

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

1 **AN ACT** *to create* 281.343 of the statutes; **relating to:** the Great Lakes–St.
2 Lawrence River Basin Water Resources Compact.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

JOINT LEGISLATIVE COUNCIL STAFF PREFATORY NOTE: This preliminary bill was prepared for discussion purposes for the Special Committee on the Great Lakes Water Resources Compact. The committee has not approved this bill.

Except as specified below, the bill contains the language of the Great Lakes–St. Lawrence River Basin Water Resources Compact approved by the Governors of the Great Lakes States on December 13, 2005, as drafted in conformance with Wisconsin’s bill drafting conventions and statutory numbering scheme. The text of the approved compact is posted at: <http://www.cglg.org/projects/water/annex2001Implementing.asp>. The bill does not contain any provisions implementing or interpreting the compact.

The bill creates the compact in s. 281.343, stats., and includes the following subsections in this section:

- (1) Ratification.
- (1e) Definitions.
- (1m) Findings and purposes.

- (1s) Science.
- (2) Organization [of the Great Lakes–St. Lawrence River Basin Water Resources Council].
- (3) General powers and duties.
- (4) Water management and regulation; water resources inventory, registration, and reporting.
 - (4b) Water management and regulation; water conservation and efficiency programs.
 - (4d) Water management and regulation; party powers and duties.
 - (4f) Water management and regulation; requirement for originating party approval.
 - (4h) Water management and regulation; regional review.
 - (4j) Water management and regulation; proposals subject to prior notice.
 - (4L) Water management and regulation; council actions.
 - (4m) Water management and regulation; prohibition of new or increased diversions.
 - (4n) Water management and regulation; exceptions to the prohibition of diversions.
 - (4p) Water management and regulation; management and regulation of new or increased withdrawals and consumptive uses.
 - (4r) Water management and regulation; decision–making standard.
 - (4t) Water management and regulation; applicability.
 - (4v) Water management and regulation; exemptions.
 - (4x) Water management and regulation; U.S. Supreme Court decree in *Wisconsin et al. v. Illinois et al.*
 - (4z) Water management and regulation; assessment of cumulative impacts.
- (5) Consultation with tribes.
- (6) Public participation.
- (7) Dispute resolution and enforcement; good faith implementation.
 - (7g) Dispute resolution and enforcement; alternative dispute resolution.
 - (7r) Dispute resolution enforcement; enforcement.
- (8) Additional provisions.
- (9) Effectuation.

In general, the numbering of the compact's provisions in the bill follows the convention that an article of the compact is numbered as a subsection in s. 281.343. The sections in articles 1, 4, and 7 in the compact are set forth in a number of subsections in s. 281.343 where the first number in the subsection corresponds to the article number.

Sections in article 1 are numbered the following subsections in s. 281.343:

<i>Section in Governors' Version of the Compact</i>	<i>Subsection in s. 281.343, as Created by LRB-0058/P1</i>
1.2	(1e)
1.3	(1m)
1.4	(1s)

Sections in article 4 are numbered the following subsections in s. 281.343:

<i>Section in Governors' Version of the Compact</i>	<i>Subsection in s. 281.343, as Created by LRB-0058/P1</i>
4.1	(4)
4.2	(4b)
4.3	(4d)
4.4	(4f)
4.5	(4h)
4.6	(4j)
4.7	(4L)
4.8	(4m)
4.9	(4n)
4.10	(4p)
4.11	(4r)
4.12	(4t)
4.13	(4v)
4.14	(4x)
4.15	(4z)

Sections in article 7 are numbered the following subsections in s. 281.343:

<i>Section in Governors' Version of the Compact</i>	<i>Subsection in s. 281.343, as Created by LRB-0058/P1</i>
7.1	(7)
7.2	(7g)
7.3	(7r)

The bill either modifies or does not contain the following provisions in the version of the compact approved by the governors:

- Section 1 on ratification, preceding article 1, is redrafted in s. 281.343 (1).
- Section 1.1 on the short title is not included in the bill, given the title of s. 281.343.
- Section 9.1 that repeals all acts or parts of acts inconsistent with the compact is not included in the draft. Under Wisconsin drafting conventions, these inconsistencies should be explicitly addressed in legislation implementing the compact.

- The text in section 9.4 on execution of the compact is not included in the draft.

1 **SECTION 1.** 281.343 of the statutes is created to read:

2 **281.343 Great Lakes—St. Lawrence River Basin Water Resources**

3 **Compact. (1) RATIFICATION.** The Great Lakes—St. Lawrence River Basin Water
4 Resources Compact, contained in subs. (1e) to (9), is ratified and approved.

5 **(1e) DEFINITIONS.** In this section, except as otherwise required by the context:

6 (a) “Adaptive management” means a water resources management system that
7 provides a systematic process for evaluation, monitoring, and learning from the
8 outcomes of operational programs and adjustment of policies, plans, and programs
9 based on experience and the evolution of scientific knowledge concerning water
10 resources and water dependent natural resources.

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

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

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

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

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

1 (dm) “Compact” means this compact.

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

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

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

9 (fm) “County” means the largest territorial division for local government in a
10 state. The county boundaries shall be defined as those boundaries that exist as of
11 December 13, 2005.

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

19 (gm) “Decision-making standard” means the decision-making standard
20 established by sub. (4r) for proposals subject to management and regulation in sub.
21 (4p).

22 (h) “Diversion” means a transfer of water from the basin into another
23 watershed, or from the watershed of one of the Great Lakes into that of another by
24 any means of transfer, including but not limited to a pipeline, canal, tunnel,
25 aqueduct, channel, modification of the direction of a water course, a tanker ship,

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

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

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

16 (j) “Exception standard” means the standard for exceptions established in sub.
17 (4n) (d).

18 (jm) “Intra-basin transfer” means the transfer of water from the watershed of
19 one of the Great Lakes into the watershed of another Great Lake.

20 (k) “Measures” means any legislation, law, regulation, directive, requirement,
21 guideline, program, policy, administrative practice, or other procedure.

22 (km) “New or increased diversion” means a new diversion, an increase in an
23 existing diversion, or the alteration of an existing withdrawal so that it becomes a
24 diversion.

1 (L) “New or increased withdrawal or consumptive use” means a new
2 withdrawal or consumptive use or an increase in an existing withdrawal or
3 consumptive use.

4 (Lm) “Originating party” means the party within whose jurisdiction an
5 application or registration is made or required.

6 (n) “Party” means a state that is a party to this compact.

7 (nm) “Person” means a human being or a legal person, including a government
8 or a nongovernmental organization, including any scientific, professional, business,
9 nonprofit, or public interest organization or association that is neither affiliated
10 with, nor under the direction of a government.

11 (o) 1. “Product” means something produced in the basin by human or
12 mechanical effort or through agricultural processes and used in manufacturing,
13 commercial, or other processes or intended for intermediate or end use consumers.

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

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

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

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

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

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

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

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

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

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

20 (rm) “Standard of review and decision” means the exception standard,
21 decision-making standard, and reviews as outlined in subs. (4) to (4z).

22 (s) “State” means one of the states of Illinois, Indiana, Michigan, Minnesota,
23 New York, Ohio, or Wisconsin or the Commonwealth of Pennsylvania.

24 (t) “Straddling community” means any incorporated city, town, or the
25 equivalent thereof, wholly within any county that lies partly or completely within the

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

3 (u) “Technical review” means a detailed review conducted to determine
4 whether or not a proposal that requires regional review under this compact meets
5 the standard of review and decision following procedures and guidelines as set out
6 in this compact.

7 (v) “Water” means groundwater or surface water contained within the basin.

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

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

13 (y) “Withdrawal” means the taking of water from surface water or
14 groundwater. “Withdraw” has a corresponding meaning.

15 **(1m)** FINDINGS AND PURPOSES. The legislative bodies of the respective parties
16 hereby find and declare:

17 (a) Findings:

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

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

22 3. The waters of the basin can concurrently serve multiple uses. Such multiple
23 uses include municipal, public, industrial, commercial, agriculture, mining,
24 navigation, energy development and production, recreation, the subsistence,
25 economic, and cultural activities of native peoples, water quality maintenance, and

1 the maintenance of fish and wildlife habitat and a balanced ecosystem. And, other
2 purposes are encouraged, recognizing that such uses are interdependent and must
3 be balanced;

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

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

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

15 (b) Purposes:

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

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

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

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

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

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

10 7. To promote interstate and state–provincial comity; and

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

15 **(1s)** SCIENCE. (a) The parties commit to provide leadership for the development
16 of a collaborative strategy with other regional partners to strengthen the scientific
17 basis for sound water management decision making under this compact.

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

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

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

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

1 4. Improved understanding of the role of groundwater in basin water resources
2 management; and

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

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

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

11 (c) *Alternates.* Each member of the council shall appoint at least one alternate
12 who may act in his or her place and stead, with authority to attend all meetings of
13 the council and with power to vote in the absence of the member. Unless otherwise
14 provided by law of the party for which he or she is appointed, each alternate shall
15 serve during the term of the member appointing him or her, subject to removal at the
16 pleasure of the member. In the event of a vacancy in the office of alternate, it shall
17 be filled in the same manner as an original appointment for the unexpired term only.

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

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

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

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

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

13 (f) *Use of existing offices and agencies.* It is the policy of the parties to preserve
14 and utilize the functions, powers, and duties of existing offices and agencies of
15 government to the extent consistent with this compact. Further, the council shall
16 promote and aid the coordination of the activities and programs of the parties
17 concerned with water resources management in the basin. To this end, but without
18 limitation, the council may:

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

21 2. Employ any other agency or instrumentality of any of the parties for any
22 purpose; and

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

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

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

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

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

22 (i) *Advisory committees.* The council may constitute and empower advisory
23 committees, which may be comprised of representatives of the public and of federal,
24 state, tribal, county, and local governments, water resources agencies, water-using

1 industries and sectors, water-interest groups, and academic experts in related
2 fields.

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

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

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

18 (b) *Council powers.* The council may plan; conduct research and collect,
19 compile, analyze, interpret, report, and disseminate data on water resources and
20 uses; forecast water levels; conduct investigations; institute court actions; design,
21 acquire, construct, reconstruct, own, operate, maintain, control, sell, and convey real
22 and personal property and any interest therein as it may deem necessary, useful, or
23 convenient to carry out the purposes of this compact; make contracts; receive and
24 accept such payments, appropriations, grants, gifts, loans, advances, and other
25 funds, properties, and services as may be transferred or made available to it by any

1 party or by any other public or private agency, corporation, or individual; and
2 exercise such other and different powers as may be delegated to it by this compact
3 or otherwise pursuant to law, and have and exercise all powers necessary or
4 convenient to carry out its express powers or that may be reasonably implied
5 therefrom.

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

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

17 (d) *Program review and findings.* 1. Each party shall submit a report to the
18 council and the regional body detailing its water management and conservation and
19 efficiency programs that implement this compact. The report shall set out the
20 manner in which water withdrawals are managed by sector, water source, quantity,
21 or any other means, and how the provisions of the standard of review and decision
22 and conservation and efficiency programs are implemented. The first report shall
23 be provided by each party one year from the effective date of this compact and
24 thereafter every 5 years.

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

6 Such review shall take place:

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

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

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

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

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

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

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

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

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

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

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

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

22 (b) Within 2 years of the effective date of this compact, each party shall develop
23 its own water conservation and efficiency goals and objectives consistent with the
24 basin-wide goals and objectives and shall develop and implement a water
25 conservation and efficiency program, either voluntary or mandatory, within its

1 jurisdiction based on the party's goals and objectives. Each party shall annually
2 assess its programs in meeting the party's goals and objectives, report to the council
3 and the regional body, and make this annual assessment available to the public.

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

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

13 1. Measures that promote efficient use of water;

14 2. Identification and sharing of best management practices and state of the art
15 conservation and efficiency technologies;

16 3. Application of sound planning principles;

17 4. Demand-side and supply-side measures or incentives; and

18 5. Development, transfer, and application of science and research.

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

23 **(4d) WATER MANAGEMENT AND REGULATION; PARTY POWERS AND DUTIES.** (a) Each
24 party, within its jurisdiction, shall manage and regulate new or increased

1 withdrawals, consumptive uses, and diversions, including exceptions, in accordance
2 with this compact.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 3. An originating party may:

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

10 b. Request regional review of an application, even if regional review is not
11 required. Any such regional review shall be undertaken only after consulting the
12 applicant.

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

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

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

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

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

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

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

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

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

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

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

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

21 2. The regional body, having considered the notice, the originating party's
22 technical review, any other independent technical review that is made, any
23 comments or objections including the analysis of comments made by the public and
24 first nations and federally recognized tribes, and any other information that is

1 provided under this compact shall issue a declaration of finding that the proposal
2 under consideration:

- 3 a. Meets the standard of review and decision;
- 4 b. Does not meet the standard of review and decision; or
- 5 c. Would meet the standard of review and decision if certain conditions were
6 met.

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

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

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

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

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

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

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

22 **(4j)** WATER MANAGEMENT AND REGULATION; PROPOSALS SUBJECT TO PRIOR NOTICE.

23 (a) Beginning no later than 5 years after the effective date of this compact, the
24 originating party shall provide all parties and the provinces with detailed and timely
25 notice and an opportunity to comment within 90 days on any proposal for a new or

1 increased consumptive use of 5,000,000 gallons per day or greater average in any
2 90-day period. Comments shall address whether or not the proposal is consistent
3 with the standard of review and decision. The originating party shall provide a
4 response to any such comment received from another party.

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

8 **(4L)** WATER MANAGEMENT AND REGULATION; COUNCIL ACTIONS. (a) Proposals for
9 exceptions subject to council review shall be submitted by the originating party to
10 the council for council review, and where applicable, to the regional body for
11 concurrent review.

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

17 **(4m)** WATER MANAGEMENT AND REGULATION; PROHIBITION OF NEW OR INCREASED
18 DIVERSIONS. All new or increased diversions are prohibited, except as provided for in
19 sub. (4n).

20 **(4n)** WATER MANAGEMENT AND REGULATION; EXCEPTIONS TO THE PROHIBITION OF
21 DIVERSIONS. (a) *Straddling communities.* A proposal to transfer water to an area
22 within a straddling community but outside the basin or outside the source Great
23 Lake watershed shall be excepted from the prohibition against diversions and be
24 managed and regulated by the originating party provided that, regardless of the

1 volume of water transferred, all of the water so transferred shall be used solely for
2 public water supply purposes within the straddling community, and:

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

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

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

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

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

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

19 (b) *Intra-basin transfer*. A proposal for an intra-basin transfer that would be
20 considered a diversion under this compact, and not already excepted pursuant to par.

21 (a), shall be excepted from the prohibition against diversions, provided that:

22 1. If the proposal results from a new or increased withdrawal of less than
23 100,000 gallons per day average over any 90-day period, the proposal shall be subject
24 to management and regulation at the discretion of the originating party.

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

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

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

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

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

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

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

23 c. The proposal undergoes regional review; and

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

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

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

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

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

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

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

18 f. The proposal undergoes regional review; and

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

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

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

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

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

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

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

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

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

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

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

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

5 **(4p)** WATER MANAGEMENT AND REGULATION; MANAGEMENT AND REGULATION OF NEW
6 OR INCREASED WITHDRAWALS AND CONSUMPTIVE USES. (a) Within 5 years of the effective
7 date of this compact, each party shall create a program for the management and
8 regulation of new or increased withdrawals and consumptive uses by adopting and
9 implementing measures consistent with the decision-making standard. Each party,
10 through a considered process, shall set and may modify threshold levels for the
11 regulation of new or increased withdrawals in order to assure an effective and
12 efficient water management program that will ensure that uses overall are
13 reasonable, that withdrawals overall will not result in significant impacts to the
14 waters and water dependent natural resources of the basin, determined on the basis
15 of significant impacts to the physical, chemical, and biological integrity of source
16 watersheds, and that all other objectives of the compact are achieved. Each party
17 may determine the scope and thresholds of its program, including which new or
18 increased withdrawals and consumptive uses will be subject to the program.

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

23 (c) The parties intend programs for new or increased withdrawals and
24 consumptive uses to evolve as may be necessary to protect basin waters. Pursuant
25 to sub. (3) (d), the council, in cooperation with the provinces, shall periodically assess

1 the water management programs of the parties. Such assessments may produce
2 recommendations for the strengthening of the programs, including, without
3 limitation, establishing lower thresholds for management and regulation in
4 accordance with the decision-making standard.

5 **(4r)** WATER MANAGEMENT AND REGULATION; DECISION-MAKING STANDARD.

6 Proposals subject to management and regulation in sub. (4p) shall be declared to
7 meet this decision-making standard and may be approved as appropriate only when
8 the following criteria are met:

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

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

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

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

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

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

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

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

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

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

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

15 **(4t)** WATER MANAGEMENT AND REGULATION; APPLICABILITY. (a) *Minimum*
16 *standard.* This standard of review and decision shall be used as a minimum
17 standard. Parties may impose a more restrictive decision-making standard for
18 withdrawals under their authority. It is also acknowledged that although a proposal
19 meets the standard of review and decision it may not be approved under the laws of
20 the originating party that has implemented more restrictive measures.

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

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

1 b. A list of the capacity of existing systems as of the effective date of this
2 compact. The capacity of the existing systems should be presented in terms of
3 withdrawal capacity, treatment capacity, distribution capacity, or other capacity
4 limiting factors. The capacity of the existing systems must represent the state of the
5 systems. Existing capacity determinations shall be based upon approval limits or
6 the most restrictive capacity information.

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

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

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

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

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

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

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

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

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

8 (j) *Bulk water transfer.* A proposal to withdraw water and to remove it from the
9 basin in any container greater than 5.7 gallons shall be treated under this compact
10 in the same manner as a proposal for a diversion. Each party shall have the
11 discretion, within its jurisdiction, to determine the treatment of proposals to
12 withdraw water and to remove it from the basin in any container of 5.7 gallons or less.

13 **(4v)** WATER MANAGEMENT AND REGULATION; EXEMPTIONS. Withdrawals from the
14 basin for the following purposes are exempt from the requirements of subs. (4) to (4z):

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

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

20 **(4x)** WATER MANAGEMENT AND REGULATION; U.S. SUPREME COURT DECREE IN
21 WISCONSIN ET AL. V. ILLINOIS ET AL. (a) Notwithstanding any terms of this compact to
22 the contrary, with the exception of par. (e), current, new, or increased withdrawals,
23 consumptive uses, and diversions of basin water by the state of Illinois shall be
24 governed by the terms of the United States Supreme Court decree in *Wisconsin et al.*
25 *v. Illinois et al.* and shall not be subject to the terms of this compact nor any rules or

1 regulations promulgated pursuant to this compact. This means that, with the
2 exception of par. (e), for purposes of this compact, current, new, or increased
3 withdrawals, consumptive uses, and diversions of basin water within the state of
4 Illinois shall be allowed unless prohibited by the terms of the United States Supreme
5 Court decree in *Wisconsin et al. v. Illinois et al.*

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

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

1 (d) With the exception of par. (e), because subs. (4d), (4f), (4h), (4j), (4L), (4m),
2 (4n), (4p), (4r), (4t) (a), (b), (c), (d), (f), and (j), and (4v) all relate to current, new, or
3 increased withdrawals, consumptive uses, and diversions of basin waters, said
4 provisions do not apply to the state of Illinois. All other provisions of this compact
5 not listed in the preceding sentence shall apply to the state of Illinois, including the
6 water conservation programs provision of sub. (4b).

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

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

15 **(4z) WATER MANAGEMENT AND REGULATION; ASSESSMENT OF CUMULATIVE IMPACTS.**

16 (a) The parties in cooperation with the provinces shall collectively conduct within
17 the basin, on a lake watershed and St. Lawrence River basin basis, a periodic
18 assessment of the cumulative impacts of withdrawals, diversions, and consumptive
19 uses from the waters of the basin, every 5 years or each time the incremental basin
20 water losses reach 50,000,000 gallons per day average in any 90-day period in excess
21 of the quantity at the time of the most recent assessment, whichever comes first, or
22 at the request of one or more of the parties. The assessment shall form the basis for
23 a review of the standard of review and decision, council and party regulations, and
24 their application. This assessment shall:

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

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

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

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

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

22 **(5) CONSULTATION WITH TRIBES.** (a) In addition to all other opportunities to
23 comment pursuant to sub. (6) (b), appropriate consultations shall occur with
24 federally recognized tribes in the originating party for all proposals subject to council
25 or regional review pursuant to this compact. Such consultations shall be organized

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

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

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

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

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

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

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

10 2. Assure public accessibility to all documents relevant to an application,
11 including public comment received.

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

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

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

21 **(7g)** DISPUTE RESOLUTION AND ENFORCEMENT; ALTERNATIVE DISPUTE RESOLUTION.

22 (a) Desiring that this compact be carried out in full, the parties agree that disputes
23 between the parties regarding interpretation, application, and implementation of
24 this compact shall be settled by alternative dispute resolution.

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

3 **(7r)** DISPUTE RESOLUTION AND ENFORCEMENT; ENFORCEMENT. (a) Any person
4 aggrieved by any action taken by the council pursuant to the authorities contained
5 in this compact shall be entitled to a hearing before the council. Any person
6 aggrieved by a party action shall be entitled to a hearing pursuant to the relevant
7 party's administrative procedures and laws. After exhaustion of such
8 administrative remedies, any aggrieved person shall have the right to judicial review
9 of a council action in the United States district court for the District of Columbia or
10 the district court in which the council maintains offices, provided such action is
11 commenced within 90 days; and any aggrieved person shall have the right to judicial
12 review of a party's action in the relevant party's court of competent jurisdiction,
13 provided that an action or proceeding for such review is commenced within the time
14 frames provided for by the party's law. For the purposes of this paragraph, a state
15 or province is deemed to be an aggrieved person with respect to any party action
16 pursuant to this compact.

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

23 2. Each party may issue orders within its respective jurisdiction and may
24 initiate actions to compel compliance with the provisions of its respective statutes

1 and regulations adopted to implement the authorities contemplated by this compact
2 in accordance with the provisions of the laws adopted in each party's jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

15 4. An approval by a party or the council under this compact does not give any
16 property rights, nor any exclusive privileges, nor shall it be construed to grant or
17 confer any right, title, easement, or interest in, to, or over any land belonging to or
18 held in trust by a party; neither does it authorize any injury to private property or
19 invasion of private rights, nor infringement of federal, state, or local laws or
20 regulations; nor does it obviate the necessity of obtaining federal assent when
21 necessary.

22 (b) *Relationship to agreements concluded by the United States of America.* 1.
23 Nothing in this compact is intended to provide nor shall be construed to provide,
24 directly or indirectly, to any person any right, claim, or remedy under any treaty or

1 international agreement nor is it intended to derogate any right, claim, or remedy
2 that already exists under any treaty or international agreement.

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

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

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

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

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

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

