (d) *Technical review.* 1. The originating party shall provide the regional body with its
23 technical review of the proposal under consideration.

1 2. The originating party's technical review shall thoroughly analyze the proposal and
2 provide an evaluation of the proposal sufficient for a determination of whether the proposal
3 meets the standard of review and decision.

4 3. Any member of the regional body may conduct the member's own technical review
5 of any proposal subject to regional review.

6 4. At the request of the majority of its members, the regional body shall make such
7 arrangements as it considers appropriate for an independent technical review of a proposal.

8 5. All parties shall exercise their best efforts to ensure that a technical review undertaken
9 under subd. 3. or 4. does not unnecessarily delay the decision by the originating party on the
10 application. Unless the applicant or the originating party otherwise requests, all technical
11 reviews shall be completed no later than 60 days after the date the notice of the proposal was
12 given to the regional body.

13 (e) *Declaration of finding.* 1. The regional body shall meet to consider a proposal. The
14 applicant shall be provided with an opportunity to present the proposal to the regional body
15 at such time.

16 2. The regional body, having considered the notice, the originating party's technical
17 review, any other independent technical review that is made, any comments or objections
18 including the analysis of comments made by the public and first nations and federally
19 recognized tribes, and any other information that is provided under this compact shall issue
20 a declaration of finding that the proposal under consideration:

21 a. Meets the standard of review and decision;

22 b. Does not meet the standard of review and decision; or

23 c. Would meet the standard of review and decision if certain conditions were met.

1 3. An originating party may decline to participate in a declaration of finding made by
2 the regional body.

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

5 5. If the members of the regional body who participate in the declaration of finding all
6 agree, they shall issue a written declaration of finding with consensus.

7 6. In the event that the members cannot agree, the regional body shall make every
8 reasonable effort to achieve consensus within 25 days.

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

11 8. The regional body shall release the declarations of finding to the public.

12 9. The originating party and the council shall consider the declaration of finding before
13 making a decision on the proposal.

14 **(4j)** WATER MANAGEMENT AND REGULATION; PROPOSALS SUBJECT TO PRIOR NOTICE. (a)
15 Beginning no later than 5 years after the effective date of this compact, the originating party
16 shall provide all parties and the provinces with detailed and timely notice and an opportunity
17 to comment within 90 days on any proposal for a new or increased consumptive use of
18 5,000,000 gallons per day or greater average in any 90-day period. Comments shall address
19 whether or not the proposal is consistent with the standard of review and decision. The
20 originating party shall provide a response to any such comment received from another party.

21 (b) A party may provide notice, an opportunity to comment, and a response to
22 comments even if this is not required under par. (a). Any provision of such notice and
23 opportunity to comment shall be undertaken only after consulting the applicant.

1 **(4L)** WATER MANAGEMENT AND REGULATION; COUNCIL ACTIONS. (a) Proposals for
2 exceptions subject to council review shall be submitted by the originating party to the council
3 for council review, and where applicable, to the regional body for concurrent review.

4 (b) The council shall review and take action on proposals in accordance with this
5 compact and the standard of review and decision. The council shall not take action on a
6 proposal subject to regional review pursuant to this compact unless the proposal shall have
7 been first submitted to and reviewed by the regional body. The council shall consider any
8 findings resulting from such review.

9 **(4m)** WATER MANAGEMENT AND REGULATION; PROHIBITION OF NEW OR INCREASED
10 DIVERSIONS. All new or increased diversions are prohibited, except as provided for in sub. (4n).

11 **(4n)** WATER MANAGEMENT AND REGULATION; EXCEPTIONS TO THE PROHIBITION OF
12 DIVERSIONS. (a) *Straddling communities*. A proposal to transfer water to an area within a
13 straddling community but outside the basin or outside the source Great Lake watershed shall
14 be excepted from the prohibition against diversions and be managed and regulated by the
15 originating party provided that, regardless of the volume of water transferred, all of the water
16 so transferred shall be used solely for public water supply purposes within the straddling
17 community, and:

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

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

1 b. Is treated to meet applicable water quality discharge standards and to prevent the
2 introduction of invasive species into the basin;

3 c. Maximizes the portion of water returned to the source watershed as basin water and
4 minimizes the surface water or groundwater from outside the basin;

5 2. If the proposal results from a new or increased withdrawal of 100,000 gallons per day
6 or greater average over any 90-day period, the proposal shall also meet the exception standard;
7 and

8 3. If the proposal results in a new or increased consumptive use of 5,000,000 gallons
9 per day or greater average over any 90-day period, the proposal shall also undergo regional
10 review.

11 (b) *Intra-basin transfer.* A proposal for an intra-basin transfer that would be
12 considered a diversion under this compact, and not already excepted pursuant to par. (a), shall
13 be excepted from the prohibition against diversions, provided that:

14 1. If the proposal results from a new or increased withdrawal of less than 100,000
15 gallons per day average over any 90-day period, the proposal shall be subject to management
16 and regulation at the discretion of the originating party.

17 2. If the proposal results from a new or increased withdrawal of 100,000 gallons per day
18 or greater average over any 90-day period and if the consumptive use resulting from the
19 withdrawal is less than 5,000,000 gallons per day average over any 90-day period:

20 a. The proposal shall meet the exception standard and be subject to management and
21 regulation by the originating party, except that the water may be returned to another Great
22 Lake watershed rather than the source watershed;

1 b. The applicant shall demonstrate that there is no feasible, cost effective, and
2 environmentally sound water supply alternative within the Great Lake watershed to which the
3 water will be transferred, including conservation of existing water supplies; and

4 c. The originating party shall provide notice to the other parties prior to making any
5 decision with respect to the proposal.

6 3. If the proposal results in a new or increased consumptive use of 5,000,000 gallons
7 per day or greater average over any 90-day period:

8 a. The proposal shall be subject to management and regulation by the originating party
9 and shall meet the exception standard, ensuring that water withdrawn shall be returned to the
10 source watershed;

11 b. The applicant shall demonstrate that there is no feasible, cost effective, and
12 environmentally sound water supply alternative within the Great Lake watershed to which the
13 water will be transferred, including conservation of existing water supplies;

14 c. The proposal undergoes regional review; and

15 d. The proposal is approved by the council. Council approval shall be given unless one
16 or more council members vote to disapprove.

17 (c) *Straddling counties.* 1. A proposal to transfer water to a community within a
18 straddling county that would be considered a diversion under this compact shall be excepted
19 from the prohibition against diversions, provided that it satisfies all of the following
20 conditions:

21 a. The water shall be used solely for the public water supply purposes of the community
22 within a straddling county that is without adequate supplies of potable water;

1 b. The proposal meets the exception standard, maximizing the portion of water returned
2 to the source watershed as basin water and minimizing the surface water or groundwater from
3 outside the basin;

4 c. The proposal shall be subject to management and regulation by the originating party,
5 regardless of its size;

6 d. There is no reasonable water supply alternative within the basin in which the
7 community is located, including conservation of existing water supplies;

8 e. Caution shall be used in determining whether or not the proposal meets the conditions
9 for this exception. This exception should not be authorized unless it can be shown that it will
10 not endanger the integrity of the basin ecosystem;

11 f. The proposal undergoes regional review; and

12 g. The proposal is approved by the council. Council approval shall be given unless one
13 or more council members vote to disapprove.

14 2. A proposal must satisfy all of the conditions listed above. Further, substantive
15 consideration will also be given to whether or not the proposal can provide sufficient
16 scientifically based evidence that the existing water supply is derived from groundwater that
17 is hydrologically interconnected to waters of the basin.

18 (d) *Exception standard.* Proposals subject to management and regulation in this
19 subsection shall be declared to meet this exception standard and may be approved as
20 appropriate only when the following criteria are met:

21 1. The need for all or part of the proposed exception cannot be reasonably avoided
22 through the efficient use and conservation of existing water supplies;

23 2. The exception will be limited to quantities that are considered reasonable for the
24 purposes for which it is proposed;

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

4 a. Is part of a water supply or wastewater treatment system that combines water from
5 inside and outside of the basin; and

6 b. Is treated to meet applicable water quality discharge standards and to prevent the
7 introduction of invasive species into the basin;

8 4. The exception will be implemented so as to ensure that it will result in no significant
9 individual or cumulative adverse impacts to the quantity or quality of the waters and water
10 dependent natural resources of the basin with consideration given to the potential cumulative
11 impacts of any precedent–setting consequences associated with the proposal;

12 5. The exception will be implemented so as to incorporate environmentally sound and
13 economically feasible water conservation measures to minimize water withdrawals or
14 consumptive use;

15 6. The exception will be implemented so as to ensure that it is in compliance with all
16 applicable municipal, state, and federal laws as well as regional interstate and international
17 agreements, including the Boundary Waters Treaty of 1909; and

18 7. All other applicable criteria in this subsection have also been met.

19 **(4p)** WATER MANAGEMENT AND REGULATION; MANAGEMENT AND REGULATION OF NEW OR
20 INCREASED WITHDRAWALS AND CONSUMPTIVE USES. (a) Within 5 years of the effective date of
21 this compact, each party shall create a program for the management and regulation of new or
22 increased withdrawals and consumptive uses by adopting and implementing measures
23 consistent with the decision–making standard. Each party, through a considered process, shall
24 set and may modify threshold levels for the regulation of new or increased withdrawals in

1 order to assure an effective and efficient water management program that will ensure that uses
2 overall are reasonable, that withdrawals overall will not result in significant impacts to the
3 waters and water dependent natural resources of the basin, determined on the basis of
4 significant impacts to the physical, chemical, and biological integrity of source watersheds,
5 and that all other objectives of the compact are achieved. Each party may determine the scope
6 and thresholds of its program, including which new or increased withdrawals and
7 consumptive uses will be subject to the program.

8 (b) Any party that fails to set threshold levels that comply with par. (a) any time before
9 10 years after the effective date of this compact shall apply a threshold level for management
10 and regulation of all new or increased withdrawals of 100,000 gallons per day or greater
11 average in any 90-day period.

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

18 **(4r)** WATER MANAGEMENT AND REGULATION; DECISION-MAKING STANDARD. Proposals
19 subject to management and regulation in sub. (4p) shall be declared to meet this
20 decision-making standard and may be approved as appropriate only when the following
21 criteria are met:

22 (a) All water withdrawn shall be returned, either naturally or after use, to the source
23 watershed less an allowance for consumptive use;

1 (b) The withdrawal or consumptive use will be implemented so as to ensure that the
2 proposal will result in no significant individual or cumulative adverse impacts to the quantity
3 or quality of the waters and water dependent natural resources and the applicable source
4 watershed;

5 (c) The withdrawal or consumptive use will be implemented so as to incorporate
6 environmentally sound and economically feasible water conservation measures;

7 (d) The withdrawal or consumptive use will be implemented so as to ensure that it is
8 in compliance with all applicable municipal, state, and federal laws as well as regional
9 interstate and international agreements, including the Boundary Waters Treaty of 1909; and

10 (e) The proposed use is reasonable, based upon a consideration of the following factors:

11 1. Whether the proposed withdrawal or consumptive use is planned in a fashion that
12 provides for efficient use of the water and will avoid or minimize the waste of water;

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

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

18 4. The supply potential of the water source, considering quantity, quality, and reliability
19 and safe yield of hydrologically interconnected water sources;

20 5. The probable degree and duration of any adverse impacts caused or expected to be
21 caused by the proposed withdrawal and use, under foreseeable conditions, to other lawful
22 consumptive or nonconsumptive uses of water or to the quantity or quality of the waters and
23 water dependent natural resources of the basin, and the proposed plans and arrangements for
24 avoidance or mitigation of such impacts; and

1 6. If a proposal includes restoration of hydrologic conditions and functions of the source
2 watershed, the party may consider that.

3 **(4t) WATER MANAGEMENT AND REGULATION; APPLICABILITY.** (a) *Minimum standard.* This
4 standard of review and decision shall be used as a minimum standard. Parties may impose a
5 more restrictive decision-making standard for withdrawals under their authority. It is also
6 acknowledged that although a proposal meets the standard of review and decision it may not
7 be approved under the laws of the originating party that has implemented more restrictive
8 measures.

9 (b) *Baseline.* 1. To establish a baseline for determining a new or increased diversion,
10 consumptive use, or withdrawal, each party shall develop either or both of the following lists
11 for the party's jurisdiction:

12 a. A list of existing withdrawal approvals as of the effective date of the compact.

13 b. A list of the capacity of existing systems as of the effective date of this compact. The
14 capacity of the existing systems should be presented in terms of withdrawal capacity,
15 treatment capacity, distribution capacity, or other capacity limiting factors. The capacity of
16 the existing systems must represent the state of the systems. Existing capacity determinations
17 shall be based upon approval limits or the most restrictive capacity information.

18 2. For all purposes of this compact, volumes of diversions, consumptive uses, or
19 withdrawals of water set forth in the lists prepared by each party in accordance with this
20 paragraph shall constitute the baseline volume.

21 3. The lists shall be furnished to the regional body and the council within one year of
22 the effective date of this compact.

1 (c) *Timing of additional applications.* Applications for new or increased withdrawals,
2 consumptive uses, or exceptions shall be considered cumulatively within 10 years of any
3 application.

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

8 (e) *Groundwater.* The basin surface water divide shall be used for the purpose of
9 managing and regulating new or increased diversions, consumptive uses, or withdrawals of
10 surface water and groundwater.

11 (f) *Withdrawal systems.* The total volume of surface water and groundwater resources
12 that supply a common distribution system shall determine the volume of a withdrawal,
13 consumptive use, or diversion.

14 (g) *Connecting channels.* The watershed of each Great Lake shall include its upstream
15 and downstream connecting channels.

16 (h) *Transmission in water lines.* Transmission of water within a line that extends outside
17 the basin as it conveys water from one point to another within the basin shall not be considered
18 a diversion if none of the water is used outside the basin.

19 (i) *Hydrologic units.* The Lake Michigan and Lake Huron watersheds shall be
20 considered to be a single hydrologic unit and watershed.

21 (j) *Bulk water transfer.* A proposal to withdraw water and to remove it from the basin
22 in any container greater than 5.7 gallons shall be treated under this compact in the same manner
23 as a proposal for a diversion. Each party shall have the discretion, within its jurisdiction, to

1 determine the treatment of proposals to withdraw water and to remove it from the basin in any
2 container of 5.7 gallons or less.

3 (4v) WATER MANAGEMENT AND REGULATION; EXEMPTIONS. Withdrawals from the basin
4 for the following purposes are exempt from the requirements of subs. (4) to (4z):

5 (a) To supply vehicles, including vessels and aircraft, whether for the needs of the
6 persons or animals being transported or for ballast or other needs related to the operation of
7 the vehicles.

8 (b) To use in a noncommercial project on a short-term basis for fire fighting,
9 humanitarian, or emergency response purposes.

10 (4x) WATER MANAGEMENT AND REGULATION; U.S. SUPREME COURT DECREE IN WISCONSIN
11 ET AL. V. ILLINOIS ET AL. (a) Notwithstanding any terms of this compact to the contrary, with
12 the exception of par. (e), current, new, or increased withdrawals, consumptive uses, and
13 diversions of basin water by the state of Illinois shall be governed by the terms of the United
14 States Supreme Court decree in *Wisconsin et al. v. Illinois et al.* and shall not be subject to the
15 terms of this compact nor any rules or regulations promulgated pursuant to this compact. This
16 means that, with the exception of par. (e), for purposes of this compact, current, new, or
17 increased withdrawals, consumptive uses, and diversions of basin water within the state of
18 Illinois shall be allowed unless prohibited by the terms of the United States Supreme Court
19 decree in *Wisconsin et al. v. Illinois et al.*

20 (b) The parties acknowledge that the United States Supreme Court decree in *Wisconsin*
21 *et al. v. Illinois et al.* shall continue in full force and effect, that this compact shall not modify
22 any terms thereof, and that this compact shall grant the parties no additional rights,
23 obligations, remedies, or defenses thereto. The parties specifically acknowledge that this
24 compact shall not prohibit or limit the state of Illinois in any manner from seeking additional

1 basin water as allowed under the terms of the United States Supreme Court decree in
2 *Wisconsin et al. v. Illinois et al.*, any other party from objecting to any request by the state of
3 Illinois for additional basin water under the terms of said decree, or any party from seeking
4 any other type of modification to said decree. If an application is made by any party to the
5 Supreme Court of the United States to modify said decree, the parties to this compact who are
6 also parties to the decree shall seek formal input from the Canadian Provinces of Ontario and
7 Quebec with respect to the proposed modification, shall use best efforts to facilitate the
8 appropriate participation of said provinces in the proceedings to modify the decree, and shall
9 not unreasonably impede or restrict such participation.

10 (c) With the exception of par. (e), because current, new, or increased withdrawals,
11 consumptive uses, and diversions of basin water by the state of Illinois are not subject to the
12 terms of this compact, the state of Illinois is prohibited from using any term of this compact,
13 including sub. (4n), to seek new or increased withdrawals, consumptive uses, or diversions
14 of basin water.

15 (d) With the exception of par. (e), because subs. (4d), (4f), (4h), (4j), (4L), (4m), (4n),
16 (4p), (4r), (4t) (a), (b), (c), (d), (f), and (j), and (4v) all relate to current, new, or increased
17 withdrawals, consumptive uses, and diversions of basin waters, said provisions do not apply
18 to the state of Illinois. All other provisions of this compact not listed in the preceding sentence
19 shall apply to the state of Illinois, including the water conservation programs provision of sub.
20 (4b).

21 (e) In the event of a proposal for a diversion of basin water for use outside the territorial
22 boundaries of the parties to this compact, decisions by the state of Illinois regarding such a
23 proposal would be subject to all terms of this compact, except pars. (a), (c), and (d).

1 (f) For purposes of the state of Illinois' participation in this compact, the entirety of this
2 subsection is necessary for the continued implementation of this compact and, if severed, this
3 compact shall no longer be binding on or enforceable by or against the state of Illinois.

4 **(4z) WATER MANAGEMENT AND REGULATION; ASSESSMENT OF CUMULATIVE IMPACTS. (a)**

5 The parties in cooperation with the provinces shall collectively conduct within the basin, on
6 a lake watershed and St. Lawrence River basin basis, a periodic assessment of the cumulative
7 impacts of withdrawals, diversions, and consumptive uses from the waters of the basin, every
8 5 years or each time the incremental basin water losses reach 50,000,000 gallons per day
9 average in any 90–day period in excess of the quantity at the time of the most recent
10 assessment, whichever comes first, or at the request of one or more of the parties. The
11 assessment shall form the basis for a review of the standard of review and decision, council
12 and party regulations, and their application. This assessment shall:

13 1. Utilize the most current and appropriate guidelines for such a review, which may
14 include but not be limited to council on environmental quality and environment Canada
15 guidelines;

16 2. Give substantive consideration to climate change or other significant threats to basin
17 waters and take into account the current state of scientific knowledge, or uncertainty, and
18 appropriate measures to exercise caution in cases of uncertainty if serious damage may result;
19 and

20 3. Consider adaptive management principles and approaches, recognizing, considering,
21 and providing adjustments for the uncertainties in, and evolution of, science concerning the
22 basin's water resources, watersheds, and ecosystems, including potential changes to
23 basin–wide processes, such as lake level cycles and climate.

1 (b) The parties have the responsibility of conducting this cumulative impact
2 assessment. Applicants are not required to participate in this assessment.

3 (c) Unless required by other statutes, applicants are not required to conduct a separate
4 cumulative impact assessment in connection with an application but shall submit information
5 about the potential impacts of a proposal to the quantity or quality of the waters and water
6 dependent natural resources of the applicable source watershed. An applicant may, however,
7 provide an analysis of how the applicant's proposal meets the no significant adverse
8 cumulative impact provision of the standard of review and decision.

9 **(5) CONSULTATION WITH TRIBES.** (a) In addition to all other opportunities to comment
10 pursuant to sub. (6) (b), appropriate consultations shall occur with federally recognized tribes
11 in the originating party for all proposals subject to council or regional review pursuant to this
12 compact. Such consultations shall be organized in the manner suitable to the individual
13 proposal and the laws and policies of the originating party.

14 (b) All federally recognized tribes within the basin shall receive reasonable notice
15 indicating that they have an opportunity to comment in writing to the council or the regional
16 body, or both, and other relevant organizations on whether the proposal meets the
17 requirements of the standard of review and decision when a proposal is subject to regional
18 review or council approval. Any notice from the council shall inform the tribes of any meeting
19 or hearing that is to be held under sub. (6) (b) and invite them to attend. The parties and the
20 council shall consider the comments received under this subsection before approving,
21 approving with modifications, or disapproving any proposal subject to council or regional
22 review.

23 (c) In addition to the specific consultation mechanisms described above, the council
24 shall seek to establish mutually agreed upon mechanisms or processes to facilitate dialogue

1 with, and input from, federally recognized tribes on matters to be dealt with by the council;
2 and the council shall seek to establish mechanisms and processes with federally recognized
3 tribes designed to facilitate ongoing scientific and technical interaction and data exchange
4 regarding matters falling within the scope of this compact. This may include participation of
5 tribal representatives on advisory committees established under this compact or such other
6 processes that are mutually agreed upon with federally recognized tribes individually or
7 through duly authorized intertribal agencies or bodies.

8 (6) PUBLIC PARTICIPATION. (a) *Meetings, public hearings, and records.* 1. The parties
9 recognize the importance and necessity of public participation in promoting management of
10 the water resources of the basin. Consequently, all meetings of the council shall be open to
11 the public, except with respect to issues of personnel.

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

14 (b) *Public participation.* It is the intent of the council to conduct public participation
15 processes concurrently and jointly with processes undertaken by the parties and through
16 regional review. To ensure adequate public participation, each party or the council shall
17 ensure procedures for the review of proposals subject to the standard of review and decision
18 consistent with the following requirements:

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

21 2. Assure public accessibility to all documents relevant to an application, including
22 public comment received.

1 3. Provide guidance on standards for determining whether to conduct a public meeting
2 or hearing for an application, time and place of such a meeting or hearing, and procedures for
3 conducting of the same.

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

6 **(7)** DISPUTE RESOLUTION AND ENFORCEMENT; GOOD FAITH IMPLEMENTATION. Each of the
7 parties pledges to support implementation of all provisions of this compact, and covenants that
8 its officers and agencies shall not hinder, impair, or prevent any other party carrying out any
9 provision of this compact.

10 **(7g)** DISPUTE RESOLUTION AND ENFORCEMENT; ALTERNATIVE DISPUTE RESOLUTION. (a)
11 Desiring that this compact be carried out in full, the parties agree that disputes between the
12 parties regarding interpretation, application, and implementation of this compact shall be
13 settled by alternative dispute resolution.

14 (b) The council, in consultation with the provinces, shall provide by rule procedures for
15 the resolution of disputes pursuant to this subsection.

16 **(7r)** DISPUTE RESOLUTION AND ENFORCEMENT; ENFORCEMENT. (a) Any person aggrieved
17 by any action taken by the council pursuant to the authorities contained in this compact shall
18 be entitled to a hearing before the council. Any person aggrieved by a party action shall be
19 entitled to a hearing pursuant to the relevant party's administrative procedures and laws. After
20 exhaustion of such administrative remedies, any aggrieved person shall have the right to
21 judicial review of a council action in the United States district court for the District of
22 Columbia or the district court in which the council maintains offices, provided such action is
23 commenced within 90 days; and any aggrieved person shall have the right to judicial review
24 of a party's action in the relevant party's court of competent jurisdiction, provided that an

1 action or proceeding for such review is commenced within the time frames provided for by
2 the party's law. For the purposes of this paragraph, a state or province is deemed to be an
3 aggrieved person with respect to any party action pursuant to this compact.

4 (b) 1. Any party or the council may initiate actions to compel compliance with the
5 provisions of this compact, and the rules and regulations promulgated hereunder by the
6 council. Jurisdiction over such actions is granted to the court of the relevant party, as well as
7 the United States district court for the District of Columbia and the district court in which the
8 council maintains offices. The remedies available to any such court shall include, but not be
9 limited to, equitable relief and civil penalties.

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

14 (c) 1. Any aggrieved person, party, or the council may commence a civil action in the
15 relevant party's courts and administrative systems to compel any person to comply with this
16 compact should any such person, without approval having been given, undertake a new or
17 increased withdrawal, consumptive use, or diversion that is prohibited or subject to approval
18 pursuant to this compact.

19 2. No action under this paragraph may be commenced if:

20 a. The originating party or council approval for the new or increased withdrawal,
21 consumptive use, or diversion has been granted; or

22 b. The originating party or council has found that the new or increased withdrawal,
23 consumptive use, or diversion is not subject to approval pursuant to this compact.

24 3. No action under this paragraph may be commenced unless:

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

3 b. Neither the originating party nor the council has commenced and is diligently
4 prosecuting appropriate enforcement actions to compel compliance with this compact.

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

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

12 **(8) ADDITIONAL PROVISIONS.** (a) *Effect on existing rights.* 1. Nothing in this compact
13 shall be construed to affect, limit, diminish, or impair any rights validly established and
14 existing as of the effective date of this compact under state or federal law governing the
15 withdrawal of waters of the basin.

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

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

22 4. An approval by a party or the council under this compact does not give any property
23 rights, nor any exclusive privileges, nor shall it be construed to grant or confer any right, title,
24 easement, or interest in, to, or over any land belonging to or held in trust by a party; neither

1 does it authorize any injury to private property or invasion of private rights, nor infringement
2 of federal, state, or local laws or regulations; nor does it obviate the necessity of obtaining
3 federal assent when necessary.

4 (b) *Relationship to agreements concluded by the United States of America.* 1. Nothing
5 in this compact is intended to provide nor shall be construed to provide, directly or indirectly,
6 to any person any right, claim, or remedy under any treaty or international agreement nor is
7 it intended to derogate any right, claim, or remedy that already exists under any treaty or
8 international agreement.

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

13 3. Nothing in this compact is intended to affect nor shall be construed to affect the
14 application of the Boundary Waters Treaty of 1909 whose requirements continue to apply in
15 addition to the requirements of this compact.

16 (c) *Confidentiality.* 1. Nothing in this compact requires a party to breach confidentiality
17 obligations or requirements prohibiting disclosure or to compromise security of commercially
18 sensitive or proprietary information.

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

1 (d) *Additional laws.* Nothing in this compact shall be construed to repeal, modify, or
2 qualify the authority of any party to enact any legislation or enforce any additional conditions
3 and restrictions regarding the management and regulation of waters within its jurisdiction.

4 (e) *Amendments and supplements.* The provisions of this compact shall remain in full
5 force and effect until amended by action of the governing bodies of the parties and consented
6 to and approved by any other necessary authority in the same manner as this compact is
7 required to be ratified to become effective.

8 (f) *Severability.* Should a court of competent jurisdiction hold any part of this compact
9 to be void or unenforceable, it shall be considered severable from those portions of the
10 compact capable of continued implementation in the absence of the voided provisions. All
11 other provisions capable of continued implementation shall continue in full force and effect.

12 (g) *Duration of compact and termination.* 1. Once effective, the compact shall continue
13 in force and remain binding upon each and every party unless terminated.

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

16 (9) EFFECTUATION. (b) *Effectuation by chief executive.* The governor is authorized to
17 take such action as may be necessary and proper in his or her discretion to effectuate the
18 compact and the initial organization and operation thereunder.

19 (c) *Entire agreement.* The parties consider this compact to be complete and an integral
20 whole. Each provision of this compact is considered material to the entire compact, and failure
21 to implement or adhere to any provision may be considered a material breach. Unless
22 otherwise noted in this compact, any change or amendment made to the compact by any party
23 in its implementing legislation or by the U.S. Congress when giving its consent to this compact
24 is not considered effective unless concurred in by all parties.

1 (d) *Effective date and execution.* This compact shall become binding and effective
2 when ratified through concurring legislation by the states of Illinois, Indiana, Michigan,
3 Minnesota, New York, Ohio, and Wisconsin and the Commonwealth of Pennsylvania and
4 consented to by the U.S. Congress.

5 **SECTION 3.** 281.344 of the statutes is created to read:

6 **281.344 Water resources regulation and conservation. (1) DEFINITIONS.** In this
7 section:

COMMENT: This subsection does not include certain definitions provided in s. 281.343 (1e). These definitions are the following:

“Adaptive management” is not included because that term is not used in connection with the implementation of the compact.

“Agreement” is not included because the name of the agreement is included in the definition of “regional body under sub. (1) (q) of this draft.

“Applicant” is not defined in s. 281.344 pending clarifying drafting instructions.

“Council review” is not included because council review is described in the relevant regulatory sections of s. 281.344.

“Decision–making standard” is not included because s. 281.344 uses cross–references to the provision containing the standard under sub. (6).

“Exception” is not included because the word is not used in s. 281.344 except as part of the term “exception standard”.

The terms “measures”, “new or increased diversion”, and “originating party” do not need to be defined in s. 281.344.

“Proposal” is not included because of the way the word is used in s. 281.344.

“Province” is not needed in s. 281.344.

“Standard of review and decision” is not needed in s. 281.344.

“State” is not needed in s. 281.344.

“Water”, as defined in s. 281.343 (1e) (r), is not included in s. 281.344 because the word is used also to refer to water that is not in the basin.

1 (c) "Basin" means the watershed of the Great Lakes and the St. Lawrence River
2 upstream from Trois-Rivieres, Quebec within the jurisdiction of the parties.

NOTE: This provision is identical to s. 281.343 (1e) (c) except that it does not include "Great Lakes-St. Lawrence River Basin" as an alternate term being defined, as it is contrary to Wisconsin drafting practices to define 2 terms to mean the same thing.

3 (cm) "Basin ecosystem" means the interacting components of air, land, water, and
4 living organisms, including humans, within the basin.

NOTE: This provision clarifies s. 281.343 (1e) (cm) and is substantively identical to the compact's provision.

5 (d) "Community within a straddling county" means any city, village, or town that is not
6 a straddling community and that is located outside the basin but wholly within a county that
7 lies partly within the basin.

NOTE: This provision interprets s. 281.343 (1e) (d) by removing the terms "incorporated" and "or the equivalent thereof" from the definition of a community within a straddling county and adding the term "village" to this definition.

COMMENT: At the August 7, 2007 committee meeting, committee staff were asked to identify all general and special purpose units of local government that can provide a public water supply, including a regional water supply, for a subsequent meeting.

The committee also decided not to include in this definition or the definition of "straddling community" in par. (t) any date on which the boundaries of these entities are established. Mr. Reopelle requested the opportunity to present an alternative to using a date certain for establishing the boundaries at a subsequent meeting.

The definition of "municipal water system" in s. 160.257 (1) (c) identifies the following types of entities that can own a "community water system", as defined in s. 281.62 (1) (a): a city, village, town, county, town sanitary district, utility district, public inland lake protection and rehabilitation district (if it has town sanitary district powers), municipal water district, or a privately owned water utility serving any of the foregoing.

Under s. 66.0823 any specified local governmental unit may contract with one or more local governmental units or federally recognized Indian

tribe or band located in the state “to establish a separate governmental entity, to be known as a joint local water authority, to jointly produce, treat, store, transmit, distribute, purchase, sell or exchange water, in whole or in part for the benefit of the contracting parties”.

In addition, specified governmental entities may contract with other governmental entities and with federally recognized Indian tribes and bands in this state for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law under the general intergovernmental cooperation statute in s. 66.0301 (2).

In reviewing this definition of “community within a straddling county”, the committee should be mindful that this term is only used to identify in s. 281.344 (4) (e) 1. (intro.), the geographic area in which an excepted diversion must be used to provide a public water supply. The term is not used in s. 281.344 (4) (e) to identify who must provide the public water supply or who may apply to the Department of Natural Resources (DNR) for the excepted diversion.

Similarly, the term “straddling community”, which is defined in s. 281.344 (1) (t), is only used to identify a geographic area in which another type of excepted diversion must be used to provide a public water supply. See s. 281.344 (4) (c) 1. (intro.).

1 (dm) “Compact” means the Great Lakes–St. Lawrence River Basin Water Resources
2 Compact under s. 281.343.

NOTE: This provision clarifies s. 281.343 (1e) (dm) and is substantively identical to the compact’s provision.

3 (dr) “Compact’s effective date” means the effective date of the compact under s.
4 281.343 (9) (d).

NOTE: This provision adds a new definition for purposes of implementing the compact under s. 281.344.

5 (e) “Consumptive use” means water that is withdrawn or withheld from the basin and
6 that is lost or otherwise not returned to the basin due to evaporation, incorporation into
7 products, or other processes, or water that is withdrawn or withheld from the upper Mississippi
8 river basin and that is lost or otherwise not returned to the upper Mississippi river basin due
9 to evaporation, incorporation into products, or other processes.

NOTE: This provision clarifies s. 281.343 (1e) (e) by conforming the definition to its principal use in s. 281.343 as a type of water use, rather than an amount of water use, and expands the compact's definition to also apply outside of the "basin" in the upper Mississippi river basin. This expanded applicability is necessary since some of the provisions in s. 281.343 that use the term "consumptive use" apply statewide, including the reporting requirements in s. 281.343 (3) (e).

COMMENT: Committee staff noted at the August 7, 2007 committee meeting some of the ambiguities in this definition.

- 1 (ed) "Cost-effective" means minimizing the total resources costs, including monetary
 2 costs and environmental and other non-monetary costs, over the applicable planning period
 3 based on a systematic comparison of alternatives.

NOTE: This provision adds a new definition for purposes of implementing and interpreting the use of this phrase in s. 281.344.

COMMENT: At its July 18, 2007 meeting, after discussing s. 281.343 (4n) (b) 2. b., the committee directed that a definition of "cost effective" be added to the draft based on the definition of "cost-effective analysis" in the DNR's wastewater program rules in ss. NR 110.03 (11) and 121.03 (5), Wis. Adm. Code. This definition is:

"Cost-effective analysis" means a systematic comparison of alternative means of meeting state water quality standards, effluent limitations, or other treatment standards in order to identify the alternative which will minimize the total resources costs over the planning period. These resources costs include monetary costs and environmental as well as other non-monetary costs.

The content of a cost-effective analysis for a proposed sewage treatment facility project is set forth in s. NR 110.09 (2).

"Cost-effective" is used in the following provisions in this draft: the definition of "environmentally sound and economically feasible water conservation measures" and the requirements for no water supply alternative for intrabasin transfers, in s. 281.344 (1) (i) and (4) (d) 2. b. and 3. b.

The committee should review this definition to ensure that it meets its intent.

- 4 (em) "Council" means the Great Lakes-St. Lawrence River Basin Water Resources
 5 Council, created under s. 281.343 (2) (a).

NOTE: This provision clarifies s. 281.343 (1e) (em) and is substantively identical to the compact's provision.

1 (fm) "County" has the meaning specified in ch. 2 with the boundaries that exist as of
2 December 13, 2005.

NOTE: This provision implements s. 281.343 (1e) (fm) and is substantively identical to the compact's provision.

3 (g) "Cumulative impacts" means the impacts on the basin ecosystem that result from
4 incremental effects of all aspects of a withdrawal, diversion, or consumptive use in addition
5 to other past, present, and reasonably foreseeable future withdrawals, diversions, and
6 consumptive uses regardless of who undertakes the other withdrawals, diversions, and
7 consumptive uses, including individually minor but collectively significant withdrawals,
8 diversions, and consumptive uses taking place over a period of time.

NOTE: This provision is substantively identical to s. 281.343 (1e) (g).

COMMENT: At the August 7, 2007 committee meeting, Mr. Lisak raised concerns over this definition in both ss. 281.343 and 281.344. The committee agreed to defer discussing this definition until a subsequent meeting.

9 (h) "Diversion" means a transfer of water from the basin into a watershed outside the
10 basin, or from the watershed of one of the Great Lakes into that of another, by any means of
11 transfer, including a pipeline, canal, tunnel, aqueduct, channel, modification of the direction
12 of a water course, tanker ship, tanker truck, or rail tanker, except that "diversion" does not
13 include any of the following:

14 1. The transfer of a product produced in the basin or in the watershed of one of the Great
15 Lakes, using waters of the basin, out of the basin or out of that watershed.

16 2. The transmission of water within a line that extends outside the basin as it conveys
17 water from one point to another within the basin if no water is used outside the basin.

1 (hm) “Divert” means to transfer water from the basin into a watershed outside the basin,
2 or from the watershed of one of the Great Lakes into that of another, by any means of transfer,
3 including a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water
4 course, tanker ship, tanker truck, or rail tanker, except that “divert” does not include any of
5 the following:

6 1. The transfer of a product produced in the basin or in the watershed of one of the Great
7 Lakes, using waters of the basin, out of the basin or out of that watershed.

8 2. The transmission of water within a line that extends outside the basin as it conveys
9 water from one point to another within the basin if no water is used outside the basin.

NOTE: Paragraphs (h) and (hm) implement s. 281.343 (1e) (h) and incorporate s. 281.343 (4t) (h). These provisions clarify s. 281.343 (1e) (h) by creating separate definitions of “diversion” and “divert” and are substantively identical to the compact’s provisions.

10 (i) “Environmentally sound and economically feasible water conservation measures”
11 mean those measures, methods, or technologies for efficient water use and for reducing water
12 loss and waste or for reducing a withdrawal, consumptive use, or diversion that are, taking into
13 account environmental impact, the age and nature of equipment and facilities involved, the
14 processes employed, the energy impacts, and other appropriate factors, all of the following:

15 1. Environmentally sound.

16 2. Reflective of best practices applicable to the water use sector.

17 3. Technically feasible and available.

18 4. Economically feasible and cost-effective based on an analysis that considers direct

19 and avoided economic and environmental costs.

NOTE: This provision clarifies and reorders s. 281.343 (1e) (i) and is substantively identical to the compact’s provision.

1 (jm) "Intrabasin transfer" means the transfer of water from the watershed of one of the
2 Great Lakes into the watershed of another of the Great Lakes.

NOTE: This provision is substantively identical to s. 281.343 (1e) (n).

3 (n) "Party" means a state that is a party to the compact.

NOTE: This provision is substantively identical to s. 281.343 (1e) (jm).

4 (nm) Notwithstanding s. 281.01 (9), "person" means an individual or other entity,
5 including a government or a nongovernmental organization, including any scientific,
6 professional, business, nonprofit, or public interest organization or association that is neither
7 affiliated with, nor under the direction of a government.

NOTE: This provision implements s. 281.343 (1e) (nm) and is
substantively identical to the compact's provision.

8 (o) "Product" means something produced by human or mechanical effort or through
9 agricultural processes and used in manufacturing, commercial, or other processes or intended
10 for intermediate or ultimate consumers, subject to all of the following:

- 11 1. Water used as part of the packaging of a product is part of the product.
- 12 2. Other than water used as part of the packaging of a product, water that is used
13 primarily to transport materials in or out of the basin is not a product or part of a product.
- 14 3. Except as provided in subd. 1., water that is transferred as part of a public or private
15 supply is not a product or part of a product.
- 16 4. Water in its natural state, such as in lakes, rivers, reservoirs, aquifers, or water basins,
17 is not a product.

NOTE: This provision is substantively identical to s. 281.343 (1e) (o),
except that the compact's definition requires the product to be "produced
in the basin" and this definition does not. This phrase was deleted from
this definition because it would duplicate the use of "produced in the
basin" in the definitions of "diversion" and "divert" in pars. (h) and (hm)
and would inappropriately restrict the use of the definition of
"consumptive use" in par. (e), where "consumptive use" is used in

provisions in s. 281.344 affecting areas of the state outside of the basin, such as the statewide reporting requirements in s. 281.344 (3) (e).

COMMENT: The redundant use of the phrase “produced in the basin” was raised at the committee’s August 7, 2007 meeting and has been addressed as described in the preceding note.

1 (pm) “Public water supply” means water distributed to the public through a physically
2 connected system of treatment, storage, and distribution facilities that serve a group of largely
3 residential customers and that may also serve industrial, commercial, and other institutional
4 customers.

NOTE: This provision interprets s. 281.343 (1e) (pm) by using “customers” instead of “operators” because the term “customers” is clearer and omits “purposes” from the term being defined because the compact’s definition defines a substance (a type of water) rather than a purpose. Also, it does not include the exclusion in the second sentence in s. 281.343 (1e) (pm) as that exclusion is already implied by the requirement in the first sentence that the water must be distributed through the specified physically connected system to be a public water supply.

COMMENT: At the August 7, 2007 committee meeting, the committee asked whether the second sentence in the compact’s version of this definition should be included in the implementing section’s version of this definition. The second sentence is redundant and not needed, as explained in the last sentence of the preceding note.

5 (q) “Regional body” means the body consisting of the governors of the parties and the
6 premiers of Ontario and Quebec or their designees as established by the Great Lakes–St.
7 Lawrence River Basin Sustainable Water Resources Agreement.

NOTE: This provision clarifies s. 281.343 (1e) (q) and is substantively identical to the compact’s provision.

8 (qd) “Regional declaration of finding” means a declaration of finding issued by the
9 regional body under s. 281.343 (4h) (e).

NOTE: This provision adds a new definition for purposes of implementing the compact under s. 281.344.

1 (qm) "Regional review" means the review by the regional body as described in s.
2 281.343 (4h).

NOTE: This provision clarifies s. 281.343 (1e) (qm) and is substantively identical to the compact's provision.

3 (r) "Source watershed" means the watershed from which a withdrawal originates. If
4 water is withdrawn directly from a Great Lake or from the St. Lawrence River, then the source
5 watershed shall be considered to be the watershed of that Great Lake or the watershed of the
6 St. Lawrence River, respectively. If water is withdrawn from the watershed of a stream that
7 is a direct tributary to a Great Lake or a direct tributary to the St. Lawrence River, then the
8 source watershed shall be considered to be the watershed of that Great Lake or the watershed
9 of the St. Lawrence River, respectively, with a preference to the direct tributary stream
10 watershed from which it was withdrawn.

NOTE: This provision is identical to s. 281.343 (1e) (r).

COMMENT: This provision uses the compact's definition rather than the definition in WLC: 0141/P1 based on drafting instructions provided at the August 7, 2007 committee meeting.

11 (t) "Straddling community" means any city, village, or town that is partly within the
12 basin or partly within the watersheds of 2 of the Great Lakes and that is wholly within any
13 county that lies partly or completely within the basin.

NOTE: This provision interprets s. 281.343 (1e) (t) by removing the terms "incorporated" and "or the equivalent thereof" from the definition of a community with a straddling county and adding the term "village" to this definition.

COMMENT: See the COMMENT following the definition of "community within a straddling county" in sub. (1e) (d).

Also, to be consistent with the definition of "straddling community" in the compact in s. 281.343 (1e) (t), it appears that this definition should include a reference to the boundary of the municipality straddling the basin divide as of the compact's effective date. An example of a substitute definition is:

“(t) “Straddling community” means any city, village, or town that, based on its boundary existing as of the compact’s effective date, is partly within the basin or partly within the watersheds of 2 of the Great Lakes and that is wholly within any county that lies partly or completely within the basin.”.

- 1 (u) “Technical review” means a thorough analysis and evaluation conducted to
2 determine whether a proposal that is subject to regional review under this section meets the
3 criteria for approval under sub. (4), (5), or (6).

NOTE: This provision adds a new definition for purposes of implementing the compact under s. 281.344 by combining s. 281.343 (1e) (u) and (4h) (d) 2.

- 4 (um) “Upper Mississippi river basin” means the watershed of the Mississippi river
5 upstream from Cairo, Illinois.

NOTE: This provision adds a new definition for purposes of implementing the compact under s. 281.344. This term is used in the definition of “consumptive use” in par. (e) and is taken from s. 281.35 (1) (j).

- 6 (w) “Water dependent natural resources” means the interacting components of land,
7 water, and living organisms affected by the waters of the basin.

NOTE: This provision is identical to s. 281.343 (1e) (w).

- 8 (wr) “Water utility” means a public utility, as defined in s. 196.01 (5), that furnishes
9 water.

NOTE: This provision adds a new definition for purposes of implementing the compact under s. 281.344.

- 10 (x) “Waters of the basin” means the Great Lakes and all streams, rivers, lakes,
11 connecting channels, and other bodies of water, including tributary groundwater, within the
12 basin.

NOTE: This provision is identical to s. 281.343 (1e) (t), except that it does include “basin water” as an alternative term being defined, as it is contrary to Wisconsin drafting practice to define 2 terms to mean the same thing.

1 (y) "Withdraw" means to take water from surface water or groundwater.

2 (z) "Withdrawal" means the taking of water from surface water or groundwater.

NOTE: Paragraphs (y) and (z) clarify s. 281.343 (1e) (y) by creating separate definitions of "withdraw" and "withdrawal" and are substantively identical to the compact's provision under s. 281.343 (y).

3 (2) DETERMINATIONS CONCERNING APPLICABILITY OF REQUIREMENTS. (a) *Use of surface*
4 *water divide.* For the purposes of this section, the surface water divide is used to determine
5 whether a new or increased withdrawal, consumptive use, or diversion of surface water or
6 groundwater is from the basin.

NOTE: This provision implements s. 281.343 (4t) (e) and is substantively identical to the compact's provision.

7 (b) *Diversions and withdrawals from more than one source.* For the purposes of this
8 section, the diversion or withdrawal of water from more than one source within the basin to
9 supply a common distribution system is considered one diversion or withdrawal.

NOTE: This provision implements s. 281.343 (4t) (f) and is substantively identical to the compact's provision.

10 (c) *Timing of additional applications.* In determining the applicability of a requirement
11 in this section to a proposed new or increased diversion, withdrawal, or consumptive use, the
12 amount of the new or increased diversion, withdrawal, or consumptive use shall be the sum
13 of the proposed amount and the amounts of all new or increased diversions, withdrawals, or
14 consumptive uses supplying or used by the same common distribution system made after the
15 later of the following:

16 1. The date that the baseline is established under par. (d).

17 2. The date that is 10 years before the date on which the proposed new or increased
18 diversion, withdrawal, or consumptive use is planned to begin.

NOTE: Paragraph (c) implements and interprets s. 281.343 (4t) (c).

1 (d) *Baseline*. 1. The department shall [. . .]

NOTE: This provision implements s. 281.343 (4t) (b) 1. and 2.

COMMENT: The subcommittee on regulation of withdrawals, consumptive uses, and diversions did not decide upon the criteria for establishing the baseline, but did develop the following options regarding these criteria:

a. Determine baseline by evaluating the design capacity of all components in a system, determining the peak daily flow for each component, and using the maximum capacity of the most restrictive component in the system.

b. Determine baseline by evaluating the design capacity of all components in a system, determining the peak daily flow for each component, and using the maximum capacity of the largest component in the system.

c. Determine baseline by evaluating the maximum capacities of “brick and mortar” components at intake point of a system.

d. Determine baseline by evaluating the capacities of individual components (peak daily flows) of a system, taking the maximum capacity of the most restrictive component, and establishing this as the “biggest average day”. Then, if at least one other component in the system has a capacity above the biggest average day, the baseline would be the lessor of double the biggest average day capacity or the capacity of the largest system component. This baseline would reflect the “biggest peak day”.

e. Determine baseline by evaluating the capacities of all components in a system, taking the component that has the maximum capacity, and assigning it as the “biggest peak day”. Then, take one-half of the biggest peak day to be the baseline. This baseline would reflect the “biggest average day”.

f. Use option a. and specify that: “The capacity of existing systems shall be presented in terms of annual capacity of the existing system”.

The subcommittee did not resolve the methods for determining baseline, but by consensus agreed that the determination should be based on water intake and treatment up to the point of delivery or use and not on wastewater treatment or discharge facilities. The subcommittee further agreed that 2 methods be authorized for setting a facility’s baseline:

a. If DNR has specified an amount of withdrawal or capacity of one or more components in the facility’s water system in a permit or plan

approval, direct DNR to propose the baseline using information in the permit or approval based on the to-be-determined baseline criteria and allow the facility to request a review and modification of the proposed baseline.

b. If item a. does not apply, direct the facility to propose its baseline to DNR and require DNR to review and accept or modify the proposed baseline.

1 2. The department shall provide a list of the amount of each withdrawal, diversion, and
2 consumptive use determined under subd. 1. to the council and the regional body no later than
3 12 months after the compact's effective date.

NOTE: This provision implements s. 281.343 (4t) (b) 3. and is substantively identical to the compact's provision.

4 (e) *Change of ownership.* Unless a new owner proposes a project that results in a
5 proposal for a new or increased diversion or consumptive use subject to regional review or
6 council approval, the change of ownership may not require regional review or council
7 approval.

NOTE: This provision implements s. 281.343 (4t) (d) and is substantively identical to the compact's provision.

8 (f) *Hydrologic units.* The Lake Michigan and Lake Huron watershed shall be
9 considered to be a single hydrologic unit and watershed.

NOTE: This provision is identical to s. 281.343 (4t) (i).

10 (g) *Effect.* Nothing in this section implementing s. 281.343 may be interpreted to make
11 the public trust doctrine under article IX, section 1 of the Wisconsin Constitution applicable
12 to groundwater in this state.

NOTE: This provision specifies that nothing in the compact affects the application of the public trust doctrine in Wisconsin. Under current law, the public trust doctrine does not apply to groundwater.

13 **(3) REGISTRATION AND REPORTING.** (a) 1. Except as provided in par. (d), any person who
14 on the effective date of this subdivision ... [revisor inserts date], has the capacity to make a

1 withdrawal from the waters of the state averaging 100,000 gallons per day or more in any
2 30-day period, or is making any diversion, shall register the withdrawal or diversion with the
3 department.

4 2. Any person who after the effective date of this subdivision ... [revisor inserts date]
5 proposes to begin a withdrawal from the waters of the state that will have the capacity to
6 average 100,000 gallons per day or more in any 30-day period, to increase a withdrawal from
7 the waters of the state that began on or before the effective date of this subdivision ... [revisor
8 inserts date] so that it will have the capacity to average 100,000 gallons per day or more in any
9 30-day period, or to begin a diversion shall register the proposed withdrawal or diversion with
10 the department.

NOTE: Paragraph (a) implements the registration requirement in s. 281.343 (4) (c) on a statewide basis.

COMMENT: Paragraph (a) 1. and 2. were amended based on drafting instructions provided at the July 18, 2007 committee meeting. The phrase “including consumptive uses” following references to a withdrawal in these subdivisions were deleted as redundant and ambiguous, since a consumptive use is one use, or a subset, of a withdrawal. Under par. (b) 10., the DNR may request information on the portion of a registered withdrawal that is used in a consumptive use.

11 (b) A person to whom par. (a) applies shall register on a form prescribed by the
12 department and provide all of the following information:

- 13 1. The name and address of the registrant and the date of registration.
- 14 2. The locations and sources of the withdrawal or diversion.
- 15 3. The daily capacity of the withdrawal or diversion and the amount withdrawn or
16 diverted from each source.

COMMENT: The subcommittee on regulation of withdrawals, consumptive uses, and diversions discussed defining “capacity” under par. (b) 3. as “projected service life of a facility”, or “projected total quantity of water use in a one-time period”. The subcommittee decided

to reconcile this capacity determination with the baseline capacity once that is determined. [See item I. B. 3. Comment in Memo No. 13.]

1 4. An estimate of the volume of the withdrawal or diversion in terms of gallons per day
2 average in any 30–day period.

3 5. The uses made of the water.

4 6. The places at which the water is used.

5 7. The places at which any of the water is discharged.

6 8. Whether the water use is continuous or intermittent.

7 9. Whether the person holds a permit under s. 283.31.

8 10. Other information required by the department by rule if the information is related
9 to the purposes of the compact.

NOTE: Paragraph (b) implements the requirements in s. 281.343 (4) (c) relating to the content of a registration.

10 (c) The department may consider homeland security concerns when determining
11 whether information regarding locations of withdrawals and diversions contained in the
12 registry under par (b) may be released to the public.

NOTE: This paragraph creates a new provision that is not contained in s. 281.343.

13 (d) Paragraph (a) 1. does not apply to a person who registered a withdrawal under ss.
14 30.18, 281.17, 2001 stats., 281.34, 281.35 (3), or 281.41 before the effective date of this
15 subdivision ... [revisor inserts date] until 3 years after the date of this subdivision ... [revisor
16 inserts date].

NOTE: This provision implements s. 281.343 (4) (c).

17 (e) 1. Each person who withdraws from the waters of the state 100,000 gallons per day
18 or more in any 30–day period or diverts any amount and who has registered the withdrawal

1 or diversion under par. (a) shall annually report to the department the monthly volumes of
2 withdrawal, including consumptive uses, or diversion.

COMMENT: This provision was amended based on drafting instructions provided at the July 18, 2007 committee meeting.

3 2. In addition to the information required under subd. 1., the department may, by rule,
4 create different reporting frequencies or require additional information from each person who
5 registers a withdrawal, or diversion under par. (a) based upon the type or category of water
6 use. The department may require additional information under this subdivision only if the
7 information is related to the purposes of the compact.

NOTE: Paragraph (e) implements the reporting requirement in s. 281.343 (4) (d) on a statewide basis. Under s. 281.344 (10) (b), the DNR must report to the council only withdrawals and consumptive uses in the basin and diversions and not withdrawals and consumptive uses in the rest of the state.

COMMENT: Paragraph (e) 2. was amended to conform with the changes in the registration requirements in par. (a) and (b).

8 **(4) DIVERSIONS.** (a) *Prohibition.* Beginning on the compact's effective date, no person
9 may begin a diversion or increase the amount of a diversion, except as authorized under par.
10 (c), (d), or (e).

11 (b) *Application.* A person who proposes to begin a diversion or to increase the amount
12 of a diversion under par. (c), (d), or (e) shall apply to the department for approval. The person
13 shall provide information about the potential impacts of the diversion on the waters of the
14 basin and water dependent natural resources of the applicable source watershed. The
15 department may by rule require additional information from a person who applies to begin or
16 increase the amount of a diversion under par. (c), (d), or (e).

NOTE: Paragraphs (a) and (b) implement s. 281.343 (4d) (b), (4m), and (4z) (c).

COMMENT: Paragraph (b) was amended based on drafting instructions provided at the July 18, 2007 committee meeting.

1 (c) *Straddling communities*. The department may approve a proposal to begin a
2 diversion, or to increase the amount of a diversion, to an area within a straddling community
3 but outside the basin or outside the source watershed if the water diverted will be used solely
4 for public water supply purposes in the straddling community and all of the following apply:

NOTE: This provision is reworded from s. 281.343 (4n) (a) (intro.) for purposes of clarity but is substantively identical to the compact's provision.

5 1. All water withdrawn from the basin shall be returned, either naturally or after use,
6 to the source watershed less an allowance for consumptive use.

NOTE: This provision is identical to the first sentence in s. 281.343 (4n) (a) 1. (intro.)

7 2. No surface water or groundwater from outside the basin may be used to satisfy any
8 portion of subd. 1. except if it:

9 a. Is part of a water supply or wastewater treatment system that combines water from
10 inside and outside of the basin.

11 b. Is treated to meet applicable permit requirements under s. 283.31 and to prevent the
12 introduction of invasive species into the basin.

13 c. Maximizes the amount of water returned to the source watershed as basin water and
14 minimizes the surface water or groundwater from outside the basin.

NOTE: Subdivision 2. is identical to the last sentence in s. 281.343 (4n) (a) 1. (intro.) and s. 281.343 (4n) (a) 1. a. to c., except that sub. (4n) (a) 1. b. substitutes "permit requirements under s. 283.31" for "applicable water quality discharge standards".

15 3. If the proposal results from a new withdrawal or an increase in a withdrawal that will
16 average 100,000 gallons or more per day in any 90-day period, the proposal meets the
17 exception standard under par. (f).

1 4. If the proposal results in a new consumptive use or an increase in a consumptive use
2 that would average 5,000,000 gallons or more per day in any 90-day period, all of the
3 following apply:

- 4 a. The department conducts a technical review.
5 b. The proposal undergoes regional review.
6 c. The department considers the regional declaration of finding in determining whether
7 to approve the proposal.

NOTE: Subdivision 4. implements and is substantively identical to s. 281.343 (4n) (a) 3. The requirements in this subdivision are from the regional review requirements in proposed s. 281.343 (4h) (d) and (e) 9., and (4n) (a) 3. and are set forth in this provision for purposes of clarity.

COMMENT: Paragraph (c) was amended based on the drafting instructions provided at the July 18, 2007 committee meeting.

8 (d) *Intrabasin transfer*. 1. The department may approve a proposal for a new intrabasin
9 transfer, or for an increase in an intrabasin transfer, to which par. (c) does not apply that would
10 average less than 100,000 gallons per day in every 90-day period, if the proposal meets the
11 applicable requirements in s. 30.18, 281.34, or 281.41.

NOTE: The compact affords an originating party discretion in how the party manages and regulates these transfers under proposed s. 281.343 (4n) (b) 1. This provision in the compact is interpreted to mean that these transfers will be subject to the appropriate regulatory standards under s. 30.18, 281.34, or 281.41.

COMMENT: This provision was amended based on drafting instructions provided at the July 18, 2007 committee meeting.

12 2. The department may approve a proposal for a new intrabasin transfer or an increase
13 in an intrabasin transfer to which par. (c) does not apply that would average 100,000 gallons
14 per day or more in any 90-day period with a consumptive use that would average less than
15 5,000,000 gallons per day in every 90-day period, if all of the following apply:

1 a. The proposal meets the exception standard under par. (f), except that the water may
2 be returned to a watershed within the basin other than the source watershed.

3 b. The applicant demonstrates that there is no feasible, cost-effective, and
4 environmentally sound water supply alternative within the watershed to which the water will
5 be transferred, including conservation of existing water supplies under par. (g).

COMMENT: At its July 18, 2007 meeting after discussing this provision, the committee directed that a definition of “cost-effective” be added to the draft based on the definition of cost-effective analysis in the DNR’s wastewater program rules. This definition is in s. 281.343 (1) (ed).

6 c. The department provides notice of the proposal to the other parties.

7 3. The department may approve a proposal for a new intrabasin transfer or an increase
8 in an intrabasin transfer to which par. (c) does not apply with a new or increased consumptive
9 use that would average 5,000,000 gallons per day or more in any 90-day period, if all of the
10 following apply:

11 a. The proposal meets the exception standard under par. (f).

12 b. The applicant demonstrates that there is no feasible, cost-effective, and
13 environmentally sound water supply alternative within the watershed to which the water will
14 be transferred, including conservation of existing water supplies under par. (g).

15 c. The department conducts a technical review.

16 d. The proposal undergoes regional review.

17 e. The department considers the regional declaration of finding in determining whether
18 to approve the proposal.

19 f. The proposal is approved by the council.

NOTE: Paragraph (d) is reworded from s. 281.343 (4n) (b) 2. and 3. but is substantively identical to the compact’s provision. The requirements in subpars. c. to e. are from the regional review requirements in proposed

s. 281.343 (4h) (d) and (e) 9. and (4n) (b) 3. c. and are set forth in this provision for purposes of clarity.

1 (e) *Straddling counties*. 1. The department may approve a proposal for a new diversion
2 or an increase in a diversion if the water diverted will be used solely for public water supply
3 purposes in a community within a straddling county and all of the following apply:

4 a. The community does not have a water supply that is economically and
5 environmentally sustainable in the long term to meet reasonable demands for a water supply
6 in the quantity and quality that complies with applicable drinking water standards, is
7 protective of public health, is economically feasible at a reasonable cost, and has no adverse
8 environmental impacts greater than those likely to result from the new or increased diversion.

COMMENT: This section replaces the phrase “is without adequate supplies of potable water” in proposed s. 281.343 (4n) (c) 1. based on the drafting instruction in item III. C. in Memo No. 13.

At the July 18, 2007 committee meeting, Mr. Duchniak and Ms. Habush Sinykin agreed to discuss this section and report alternative text to the committee.

9 b. The proposal meets the exception standard under par. (f).
10 c. The proposal maximizes the portion of water returned to the source watershed as
11 waters of the basin and minimizes the surface water or groundwater from outside the basin.

NOTE: Subparagraphs b. and c. are combined in the corresponding provision in the compact in proposed s. 283.343 (4n) c. 1. b. The subparagraphs are substantively identical to the compact’s provision.

12 d. There is no reasonable water supply alternative within the basin in which the
13 community is located, including conservation of existing water supplies under par. (g).

COMMENT: At the July 18, 2007 committee meeting, Mr. Duchniak, Ms. Habush Sinykin, and Mr. Ledin agreed to discuss this section and report back to the committee.

Note that “basin” is defined in ss. 281.343 (1e) (c) and 281.344 (1) (c) to be the watershed of the Great Lakes and the St Lawrence River.

1 e. The proposal will not endanger the integrity of the basin ecosystem, based upon the
2 proposal having no significant adverse impact to the basin ecosystem.

COMMENT: This provision was amended based on drafting instructions provided at the July 18, 2007 committee meeting.

An alternative to this approach is to leave the language from WLC: 0141/P1 in the text and add a note stating that this section interprets the compact's language.

3 f. The department conducts a technical review.

4 g. The proposal undergoes regional review.

5 h. The department considers the regional declaration of finding in determining whether
6 to approve the proposal.

7 i. The proposal is approved by the council.

NOTE: The requirements in subpars. f. to h. are from the regional review requirements in proposed s. 281.343 (4h) (d) and (e) 9. and (4n) (c) f. and are reorganized in this section for purposes of clarity. This section is substantively identical to the compact's provision.

8 2. The department shall also give substantive consideration to whether or not the
9 proposal under this paragraph provides sufficient scientifically based evidence that the
10 applicant's existing water supply is derived from groundwater that is hydrologically
11 interconnected to waters of the basin.

12 3. A proposal for a new diversion or an increase in a diversion may include information
13 regarding restoration of hydrologic conditions and function of the source watershed. The
14 department may consider information regarding restoration of hydrologic conditions and
15 function of the source watershed if the proposal includes this information.

NOTE: Subdivisions 2. and 3. implement s. 281.343 (4n) (c) 1. and 2. and are reworded and reorganized for purposes of clarity. These provisions are substantively identical to the compact's provision.

COMMENT: Subdivision 2. was amended based on drafting instructions provided at the July 18, 2007 committee meeting.

The subcommittee on regulation of withdrawals, consumptive uses and diversions did not reach consensus on the definition of “hydrologically interconnected”. Mr. Duchniak has proposed the following language: “hydrologically interconnected” means surface or groundwater that is physically connected to other surface or groundwater so as to affect its level, flow, or recharge. This includes but is not limited to, circumstances in which the historic use of groundwater by municipalities within the Great Lakes surface divide has contributed to the drawdown of the groundwater supply of a municipality outside the surface water divide that is making the proposal.”

1 (f) *Exception standard.* A proposal meets the exception standard if all of the following
2 apply:

3 1. The need for the proposed diversion cannot be reasonably avoided through the
4 efficient use and conservation of existing water supplies under par. (g).

NOTE: This provision is identical to s. 281.343 (4n) (d) 1.

COMMENT: This provision was amended based on drafting instructions provided at the July 18, 2007 committee meeting.

5 2. The diversion is limited to the amount needed for the anticipated use of the service
6 life of the project.

NOTE: This provision interprets s. 281.343 (4n) (d) 2.

COMMENT: At the July 18, 2007 committee meeting, Mr. Ledin and legislative council staff were asked to review subd. 2. and report back language that clarifies the “service life of the project”.

7 3. All water withdrawn from the basin shall be returned, either naturally or after use,
8 to the source watershed less an allowance for consumptive use.

COMMENT: This section was amended based on drafting instructions provided at the July 18, 2007 committee meeting.

9 4. No surface water or groundwater from outside the basin will be used to satisfy any
10 portion of subd. 3. except if it:

11 a. Is part of a water supply or wastewater treatment system that combines water from
12 inside and outside the basin.

1 b. Is treated to meet applicable permit requirements under s. 283.31 and to prevent the
2 introduction of invasive species into the basin.

3 5. The diversion will result in no significant adverse individual impacts or cumulative
4 impacts to the quantity or quality of the waters of the basin or to water dependent natural
5 resources, with consideration given to the potential cumulative impacts of any
6 precedent-setting consequences associated with the proposed diversion, based upon the
7 proposed diversion not having any positive or negative impacts on the sustainable
8 management of the waters of the basin. The applicant shall include an individual adverse
9 impact assessment under this section and may include a cumulative adverse impact
10 assessment as provided under s. 281.343 (4z) (c).

NOTE: This provision implements s. 281.343 (4n) (d) and is reworded for purposes of clarity. This section is substantively identical to the compact provision.

COMMENT: An alternative to the approach in subd. 5. regarding the implementing language is to leave the language from WLC: 0141/P1 and add a note stating that this section interprets the compact language. Subdivision 5. also clarifies that the applicant is not required to provide a cumulative adverse impact assessment.

This subdivision was amended based on drafting instructions provided at the July 18, 2007 committee meeting.

11 6. The applicant commits to implementing the water conservation measures in tier 3
12 under sub. (8) (d) 3. that are environmentally sound and economically feasible for the
13 applicant.

NOTE: This provision interprets and implements s. 281.343 (4n) (d) 5.

14 7. The diversion will be in compliance with all applicable local, state, and federal laws
15 and interstate and international agreements, including the Boundary Waters Treaty of 1909.

NOTE: This provision is substantively the same as s. 281.343 (4n) (d) b. It is reworded for purposes of clarity.

1 (g) *Conservation and efficient use of existing water supplies.* An applicant for an
2 approval subject to par. (f) shall demonstrate the efficient use and conservation of existing
3 water supplies under pars. (d) 2. b. and 3. b., (e) 4., and (f) 1. by doing all of the following prior
4 to submitting the application:

5 1. Engaging in water conservation planning that included all of the following:

6 a. Evaluation of the applicant's present and future water uses.

7 b. Setting of a representative amount of the applicant's water use prior to implementing
8 the measures under subd. 2.

COMMENT: This provision was amended based on drafting instructions
provided at the August 7, 2007 committee meeting.

9 c. Determination of the water conservation and efficiency measures in tier 2 and
10 measures b. and c. in tier 3 under sub. (8) (c) 2. and 3. b. and c. that are environmentally sound
11 and economically feasible for the applicant.

12 2. Implementing the environmentally sound and economically feasible water
13 conservation measures identified under subd. 1. c.

NOTE: Paragraph (g) is referenced in sub. (4) (d) 2. b. and 3. b., (e) 4.,
and (f) 1.

14 (5) WITHDRAWALS AND CONSUMPTIVE USES. (a) *Approval required.* 1. Beginning on the
15 compact's effective date, no person may begin a withdrawal or consumptive use from the basin
16 that is not a diversion and that will average more than [insert amount] gallons per day in any
17 [insert averaging period] day period without an approval from the department under this
18 subsection.

19 2. Beginning on the compact's effective date, no person may increase an existing
20 withdrawal or consumptive use from the basin so that it will average more than [insert amount]

1 gallons per day in any [insert averaging period] day period without an approval from the
2 department under this subsection.

NOTE: Paragraph (a) implements s. 281.343 (4p) (a).

COMMENT: The specification of the threshold levels for new or increased withdrawals and consumptive uses being subject to the compact is an unresolved issue before the committee. The effective date and averaging period for these regulations also needs to be specified by the committee. Depending upon how the committee resolves these issues, it may be possible to consolidate the text in these paragraphs, as a consumptive use is a subset of the uses of a withdrawal.

Whether an application for a new or increased surface water withdrawal must include an analysis of whether the withdrawal will result in 95% or greater consumption use (similar to a requirement in the proposed new groundwater rule regarding new groundwater withdrawals via high capacity wells with high water loss in proposed s. NR 820.32) is also an unresolved issue before the committee.

3 (b) *Application.* A person who proposes a withdrawal or an increase in a withdrawal
4 or a consumptive use or an increase in a consumptive use for which approval is required under
5 par. (a) shall apply to the department for approval. The person shall provide information about
6 the potential impacts of the withdrawal on the waters of the basin and water dependent natural
7 resources of the source watershed. The department may by rule require additional information
8 from a person who applies to begin or increase the amount of a withdrawal or consumptive
9 use under par. (a) 1. or 2.

NOTE: This provision implements s. 281.343 (4d) (b) and (4z) (c).

COMMENT: The authorization in par. (b) for the DNR to require additional information by rule in an application for a withdrawal or consumptive use was not directly discussed and approved by the committee. At its July 18, 2007 meeting, the committee did adopt comparable rule-making regarding the content of an application for a diversion under s. 281.344 (4) (b), and based on that action, par. (b) is similarly revised in this draft.

1 (c) *Standard for approval.* The department may approve a proposal for a new or
2 increased withdrawal or consumptive use if the proposal meets the decision-making standard
3 under sub. (6).

NOTE: This provision implements s. 281.343 (4p) (a).

4 (d) *Prior notice.* Beginning no later than 5 years after the compact's effective date, if
5 a proposal for which approval is required under this subsection will result in a new
6 consumptive use or an increase in a consumptive use that will average more than 5,000,000
7 gallons per day in any 90-day period, the department shall provide the other parties and the
8 provinces of Ontario and Quebec, Canada, with detailed notice of the proposal and an
9 opportunity to comment on the proposal. The department shall provide a response to any
10 comment received under this paragraph. The department may not grant an approval under this
11 subsection until at least 90 days after the day on which it provided notice under this paragraph.

NOTE: This provision implements s. 281.343 (4j).

12 (e) *Regional review.* If a majority of the members of the regional body request regional
13 review of a proposal for which approval is required under this subsection under s. 281.343 (4h)
14 (a) 6., the department shall conduct a technical review of the proposal and submit the proposal
15 for regional review. The department may not act on the proposal until the proposal has
16 undergone regional review and the department has considered the regional declaration of
17 finding in determining whether to approve the proposal.

NOTE: This provision implements s. 281.343 (4h) (a) 6., as this subdivision applies to withdrawals and consumptive uses. Subdivision 6. requires regional review of “a regionally significant or potentially precedent setting proposal” at the request of a majority of the members of the regional body. In s. 281.343 (1e) (om), the compact defines a “proposal” to be a withdrawal, diversion, or consumptive use that is subject to the compact. This provision interprets this definition and regional review mechanism in the compact to apply only to those

withdrawals or consumptive uses requiring approval by the department under s. 281.344 (5).

1 **(6) DECISION-MAKING STANDARD.** A proposal under sub. (5) meets the decision-making
2 standard if all of the following apply:

3 (a) All of the water withdrawn from the basin will be returned to the source watershed,
4 less an allowance for consumptive use.

NOTE: This provision is substantively the same as s. 281.343 (4r) (a).

5 (b) The withdrawal or consumptive use will result in no significant adverse individual
6 impacts or cumulative impacts to the quantity or quality of the waters of the basin, to water
7 dependent natural resources, or to the source watershed.

NOTE: This provision is substantively the same as s. 281.343 (4r) (b). It is reworded for purposes of clarity.

COMMENT: The interpretation and application of the tests in sub. (6), especially the “no significant individual impacts or cumulative impacts” test in par. (b) are unresolved issues before the committee.

The interpretation and application of par. (b) will be affected by how the committee interprets s. 281.343 (4z) (c), which reads as follows:

“(c) Unless required by other statutes, applicants are not required to conduct a separate cumulative impact assessment in connection with an application but shall submit information about the potential impacts of a proposal to the quantity or quality of the waters and water dependent natural resources of the applicable source watershed. An applicant may, however, provide an analysis of how the applicant’s proposal meets the no significant adverse cumulative impact provision of the standard of review and decision [this standard includes the exception standard and the decision-making standard].”

Also, see the treatment of the “significant cumulative impact” provision in the exception standard in s. 281.344 (4) (f) 5. by the committee at its July 18, 2007 meeting. This provision contains a comparable no significant adverse impacts test in the exception standard.

1 (c) For a proposal for a new or increased withdrawal, the applicant commits to
2 implementing the following water conservation measures that are environmentally sound and
3 economically feasible for the applicant:

4 1. If the applicant is a water utility, water conservation measures in tier 1 under sub. (8)
5 (d) 1., as determined in a water conservation planning process that includes the elements in
6 sub. (4) (g) 1. a. and b.

7 2. If the applicant is not a water utility, water conservation measures in tier 1 under sub.
8 (8) (d) 1.

9 (cm) Subject to par. (cr), for a proposal for a new or increased consumptive use that is
10 more than 1 million gallons per day and exceeds a percentage of the applicant's annual
11 withdrawal specified by the department by rule, the applicant commits to implementing the
12 following water conservation measures that are environmentally sound and economically
13 feasible for the applicant:

14 1. If the applicant is a water utility, water conservation measures in tier 1 under sub. (8)
15 (d) 1., as determined in a water conservation planning process that includes the elements in
16 sub. (4) (g) 1. a. and b.

17 2. If the applicant is not a water utility, water conservation measures in tier 1 under sub.
18 (8) (d) 1.

19 (cr) Paragraph (cm) applies only if the department determines all of the following:

20 1. There is a need for additional water conservation under the basin water conservation
21 and efficiency program to meet the basin water conservation and efficiency goals and
22 objectives specified by the department under sub. (8) (a).

23 2. There is an available methodology for determining the consumptive use of water by
24 the applicant.

NOTE: Paragraphs (c), (cm), and (cr) implement s. 281.343 (4r) (c).

COMMENT: The committee deferred acting on par. (c), (cm), and (cr) until after it establishes the threshold amounts of a new or increased withdrawal or consumptive use subject to approval under sub. (5).

- 1 (d) The withdrawal or consumptive use will be in compliance with all applicable local,
2 state, and federal laws and interstate and international agreements, including the Boundary
3 Waters Treaty of 1909.

NOTE: This provision is substantively the same as s. 281.343 (4r) (d). It is reworded for purposes of clarity.

- 4 (e) The proposed use of the water is reasonable, based on a consideration of all of the
5 following:

- 6 1. Whether the proposed withdrawal or consumptive use is planned in a way that
7 provides for efficient use of the water and will avoid or minimize the waste of water.
8 2. If the proposal is for an increased withdrawal or consumptive use, whether efficient
9 use is made of existing water supplies.

COMMENT: The drafting instructions in Memo No. 12 did not address how an applicant would demonstrate “whether efficient use is made of existing water supplies” under this provision. The committee could choose to use the same approach as for the conservation and efficient use of existing water supplies as part of a diversion application under sub. (4) (g). If the committee adopts this approach, it would then need to specify the water conservation and efficiency measures in the water conservation and efficiency tiers in sub. (8) (d) that an applicant would have to evaluate to determine which of these measures are environmentally sound and economically feasible for the applicant. An additional consideration is whether the committee wishes to distinguish between the “efficient use” and “water conservation” of existing water supplies in implementing this provision.

- 10 3. The balance between the effects of the proposed withdrawal or consumptive use on
11 economic development, social development, and environmental protection and the effects of
12 other existing or planned withdrawals and water uses sharing the water source.

1 4. The supply potential of the water source, considering quantity, quality, reliability, and
2 safe yield of hydrologically interconnected water sources.

3 5. The probable degree and duration of any adverse impacts caused or expected to be
4 caused by the proposed withdrawal and use, under foreseeable conditions, to other lawful
5 consumptive uses or nonconsumptive uses of water or to the quantity or quality of the waters
6 of the basin and water dependent natural resources, and the proposed plans and arrangements
7 for avoidance or mitigation of those impacts.

8 6. Any provisions for restoration of hydrologic conditions and functions of the source
9 watershed.

NOTE: Paragraph (e) is substantively the same as s. 281.343 (4r) (e). Portions of it are reworded for purposes of clarity or conformity with Wisconsin drafting style.

COMMENT: Section 281.343 (4p) (a) requires the state regulation of withdrawals and consumptive uses under the compact to be “consistent with the decision-making standard” in sub. (6). The committee has not yet interpreted this consistency requirement and determined if the content or application of any of the elements in the decision-making standard should be modified accordingly.

10 **(7) EXEMPTIONS.** Subsections (3) to (6) do not apply to withdrawals from the basin for
11 any of the following purposes:

12 (a) To supply vehicles, including vessels and aircraft, for the needs of the persons or
13 animals being transported or for ballast or other needs related to the operation of the vehicles.

14 (b) To use in a noncommercial project on a short-term basis for fire fighting,
15 humanitarian, or emergency response purposes.

NOTE: This provision implements s. 281.343 (4v). Paragraph (a) is substantively the same as s. 281.343 (4v) (a); par. (b) is identical to s. 281.343 (4v) (b). The exempted subsections are registration and reporting, diversions, withdrawals and consumptive uses, and the decision-making standard.

1 **(8) WATER CONSERVATION AND EFFICIENCY. (a) Goals and objectives.** 1. The department
2 shall specify water conservation and efficiency goals and objectives for the waters of the state
3 and for the waters of the basin. The goals and objectives for the waters of the basin shall be
4 consistent with the goals under s. 281.343 (4b) (a) and the objectives identified by the council
5 under s. 281.343 (4b) (a) and (c). In specifying these goals and objectives, the department shall
6 consult with the department of commerce and public service commission and consider the
7 water conservation and efficiency goals and objectives developed in any pilot program
8 conducted by the department in cooperation with the regional body.

NOTE: In implementing their state water conservation and efficiency programs, the compact directs the parties to “have regard” for any modifications in the basin-wide water conservation and efficiency objectives made by the council in its 5-year reviews of the basin-wide objectives. See proposed s. 281.343 (4b) (c). “Have regard” is not a standard verb used in the statutes. This provision interprets this requirement to direct the DNR to make the state water conservation and efficiency objectives consistent with the modified basin-wide objectives.

9 **(b) Statewide program.** In cooperation with the department of commerce and public
10 service commission, the department shall develop and implement a statewide water
11 conservation and efficiency program. The program shall include all of the following:

12 1. Promotion of environmentally sound and economically feasible water conservation
13 measures.

14 2. Water conservation and efficiency measures that the public service commission
15 requires or authorizes a water utility to implement under ch. 196.

16 3. Water conservation and efficiency measures that the department of commerce
17 requires or authorizes to be implemented under chs. 101 and 145.

18 **(c) Basin program.** No later than the first day of the 24th month after the compact’s
19 effective date, the department shall implement a basin water conservation and efficiency

1 program as part of the statewide program under par. (b) for all users of the waters of the basin
2 that is designed to achieve the goals and objectives for the waters of the basin specified under
3 par. (a). The basin program shall include the activities in par. (b) 1. to 3. applicable in the basin
4 and application of the water conservation and efficiency tiers specified in par. (d) under subs.
5 (4) (f) 6. and (g) and (6) (c) and (cm).

COMMENT: Paragraph (b) on promotion in WLC: 0141/P1 was deleted based on a drafting instruction provided at the August 7, 2007 meeting.

6 (d) Water conservation and efficiency tiers.

COMMENT: These tiers implement the drafting instructions in items II. B., C., and D. in Memo No. 12. The water conservation measures in these tiers are based on the U.S. Environmental Protection Agency's (EPA) *Water Conservation Plan Guidelines, Appendix A, Water Conservation Measures* referenced in the instructions.

7 1. Tier 1 water conservation and efficiency measures shall consist of all of the
8 following:

9 a. Metering or comparable measure of water use and related testing, calibration,
10 maintenance, and replacement of water meters.

COMMENT: At the August 7, 2007 committee meeting, Mr. Wilusz indicated that he will propose language to clarify the phrase "comparable measure of water use" at a subsequent meeting.

11 b. Costing and pricing of water, including related accounting and cost analysis. This
12 measure applies only to water utilities.

COMMENT: The exception for self-supply systems is in the drafting instructions in item II. B. 2. in Memo No. 12, which specified an exception to this measure for self-supply systems. The draft expresses this by stating which persons the measure applies to, water utilities, rather than which persons the measure does not apply to.

13 c. Accounting and assessment of water flows and losses in a water supply system.

COMMENT: Based on the drafting instructions in item II. B. 3. in Memo No. 12, this measure does not include repair of water leakage or

loss-prevention programs, even though these activities are identified as part of this measure in the EPA's *Water Conservation Plan Guidelines, Appendix A, Water Conservation Measures*, cited above.

1 d. Information and education on water consumption and conservation, and, as
2 appropriate, water utility bills.

3 e. Any other water conservation and efficiency measure specified by the department
4 under subd. 4.

5 2. Tier 2 water conservation and efficiency measures shall consist of all of the
6 following:

7 a. All tier 1 measures.

8 b. Audits of water use by large-volume and other classes of users.

9 c. Retrofitting existing fixtures, appliances, and equipment to increase the efficiency of
10 their water use.

11 d. Management of the pressure in a water supply distribution system.

12 e. Efficient use of water for landscaping, irrigation, and other outdoor water usage.

13 f. Any other water conservation and efficiency measure specified by the department
14 under subd. 4.

15 3. Tier 3 water conservation and efficiency measures shall consist of all of the
16 following:

17 a. All tier 1 and 2 measures.

18 b. Replacement of inefficient fixtures, appliances, and equipment and promotion of new
19 water conserving fixtures, appliances, and equipment.

20 c. Reuse and recycling of wastewater.

21 d. Regulations and standards to manage water use during droughts or other
22 water-supply emergencies and at new developments.

1 e. Water conservation and efficiency measures planned and implemented jointly with
2 the conservation or efficient use of other resources, considering the interrelationships between
3 the water and other resources.

NOTE: Subparagraph e. sets forth a water conservation and efficiency measure based on “integrated resource management”.

4 f. Any other water conservation and efficiency measure specified by the department
5 under subd. 4.

6 4. The department may, by rule, amend any of the water conservation and efficiency
7 measures in subds. 1. a. to d., 2. a. to e., and 3. a. to e. and may add one or more water
8 conservation and efficiency measures to the water conservation and efficiency tiers in subds.
9 1. to 3. based on the recommendations of the water conservation advisory committee or the
10 results of any pilot water conservation program conducted by the department in cooperation
11 with the regional body.

NOTE: Subsection 8 implements s. 281.343 (4b) (b), (d), and (e).

COMMENT: Subsection (8) (d) 1. e., 2. f., 3. f., and 4. is based on drafting instructions provided at the August 7, 2007 committee meeting.

Should an additional basis for this rule-making in par. (d) 4. be an assessment of the basin water conservation and efficiency program under s. 281.344 (10) (d)?

12 **(9) TRIBAL CONSULTATION AND PUBLIC PARTICIPATION.** (a) *Tribal consultation.* The
13 department shall consult with the governing body of each federally recognized American
14 Indian tribe or band in this state concerning each proposal that is subject to regional review
15 or council approval under sub. (4) or (5).

NOTE: This provision implements s. 281.343 (5) (a).

16 (b) *Public Notice.* 1. The department shall, by rule, create procedures for circulating
17 to interested and potentially interested members of the public notices of each complete

1 application under sub. (4) or (5) the department receives. Procedures for the circulation of
2 public notices shall include at least the following:

3 a. Publication of the notice as a class I notice under ch. 985;

4 b. Mailing of the notice to any person, group, or local governmental unit, or state agency
5 upon request.

6 2. The department shall establish the form and content of a public notice by rule. Every
7 public notice issued by the department shall include at least the following information:

8 a. The name and address of each applicant.

9 b. A brief description of the proposal for which the application is made under sub. (4)
10 or (5), including the amount of the proposed withdrawal or diversion.

11 c. A brief description of the procedures for the formulation of final determinations on
12 applications, including the 30-day comment period required under par. (b) 1.

13 (c) *Public comment.* The department shall receive public comments on a proposal for
14 which it receives an application under sub. (4) or (5) for a 30-day period beginning when the
15 department gives notice under par. (b) 1. All written comments submitted during the period
16 for comment shall be retained by the department and considered in the formulation of the final
17 determinations for the application.

18 (d) *Public hearing.* 1. The department shall provide an opportunity for any interested
19 person or group of persons, any affected local governmental unit or state agency to request a
20 public hearing with respect to a proposal for which the department receives an application
21 under sub. (4) or (5). A request for a public hearing shall be filed with the department within
22 30 days after the department gives notice under par. (b). A request for a public hearing shall
23 indicate the interest of the party filing the request and the reasons why a hearing is warranted.
24 The department shall hold a public hearing on a proposal for which the department receives

1 an application under sub. (4) or (5) if the department determines that there is a significant
2 public interest in holding a hearing.

3 2. The department shall promulgate, by rule, procedures for the conduct of public
4 hearings held under this section. A hearing held under this paragraph is not a contested case
5 hearing under ch. 227.

6 3. Public notice of any hearing held under this section shall be circulated in accordance
7 with the requirements of par. (b) 1.

8 (e) *Public access to information.* Any records or other information provided to or
9 obtained by the department regarding a proposal for which an application under sub. (4) or
10 (5) is received shall be a public record as provided in subch. II of ch. 19. The department shall
11 make available to and provide facilities for the public to inspect and copy any records or other
12 information provided to or obtained by the department regarding a proposal for which an
13 application under sub. (4) or (5) is received. Any records or other information provided to the
14 department may be treated as confidential upon a showing to the secretary that said records
15 or information is entitled to protection as a trade secret as defined in s. 134.90 (1) (c) or upon
16 a determination by the DNR that homeland security concerns warrant confidential treatment.
17 Nothing in this subsection shall prevent the use of any confidential records or information
18 obtained by the department in the administration of this section in compiling or publishing
19 general analyses or summaries, if the analyses or summaries do not identify a specific owner
20 or operator.

NOTE: Paragraphs (b), (c), (d), and (e) implement s. 281.343 (6) (b) and are based on the public notice, public comment, public hearing, and public access to information sections under the Wisconsin Pollution Discharge Elimination System (WPDES) program, ss. 283.39, 283.43, 283.49, and 283.55 (2) (c), stats. The confidentiality provision under par. (e) is based on s. 283.55 (2) (c), stats.

COMMENT: This provision was amended to be consistent with sub. (3) (c) which authorizes the DNR to consider homeland security concerns when determining whether information regarding locations of withdrawals and diversions contained in the registry may be released to the public.

1 (f) 1. Within 60 days after receipt of an application under sub. (4) or (5), the department
2 shall either determine the application is complete or shall notify the applicant in writing that
3 the application is not complete and shall specify the information which is required to make
4 the application complete.

5 2. Except as provided in par. (g), within 90 days after receipt of a complete application,
6 the department shall notify the applicant in writing of the approval, conditional approval, or
7 denial of the application. If the application is denied, the reason for denial shall be included
8 in the notification.

9 (g) The department may suspend the 90-day period specified in par. (f) 2. for any of the
10 following periods:

11 1. From the day that the department provides notice under s. 281.343 (4h) (b) that an
12 application is subject to regional review to the day the department receives either the regional
13 declaration of finding on the application or, if applicable, notice of the action taken by the
14 council on the application, whichever is later.

15 2. From the day the department provides notice under s. 281.344 (5) (d) to the day last
16 day of the 90-day comment period under s. 281.344 (5) (d).

17 (h) The department shall take appropriate measures to expedite, to the extent feasible,
18 applicable reviews by the regional body, council, parties, and the provinces of Ontario and
19 Quebec of applications submitted under sub. (4) (b) or (5) (b).

COMMENT: At the August 7, 2007 committee meeting, Mr. Ledin and committee staff were asked to propose language that accommodates, within the 90-day review period in par. (f) 2., time needed for regional

review or council approval of a diversion, or review of a large consumptive use application by the parties and the provinces of Ontario and Quebec. This proposal is set forth in pars. (g) and (h).

1 **(10) INFORMATION, REPORTS, AND ASSESSMENTS.** (a) *Inventory.* 1. The department shall
2 develop and maintain a water resources inventory consisting of information about the waters
3 of the state, including information about the location, type, quantity, and uses of water
4 resources and the location, type, and quantity of withdrawals, diversions, and consumptive
5 uses. The department shall develop the inventory in cooperation with federal and local
6 governmental entities, agencies of this state and of the other parties, tribal agencies, and
7 private entities. The department shall use information from the registry under sub. (3) to create
8 the inventory.

NOTE: This provision implements s. 281.343 (4) (a) on a statewide basis.

COMMENT: This provision was amended based on drafting instructions provided at the August 7, 2007 committee meeting.

9 2. Within 3 years of the effective date of this subdivision ... [revisor inserts date], the
10 department shall create the water resources inventory under subd. 1.

NOTE: This provision implements s. 281.343 (4) (a) on a statewide basis.

11 (b) *Annual report on water resources.* Commencing within 5 years of the compact's
12 effective date, the department shall annually report to the council the information from par.
13 (a) regarding withdrawals that average 100,000 gallons per day or more over a 30-day period,
14 including consumptive uses, in the basin and any diversion, as well as the amounts of the
15 withdrawals, consumptive uses, and diversions in the basin reported under sub. (3) (e).

NOTE: This provision implements s. 281.343 (4) (e).

COMMENT: This provision was amended based on drafting instructions provided at the August 7, 2007 committee meeting.

1 (c) *Program report.* Within one year after the compact's effective date and every 5 years
2 thereafter, the department shall submit a report to the council and the regional body describing
3 the implementation of the program under this section, including the manner in which
4 withdrawals from the basin are managed, how the criteria for approval under subs. (4), (5),
5 and (6) are applied, and how water conservation and efficiency measures are implemented.

NOTE: This provision implements s. 281.343 (3) (d).

6 (d) *Assessment of water conservation and efficiency program.* The department shall
7 annually assess the effectiveness of the basin water conservation and efficiency program
8 under sub. (8) (c) in meeting the basin water conservation and efficiency goals under sub. (8)
9 (a). In each assessment, the department shall consider whether there is a need to adjust the
10 basin water conservation and efficiency program in response to new demands for water from
11 the basin and the potential impacts of the cumulative effects of diversions, withdrawals, and
12 consumptive uses and climate. The department shall provide the assessment to the council
13 and the regional body and make it available to the public.

NOTE: This provision implements s. 281.343 (4b) (b). The second sentence in this provision interprets the requirement in the compact that "conservation programs need to adjust to new demands and the potential impacts of cumulative effects and climate" in s. 281.343 (4b) (e).

14 (e) *Assessment of cumulative impacts.* The department shall participate in the periodic
15 assessment of the impacts of withdrawals, diversions, and consumptive uses under s. 281.343
16 (4z) (a).

NOTE: This provision implements s. 281.343 (4z) (a).

17 **(11) DISPUTE RESOLUTION AND PENALTIES.** (a) *Dispute Resolution.* 1. For purposes of
18 s. 281.343 (7r) (a) and (c), "aggrieved" means substantial interests are adversely affected by
19 a determination of an agency.

NOTE: Under this provision, a “person aggrieved” under proposed s. 281.343 (7r) (a) and (c) is defined to mean an individual or other entity, including a government or a nongovernmental organization whose substantial interests are adversely affected by a determination of an agency.

COMMENT: This provision is discussed in Memo No. 16.

1 2. The available remedies provided under s. 281.343 (7r) (d) apply only to the actions
2 specified under s. 281.343 (7r) (c).

NOTE: This provision implements s. 281.343 (7r) (d) by clarifying that the available remedies under s. 281.343 (7r) (d), which include equitable relief, and the prevailing or substantially prevailing party ability to recover the costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines that such an award is appropriate, are only available in actions commenced under s. 281.343 (7r) (c).

3 (b) *Penalties.* 1. Any person who violates this section or any rule promulgated or any
4 approval issued under this section shall forfeit not less than \$10 nor more than \$10,000 for
5 each violation. Each day of continued violation is a separate offense. While an order is
6 suspended, stayed, or enjoined, this penalty does not accrue.

7 2. In addition to the penalties provided under subd. 1., the court may award the
8 department of justice the reasonable and necessary expenses of the investigation and
9 prosecution of a violation of this chapter, including attorney fees. The department of justice
10 shall deposit in the state treasury for deposit into the general fund all moneys that the court
11 awards to the department or the state under this subsection. The costs of investigation and the
12 expenses of prosecution, including attorney fees, shall be credited to the appropriation account
13 under s. 20.455 (1) (gh).

14 3. In addition to the penalties under subd. 1., the court may order the defendant to abate
15 any nuisance, restore a natural resource or take, or refrain from taking, any other action as
16 necessary to eliminate or minimize any environmental damage caused by the defendant.

NOTE: Subsection (11) (b) is based on s. 281.98 (1), (2), and (3), stats.

COMMENT: At the August 7, 2007 committee meeting, Mr. Reopelle stated that he would research the appropriateness of the \$10 minimum forfeiture for each violation and may recommend a higher amount at a subsequent meeting.

1 **SECTION 4.** 281.98 (1) of the statutes is amended to read:

2 281.98 (1) Except as provided in ss. 281.343 (11) (b) 1., 281.47 (1) (d), 281.75 (19),
3 and 281.99 (2), any person who violates this chapter or any rule promulgated or any plan
4 approval, license, special order, or water quality certification issued under this chapter shall
5 forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued
6 violation is a separate offense. While an order is suspended, stayed, or enjoined, this penalty
7 does not accrue.

8 **SECTION 5. Nonstatutory provisions.**

9 **(1) WATER CONSERVATION ADVISORY COMMITTEE.** (a) There is created
10 a water conservation advisory committee consisting of the following members:

- 11 1. Five persons appointed by the governor.
- 12 2. Four persons appointed by the speaker of the assembly.
- 13 3. Four persons appointed by the majority leader of the senate.
- 14 4. One member appointed by the minority leader of the assembly.
- 15 5. One member appointed by the minority leader of the senate.
- 16 6. The secretary of natural resources or the secretary's designee.
- 17 7. The secretary of commerce or the secretary's designee.
- 18 8. The chairperson of the public service commission or the chairperson's designee.

19 (b) Each appointing authority under paragraph (a) 2. and 3. shall appoint one member
20 representing each of the following interests:

- 21 1. Industrial.

1 2. Agricultural.

2 3. Environmental.

3 4. Municipal.

4 (c) The governor shall appoint 2 members of the water conservation advisory committee
5 from names submitted by the federally recognized American Indian tribes or bands in this
6 state. The governor, the minority leader of the assembly, and the minority leader of the senate
7 shall consult regarding the other 5 appointees under paragraph (a) 1., 4., and 5. to ensure that
8 one represents each of the interests under paragraph (b) 1. to 4.

9 (d) The speaker of the assembly and the majority leader of the senate shall each
10 designate one appointee as cochairperson of the water conservation advisory committee.

11 (e) The water conservation advisory committee shall advise the department of natural
12 resources on all of the following:

13 1. The development of the initial sets of water conservation and efficiency goals and
14 objectives for the waters of the state and for the waters of the basin under section 281.344 (8)
15 (a) of the statutes, as created by this act.

16 2. The initial development and implementation of the statewide water conservation and
17 efficiency program under section 281.344 (8) (b) of the statutes, as created by this act.

18 3. The initial implementation of the basin water conservation and efficiency program
19 under section 281.344 (8) (c) of the statutes, as created by this act.

20 4. Whether any of the water conservation and efficiency measures in section 281.344
21 (8) (d), as created by this act, should be modified, or additional water conservation and
22 efficiency measures should be added to any of the water conservation and efficiency tiers in
23 section 281.344 (8) (d), as created by this act.

