

## CHAPTER 103G

### WATERS OF THE STATE

<p>103G.222 REPLACEMENT OF WETLANDS.          103G.2241 EXEMPTIONS.          103G.2242 WETLAND VALUE REPLACEMENT PLANS.          103G.2243 LOCAL COMPREHENSIVE WETLAND PROTECTION AND MANAGEMENT PLANS.          103G.235 RESTRICTIONS ON ACCESS TO WETLANDS.</p>	<p>103G.291 PUBLIC WATER SUPPLY PLANS; APPROPRIATION DURING DEFICIENCY.          103G.301 GENERAL PERMIT APPLICATION PROCEDURES.          103G.311 PERMIT HEARING.          103G.801 GREAT LAKES — ST. LAWRENCE RIVER BASIN WATER RESOURCES COMPACT.</p>
---	--

#### 103G.222 REPLACEMENT OF WETLANDS.

Subdivision 1. **Requirements.** (a) Wetlands must not be drained or filled, wholly or partially, unless replaced by restoring or creating wetland areas of at least equal public value under a replacement plan approved as provided in section 103G.2242, a replacement plan under a local governmental unit's comprehensive wetland protection and management plan approved by the board under section 103G.2243, or, if a permit to mine is required under section 93.481, under a mining reclamation plan approved by the commissioner under the permit to mine. Mining reclamation plans shall apply the same principles and standards for replacing wetlands by restoration or creation of wetland areas that are applicable to mitigation plans approved as provided in section 103G.2242. Public value must be determined in accordance with section 103B.3355 or a comprehensive wetland protection and management plan established under section 103G.2243. Sections 103G.221 to 103G.2372 also apply to excavation in permanently and semipermanently flooded areas of types 3, 4, and 5 wetlands.

(b) Replacement must be guided by the following principles in descending order of priority:

(1) avoiding the direct or indirect impact of the activity that may destroy or diminish the wetland;

(2) minimizing the impact by limiting the degree or magnitude of the wetland activity and its implementation;

(3) rectifying the impact by repairing, rehabilitating, or restoring the affected wetland environment;

(4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the activity;

(5) compensating for the impact by restoring a wetland; and

(6) compensating for the impact by replacing or providing substitute wetland resources or environments.

For a project involving the draining or filling of wetlands in an amount not exceeding 10,000 square feet more than the applicable amount in section 103G.2241, subdivision 9, paragraph (a), the local government unit may make an on-site sequencing determination without a written alternatives analysis from the applicant.

(c) If a wetland is located in a cultivated field, then replacement must be accomplished through restoration only without regard to the priority order in paragraph (b), provided that a deed restriction is placed on the altered wetland prohibiting nonagricultural use for at least ten years.

(d) If a wetland is drained under section 103G.2241, subdivision 2, paragraphs (b) and (e), the local government unit may require a deed restriction that prohibits nonagricultural use for at least ten years unless the drained wetland is replaced as provided under this section. The local government unit may require the deed restriction if it determines the wetland area drained is at risk of conversion to a nonagricultural use within ten years based on the zoning classification, proximity to a municipality or full service road, or other criteria as determined by the local government unit.

(e) Restoration and replacement of wetlands must be accomplished in accordance with the ecology of the landscape area affected and ponds that are created primarily to fulfill stormwater management, and water quality treatment requirements may not be used to satisfy replacement requirements under this chapter unless the design includes pretreatment of runoff and the pond is functioning as a wetland.

(f) Except as provided in paragraph (g), for a wetland or public waters wetland located on nonagricultural land, replacement must be in the ratio of two acres of replaced wetland for each acre of drained or filled wetland.

(g) For a wetland or public waters wetland located on agricultural land or in a greater than 80 percent area, replacement must be in the ratio of one acre of replaced wetland for each acre of drained or filled wetland.

(h) Wetlands that are restored or created as a result of an approved replacement plan are subject to the provisions of this section for any subsequent drainage or filling.

(i) Except in a greater than 80 percent area, only wetlands that have been restored from previously drained or filled wetlands, wetlands created by excavation in nonwetlands, wetlands created by dikes or dams along public or private drainage ditches, or wetlands created by dikes or dams associated with the restoration of previously drained or filled wetlands may be used in a statewide banking program established in rules adopted under section 103G.2242, subdivision 1. Modification or conversion of nondegraded naturally occurring wetlands from one type to another are not eligible for enrollment in a statewide wetlands bank.

(j) The Technical Evaluation Panel established under section 103G.2242, subdivision 2, shall ensure that sufficient time has occurred for the wetland to develop wetland characteristics of soils, vegetation, and hydrology before recommending that the wetland be deposited in the statewide wetland bank. If the Technical Evaluation Panel has reason to believe that the wetland characteristics may change substantially, the panel shall postpone its recommendation until the wetland has stabilized.

(k) This section and sections 103G.223 to 103G.2242, 103G.2364, and 103G.2365 apply to the state and its departments and agencies.

(l) For projects involving draining or filling of wetlands associated with a new public transportation project, and for projects expanded solely for additional traffic capacity, public transportation authorities may purchase credits from the board at the cost to the board to establish credits. Proceeds from the sale of credits provided under this paragraph are appropriated to the board for the purposes of this paragraph.

(m) A replacement plan for wetlands is not required for individual projects that result in the filling or draining of wetlands for the repair, rehabilitation, reconstruction, or replacement of a currently serviceable existing state, city, county, or town public road necessary, as determined by the public transportation authority, to meet state or federal design or safety standards or requirements, excluding new roads or roads expanded solely for additional traffic capacity lanes. This paragraph only applies to authorities for public transportation projects that:

(1) minimize the amount of wetland filling or draining associated with the project and consider mitigating important site-specific wetland functions on-site;

(2) except as provided in clause (3), submit project-specific reports to the board, the Technical Evaluation Panel, the commissioner of natural resources, and members of the public requesting a copy at least 30 days prior to construction that indicate the location, amount, and type of wetlands to be filled or drained by the project or, alternatively, convene an annual meeting of the parties required to receive notice to review projects to be commenced during the upcoming year; and

(3) for minor and emergency maintenance work impacting less than 10,000 square feet, submit project-specific reports, within 30 days of commencing the activity, to the board that indicate the location, amount, and type of wetlands that have been filled or drained.

Those required to receive notice of public transportation projects may appeal minimization, delineation, and on-site mitigation decisions made by the public transportation authority to the board according to the provisions of section 103G.2242, subdivision 9. The Technical Evaluation Panel shall review minimization and delineation decisions made by the public transportation authority and provide recommendations regarding on-site mitigation if requested to do so by the local government unit, a contiguous landowner, or a member of the Technical Evaluation Panel.

Except for state public transportation projects, for which the state Department of Transportation is responsible, the board must replace the wetlands, and wetland areas of public waters if authorized by the commissioner or a delegated authority, drained or filled by public transportation projects on existing roads.

Public transportation authorities at their discretion may deviate from federal and state design standards on existing road projects when practical and reasonable to avoid wetland filling or draining, provided that public safety is not unreasonably compromised. The local road authority and its officers and employees are exempt from liability for any tort claim for injury to persons or property arising from travel on the highway and related to the deviation from the design standards for construction or reconstruction under this paragraph. This paragraph does not preclude an action for damages arising from negligence in construction or maintenance on a highway.

(n) If a landowner seeks approval of a replacement plan after the proposed project has already affected the wetland, the local government unit may require the landowner to replace the affected wetland at a ratio not to exceed twice the replacement ratio otherwise required.

(o) A local government unit may request the board to reclassify a county or watershed on the basis of its percentage of presettlement wetlands remaining. After receipt of satisfactory documentation from the local government, the board shall change the classification of a county or watershed. If requested by the local government unit, the board must assist in developing the documentation. Within 30 days of its action to approve a change of wetland classifications, the board shall publish a notice of the change in the Environmental Quality Board Monitor.

(p) One hundred citizens who reside within the jurisdiction of the local government unit may request the local government unit to reclassify a county or watershed on the basis of its percentage of presettlement wetlands remaining. In support of their petition, the citizens shall provide satisfactory documentation to the local government unit. The local government unit shall consider the petition and forward the request to the board under paragraph (o) or provide a reason why the petition is denied.

*[For text of subd 2, see M.S.2006]*

**Subd. 3. Wetland replacement siting.** (a) Siting wetland replacement must follow this priority order:

- (1) on site or in the same minor watershed as the affected wetland;
- (2) in the same watershed as the affected wetland;
- (3) in the same county as the affected wetland;

(4) for replacement by wetland banking, in the same wetland bank service area as the impacted wetland, except that impacts in a 50 to 80 percent area must be replaced in a 50 to 80 percent area and impacts in a less than 50 percent area must be replaced in a less than 50 percent area;

(5) for project specific replacement, in an adjacent watershed to the affected wetland, or for replacement by wetland banking, in an adjacent wetland bank service area, except that impacts in a 50 to 80 percent area must be replaced in a 50 to 80 percent area and impacts in a less than 50 percent area must be replaced in a less than 50 percent area; and

(6) statewide for public transportation projects, except that wetlands affected in less than 50 percent areas must be replaced in less than 50 percent areas, and wetlands affected in the seven-county metropolitan area must be replaced at a ratio of two to one in: (i) the af-

affected county or, (ii) in another of the seven metropolitan counties, or (iii) in one of the major watersheds that are wholly or partially within the seven-county metropolitan area, but at least one to one must be replaced within the seven-county metropolitan area.

(b) Notwithstanding paragraph (a), siting wetland replacement in greater than 80 percent areas may follow the priority order under this paragraph: (1) by wetland banking after evaluating on-site replacement and replacement within the watershed; (2) replaced in an adjacent wetland bank service area if wetland bank credits are not reasonably available in the same wetland bank service area as the affected wetland, as determined by a comprehensive inventory approved by the board; and (3) statewide.

(c) Notwithstanding paragraph (a), siting wetland replacement in the seven-county metropolitan area must follow the priority order under this paragraph: (1) in the affected county; (2) in another of the seven metropolitan counties; or (3) in one of the major watersheds that are wholly or partially within the seven-county metropolitan area, but at least one to one must be replaced within the seven-county metropolitan area.

(d) The exception in paragraph (a), clause (6), does not apply to replacement completed using wetland banking credits established by a person who submitted a complete wetland banking application to a local government unit by April 1, 1996.

(e) When reasonable, practicable, and environmentally beneficial replacement opportunities are not available in siting priorities listed in paragraph (a), the applicant may seek opportunities at the next level.

(f) For the purposes of this section, "reasonable, practicable, and environmentally beneficial replacement opportunities" are defined as opportunities that:

(1) take advantage of naturally occurring hydrogeomorphological conditions and require minimal landscape alteration;

(2) have a high likelihood of becoming a functional wetland that will continue in perpetuity;

(3) do not adversely affect other habitat types or ecological communities that are important in maintaining the overall biological diversity of the area; and

(4) are available and capable of being done after taking into consideration cost, existing technology, and logistics consistent with overall project purposes.

(g) Regulatory agencies, local government units, and other entities involved in wetland restoration shall collaborate to identify potential replacement opportunities within their jurisdictional areas.

**History:** 2007 c 57 art 1 s 120,121

### 103G.2241 EXEMPTIONS.

**Subdivision 1. Agricultural activities.** A replacement plan for wetlands is not required for:

(1) activities in a wetland that was planted with annually seeded crops, was in a crop rotation seeding of pasture grass or legumes, or was required to be set aside to receive price support or other payments under United States Code, title 7, sections 1421 to 1469, in six of the last ten years prior to January 1, 1991;

(2) activities in a type 1 wetland on agricultural pasture land that remains in the same use, except for bottomland hardwood type 1 wetlands, and activities in a type 2 or type 6 wetland that is less than two acres in size and located on agricultural pasture land that remains in the same use;

(3) activities in a wetland conducted as part of normal farming practices. For purposes of this clause, "normal farming practices" means farming, silvicultural, grazing, and ranching activities such as plowing, seeding, cultivating, and harvesting for the production of feed, food, and fiber products, but does not include activities that result in the draining of wetlands;

(4) soil and water conservation practices approved by the soil and water conservation district, after review by the Technical Evaluation Panel;

(5) aquaculture activities including pond excavation and construction and maintenance of associated access roads and dikes authorized under, and conducted in accordance with, a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, but not including construction or expansion of buildings;

(6) wild rice production activities, including necessary diking and other activities authorized under a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344; or

(7) agricultural activities on agricultural land that is subject to federal farm program restrictions that meet minimum state standards under this chapter and sections 103A.202 and 103B.3355 and that have been approved by the Board of Water and Soil Resources, the commissioners of natural resources and agriculture, and the Pollution Control Agency.

**Subd. 2. Drainage.** (a) For the purposes of this subdivision, “public drainage system” means a drainage system as defined in section 103E.005, subdivision 12, and any ditch or tile lawfully connected to the drainage system.

(b) A replacement plan is not required for draining of type 1 wetlands, or up to five acres of type 2 or 6 wetlands, in an unincorporated area on land that has been assessed drainage benefits for a public drainage system, provided that:

(1) during the 20-year period that ended January 1, 1992:

(i) there was an expenditure made from the drainage system account for the public drainage system;

(ii) the public drainage system was repaired or maintained as approved by the drainage authority; or

(iii) no repair or maintenance of the public drainage system was required under section 103E.705, subdivision 1, as determined by the public drainage authority; and

(2) the wetlands are not drained for conversion to:

(i) platted lots;

(ii) planned unit, commercial, or industrial developments; or

(iii) any development with more than one residential unit per 40 acres, except for parcels subject to local zoning standards that allow for family members to establish an additional residence on the same 40 acres.

If wetlands drained under this paragraph are converted to uses prohibited under clause (2) during the ten-year period following drainage, the wetlands must be replaced under section 103G.222.

(c) A replacement plan is not required for draining or filling of wetlands, except for draining types 3, 4, and 5 wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing public drainage systems.

(d) A replacement plan is not required for draining or filling of wetlands, except for draining wetlands that have been in existence for more than 25 years, resulting from maintenance and repair of existing drainage systems other than public drainage systems.

(e) A replacement plan is not required for draining agricultural land that: (1) was planted with annually seeded crops before July 5, except for crops that are normally planted after that date, in eight out of the ten most recent years prior to the impact; (2) was in a crop rotation seeding of pasture grass, cover crop, or legumes, or was fallow for a crop production purpose, in eight out of the ten most recent years prior to the impact; or (3) was enrolled in a state or federal land conservation program and met the requirements of clause (1) or (2) before enrollment.

(f) The public drainage authority may, as part of the repair, install control structures, realign the ditch, construct dikes along the ditch, or make other modifications as necessary to prevent drainage of the wetland.

(g) Wetlands of all types that would be drained as a part of a public drainage repair project are eligible for the permanent wetlands preserve under section 103F.516. The board shall

give priority to acquisition of easements on types 3, 4, and 5 wetlands that have been in existence for more than 25 years on public drainage systems and other wetlands that have the greatest risk of drainage from a public drainage repair project.

**Subd. 3. Federal approvals.** A replacement plan for wetlands is not required for activities authorized under the federal Clean Water Act, section 404, or the Rivers and Harbors Act, section 10, regulations that meet minimum state standards under this chapter and sections 103A.202 and 103B.3355 and that have been approved by the Board of Water and Soil Resources, the commissioners of natural resources and agriculture, and the Pollution Control Agency.

**Subd. 4. Wetland restoration.** A replacement plan for wetlands is not required for:

(1) activities in a wetland restored or created for conservation purposes under a contract or easement providing the landowner with the right to drain the restored or created wetland; or

(2) activities in a wetland restored or created by a landowner without any assistance or financing from public agencies or private entities other than the landowner and the wetland has not been used for wetland replacement or deposited in the state wetland bank.

*[For text of subd 5, see M.S.2006]*

**Subd. 6. Utilities; public works.** (a) A replacement plan for wetlands is not required for:

(1) new placement or maintenance, repair, enhancement, or replacement of existing utility or utility-type service, including pipelines, if:

(i) the direct and indirect impacts of the proposed project have been avoided and minimized to the extent possible; and

(ii) the proposed project significantly modifies or alters less than one-half acre of wetlands;

(2) activities associated with operation, routine maintenance, or emergency repair of existing utilities and public work structures, including pipelines, provided the activities do not result in additional wetland intrusion or additional draining or filling of a wetland either wholly or partially; or

(3) repair and updating of existing individual sewage treatment systems necessary to comply with local, state, and federal regulations.

(b) For maintenance, repair, and replacement, the local government unit may issue a seasonal or annual exemption certification or the utility may proceed without local government unit certification if the utility is carrying out the work according to approved best management practices. Work of an emergency nature may proceed as necessary and any drain or fill activities shall be addressed with the local government unit after the emergency work has been completed.

*[For text of subd 7, see M.S.2006]*

**Subd. 8.** [Repealed, 2007 c 57 art 1 s 170]

**Subd. 9. De minimis.** (a) Except as provided in paragraphs (b) and (c), a replacement plan for wetlands is not required for draining or filling the following amounts of wetlands as part of a project:

(1) 10,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, outside of the shoreland wetland protection zone in a greater than 80 percent area;

(2) 5,000 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, outside of the shoreland wetland protection zone in a 50 to 80 percent area, except within the 11-county metropolitan area;

(3) 2,000 square feet of type 1, 2, or 6 wetland, outside of the shoreland wetland protection zone in a less than 50 percent area, except within the 11-county metropolitan area;

(4) 100 square feet of wetland types not listed in clauses (1) to (3) outside of the building setback zone of the shoreland wetland protection zones in all counties;

(5) 400 square feet of wetland types listed in clauses (1) to (3), beyond the building setback zone, as defined in the local shoreland management ordinance, but within the shoreland wetland protection zone. In a greater than 80 percent area, the local government unit may increase the de minimis amount up to 1,000 square feet if the wetland is isolated and is determined to have no direct surficial connection to the public water. To the extent that a local shoreland management ordinance is more restrictive than this provision, the local shoreland ordinance applies;

(6) up to 20 square feet of wetland, regardless of type or location;

(7) 2,500 square feet of type 1, 2, 6, or 7 wetland, excluding white cedar and tamarack wetlands, outside of the shoreland wetland protection zone in a 50 to 80 percent area within the 11-county metropolitan area; or

(8) 1,000 square feet of type 1, 2, or 6 wetland, outside of the shoreland wetland protection zone in a less than 50 percent area within the 11-county metropolitan area.

For purposes of this paragraph, the 11-county metropolitan area consists of the counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, and Wright.

(b) The amounts listed in paragraph (a), clauses (1) to (8), may not be combined on a project.

(c) This exemption no longer applies to a landowner's portion of a wetland when the cumulative area drained or filled of the landowner's portion since January 1, 1992, is the greatest of:

(1) the applicable area listed in paragraph (a), if the landowner owns the entire wetland;

(2) five percent of the landowner's portion of the wetland; or

(3) 400 square feet.

(d) This exemption may not be combined with another exemption in this section on a project.

(e) Property may not be divided to increase the amounts listed in paragraph (a).

*[For text of subd 10, see M.S.2006]*

Subd. 11. **Exemption conditions.** (a) A person conducting an activity in a wetland under an exemption in subdivisions 1 to 10 shall ensure that:

(1) appropriate erosion control measures are taken to prevent sedimentation of the water;

(2) the activity does not block fish passage in a watercourse; and

(3) the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices and water resource protection requirements established under chapter 103H.

(b) An activity is exempt if it qualifies for any one of the exemptions, even though it may be indicated as not exempt under another exemption.

(c) Persons proposing to conduct an exempt activity are encouraged to contact the local government unit or the local government unit's designee for advice on minimizing wetland impacts.

(d) The board shall develop rules that address the application and implementation of exemptions and that provide for estimates and reporting of exempt wetland impacts, including those in section 103G.2241, subdivisions 2, 6, and 9.

**History:** 2007 c 57 art 1 s 122–127; 2007 c 131 art 1 s 55

## 103G.2242 WETLAND VALUE REPLACEMENT PLANS.

*[For text of subd 1, see M.S.2006]*

Subd. 2. **Evaluation.** (a) Questions concerning the public value, location, size, or type of a wetland shall be submitted to and determined by a Technical Evaluation Panel after an

on-site inspection. The Technical Evaluation Panel shall be composed of a technical professional employee of the board, a technical professional employee of the local soil and water conservation district or districts, a technical professional with expertise in water resources management appointed by the local government unit; and a technical professional employee of the Department of Natural Resources for projects affecting public waters or wetlands adjacent to public waters. The panel shall use the "United States Army Corps of Engineers Wetland Delineation Manual" (January 1987), including updates, supplementary guidance, and replacements, if any, "Wetlands of the United States" (United States Fish and Wildlife Service Circular 39, 1971 edition), and "Classification of Wetlands and Deepwater Habitats of the United States" (1979 edition). The panel shall provide the wetland determination and recommendations on other technical matters to the local government unit that must approve a replacement plan, wetland banking plan, exemption determination, no-loss determination, or wetland boundary or type determination and may recommend approval or denial of the plan. The authority must consider and include the decision of the Technical Evaluation Panel in their approval or denial of a plan or determination.

(b) Persons conducting wetland or public waters boundary delineations or type determinations are exempt from the requirements of chapter 326. The board may develop a professional wetland delineator certification program.

**Subd. 2a. Wetland boundary or type determination.** (a) A landowner may apply for a wetland boundary or type determination from the local government unit. The landowner applying for the determination is responsible for submitting proof necessary to make the determination, including, but not limited to, wetland delineation field data, observation well data, topographic mapping, survey mapping, and information regarding soils, vegetation, hydrology, and groundwater both within and outside of the proposed wetland boundary.

(b) A local government unit that receives an application under paragraph (a) may seek the advice of the Technical Evaluation Panel as described in subdivision 2, and, if necessary, expand the Technical Evaluation Panel. The local government unit may delegate the decision authority for wetland boundary or type determinations to designated staff, or establish other procedures it considers appropriate.

(c) The local government unit decision must be made in compliance with section 15.99. Within ten calendar days of the decision, the local government unit decision must be mailed to the landowner, members of the Technical Evaluation Panel, the watershed district or watershed management organization, if one exists, and individual members of the public who request a copy.

(d) Appeals of decisions made by designated local government staff must be made to the local government unit. Notwithstanding any law to the contrary, a ruling on an appeal must be made by the local government unit within 30 days from the date of the filing of the appeal.

(e) The local government unit decision is valid for three years unless the Technical Evaluation Panel determines that natural or artificial changes to the hydrology, vegetation, or soils of the area have been sufficient to alter the wetland boundary or type.

*[For text of subs 3 to 8, see M.S.2006]*

**Subd. 9. Appeal.** (a) Appeal of a replacement plan, exemption, wetland banking, wetland boundary or type determination, no-loss decision, or restoration order may be obtained by mailing a petition and payment of a filing fee, which shall be retained by the board to defray administrative costs, to the board within 30 days after the postmarked date of the mailing specified in subdivision 7. If appeal is not sought within 30 days, the decision becomes final. If the petition for hearing is accepted, the amount posted must be returned to the petitioner. Appeal may be made by:

- (1) the wetland owner;
- (2) any of those to whom notice is required to be mailed under subdivision 7; or
- (3) 100 residents of the county in which a majority of the wetland is located.

(b) Within 30 days after receiving a petition, the board shall decide whether to grant the petition and hear the appeal. The board shall grant the petition unless the board finds that:



- (1) the appeal is meritless, trivial, or brought solely for the purposes of delay;
- (2) the petitioner has not exhausted all local administrative remedies;
- (3) expanded technical review is needed;
- (4) the local government unit's record is not adequate; or
- (5) the petitioner has not posted a letter of credit, cashier's check, or cash if required by the local government unit.

(c) In determining whether to grant the appeal, the board shall also consider the size of the wetland, other factors in controversy, any patterns of similar acts by the local government unit or petitioner, and the consequences of the delay resulting from the appeal.

(d) All appeals must be heard by the committee for dispute resolution of the board, and a decision made within 60 days of filing the local government unit's record and the written briefs submitted for the appeal. The decision must be served by mail on the parties to the appeal, and is not subject to the provisions of chapter 14. A decision whether to grant a petition for appeal and a decision on the merits of an appeal must be considered the decision of an agency in a contested case for purposes of judicial review under sections 14.63 to 14.69.

(e) Notwithstanding section 16A.1283, the board shall establish a fee schedule to defray the administrative costs of appeals made to the board under this subdivision. Fees established under this authority shall not exceed \$1,000. Establishment of the fee is not subject to the rulemaking process of chapter 14 and section 14.386 does not apply.

*[For text of subd 10, see M.S.2006]*

**Subd. 12. Replacement credits.** (a) No public or private wetland restoration, enhancement, or construction may be allowed for replacement unless specifically designated for replacement and paid for by the individual or organization performing the wetland restoration, enhancement, or construction, and is completed prior to any draining or filling of the wetland.

(b) Paragraph (a) does not apply to a wetland whose owner has paid back with interest the individual or organization restoring, enhancing, or constructing the wetland.

(c) Notwithstanding section 103G.222, subdivision 1, paragraph (i), the following actions, and others established in rule, that are consistent with criteria in rules adopted by the board in conjunction with the commissioners of natural resources and agriculture, are eligible for replacement credit as determined by the local government unit, including enrollment in a statewide wetlands bank:

(1) reestablishment of permanent native, noninvasive vegetative cover on a wetland on agricultural land that was planted with annually seeded crops, was in a crop rotation seeding of pasture grasses or legumes, or was in a land retirement program during the past ten years;

(2) buffer areas of permanent native, noninvasive vegetative cover established or preserved on upland adjacent to replacement wetlands;

(3) wetlands restored for conservation purposes under terminated easements or contracts; and

(4) water quality treatment ponds constructed to pretreat storm water runoff prior to discharge to wetlands, public waters, or other water bodies, provided that the water quality treatment ponds must be associated with an ongoing or proposed project that will impact a wetland and replacement credit for the treatment ponds is based on the replacement of wetland functions and on an approved stormwater management plan for the local government.

(d) Notwithstanding section 103G.222, subdivision 1, paragraphs (f) and (g), the board may establish by rule different replacement ratios for restoration projects with exceptional natural resource value.

*[For text of subd 14, see M.S.2006]*

**Subd. 15. Fees paid to board.** All fees established in subdivisions 9 and 14 must be paid to the Board of Water and Soil Resources and are annually appropriated to the board for

the purpose of administration of the wetland bank and to process appeals under section 103G.2242, subdivision 9.

**History:** 2007 c 57 art 1 s 128–132; 2007 c 131 art 1 s 56

### 103G.2243 LOCAL COMPREHENSIVE WETLAND PROTECTION AND MANAGEMENT PLANS.

*[For text of subd 1, see M.S.2006]*

Subd. 2. **Plan contents.** A comprehensive wetland protection and management plan may:

(1) provide for classification of wetlands in the plan area based on:

(i) an inventory of wetlands in the plan area;

(ii) an assessment of the wetland functions listed in section 103B.3355, using a methodology chosen by the Technical Evaluation Panel from one of the methodologies established or approved by the board under that section; and

(iii) the resulting public values;

(2) vary application of the sequencing standards in section 103G.222, subdivision 1, paragraph (b), for projects based on the classification and criteria set forth in the plan;

(3) vary the replacement standards of section 103G.222, subdivision 1, paragraphs (f) and (g), based on the classification and criteria set forth in the plan, for specific wetland impacts provided there is no net loss of public values within the area subject to the plan, and so long as:

(i) in a 50 to 80 percent area, a minimum acreage requirement of one acre of replaced wetland for each acre of drained or filled wetland requiring replacement is met within the area subject to the plan; and

(ii) in a less than 50 percent area, a minimum acreage requirement of two acres of replaced wetland for each acre of drained or filled wetland requiring replacement is met within the area subject to the plan, except that replacement for the amount above a 1:1 ratio can be accomplished as described in section 103G.2242, subdivision 12; and

(4) in a greater than 80 percent area, allow replacement credit, based on the classification and criteria set forth in the plan, for any project that increases the public value of wetlands, including activities on adjacent upland acres.

*[For text of subds 3 to 6, see M.S.2006]*

**History:** 2007 c 57 art 1 s 133

### 103G.235 RESTRICTIONS ON ACCESS TO WETLANDS.

Subdivision 1. **Wetlands adjacent to roads.** To protect the public health or safety, local units of government may by ordinance restrict public access to public waters wetlands from municipality, county, or township roads that abut public waters wetlands.

Subd. 2. **Privately restored or created wetlands.** When a landowner creates a new wetland or restores a formerly existing wetland on private land that is adjacent to public land or a public road right-of-way, there is no public access to the created or restored wetland if posted by the landowner.

**History:** 2007 c 57 art 1 s 134

### 103G.291 PUBLIC WATER SUPPLY PLANS; APPROPRIATION DURING DEFICIENCY.

*[For text of subds 1 and 2, see M.S.2006]*

Subd. 3. **Water supply plans; demand reduction.** (a) Every public water supplier serving more than 1,000 people must submit a water supply plan to the commissioner for

approval by January 1, 1996. In accordance with guidelines developed by the commissioner, the plan must address projected demands, adequacy of the water supply system and planned improvements, existing and future water sources, natural resource impacts or limitations, emergency preparedness, water conservation, supply and demand reduction measures, and allocation priorities that are consistent with section 103G.261. Public water suppliers must update their plan and, upon notification, submit it to the commissioner for approval every ten years.

(b) The water supply plan in paragraph (a) is required for all communities in the metropolitan area, as defined in section 473.121, with a municipal water supply system and is a required element of the local comprehensive plan required under section 473.859. Water supply plans or updates submitted after December 31, 2008, must be consistent with the metropolitan area master water supply plan required under section 473.1565, subdivision 1, paragraph (a), clause (2).

(c) Public water suppliers serving more than 1,000 people must employ water use demand reduction measures before requesting approval from the commissioner of health under section 144.383, paragraph (a), to construct a public water supply well or requesting an increase in the authorized volume of appropriation. Demand reduction measures must include evaluation of conservation rate structures and a public education program that may include a toilet and showerhead retrofit program.

(d) Public water suppliers serving more than 1,000 people must submit records that indicate the number of connections and amount of use by customer category and volume of water unaccounted for with the annual report of water use required under section 103G.281, subdivision 3.

(e) For the purposes of this subdivision, "public water supplier" means an entity that owns, manages, or operates a public water supply, as defined in section 144.382, subdivision 4.

**History:** 2007 c 131 art 1 s 57

### 103G.301 GENERAL PERMIT APPLICATION PROCEDURES.

*[For text of subd 1, see M.S.2006]*

Subd. 2. **Permit application fees.** (a) A permit application fee to defray the costs of receiving, recording, and processing the application must be paid for a permit authorized under this chapter and for each request to amend or transfer an existing permit.

(b) The fee for a project appropriating water in excess of 100 million gallons per year must be assessed to recover the reasonable costs of preparing and processing the permit, including costs for environmental review. Fees collected under this paragraph must be credited to an account in the natural resources fund and are appropriated to the commissioner for fiscal years 2008 and 2009.

(c) The fee to apply for a permit to appropriate water, other than a permit subject to the fee under paragraph (b); a permit to construct or repair a dam that is subject to dam safety inspection; or a state general permit or to apply for the state water bank program is \$150. The application fee for a permit to work in public waters or to divert waters for mining must be at least \$150, but not more than \$1,000, according to a schedule of fees adopted under section 16A.1285.

*[For text of subs 3 to 7, see M.S.2006]*

**History:** 2007 c 57 art 1 s 135

### 103G.311 PERMIT HEARING.

*[For text of subd 1, see M.S.2006]*

Subd. 2. **Hearing notice.** (a) The hearing notice on an application must include:

(1) the date, place, and time fixed by the commissioner for the hearing;

(2) the waters affected, the water levels sought to be established, or control structures proposed; and

(3) the matters prescribed by sections 14.57 to 14.59 and rules adopted thereunder.

(b) A summary of the hearing notice must be published by the commissioner at the expense of the applicant or, if the proceeding is initiated by the commissioner in the absence of an applicant, at the expense of the commissioner.

(c) The summary of the hearing notice must be:

(1) published once a week for two successive weeks before the day of hearing in a legal newspaper published in the county where any part of the affected waters is located; and

(2) mailed by the commissioner to the county auditor, the mayor of a municipality, the watershed district, and the soil and water conservation district affected by the application.

*[For text of subs 3 to 7, see M.S.2006]*

**History:** 2007 c 131 art 1 s 58

### **103G.801 GREAT LAKES — ST. LAWRENCE RIVER BASIN WATER RESOURCES COMPACT.**

The Great Lakes — St. Lawrence River Basin Water Resources Compact is enacted into law and entered into with all jurisdictions legally joining therein in the form substantially as follows:

#### **ARTICLE 1**

##### **SHORT TITLE, DEFINITIONS, PURPOSES AND DURATION**

###### **Section 1.1. Short title.**

This act shall be known and may be cited as the “Great Lakes — St. Lawrence River Basin Water Resources Compact.”

###### **Section 1.2. Definitions.**

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

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

“Agreement” means the Great Lakes — St. Lawrence River Basin Sustainable Water Resources Agreement.

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

“Basin” or “Great Lakes — St. Lawrence River basin” means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivieres, Quebec within the jurisdiction of the parties.

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

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

“Compact” means this compact.

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

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

“Council review” means the collective review by the council members as described in Article 4 of this compact.

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

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

“Decision-making standard” means the decision-making standard established by Section 4.11 for proposals subject to management and regulation in Section 4.10.

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

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

“Exception” means a transfer of water that is excepted under Section 4.9 from the prohibition against diversions in Section 4.8.

“Exception standard” means the standard for exceptions established in Section 4.9.4.

“Intra-basin transfer” means the transfer of water from the watershed of one of the Great Lakes into the watershed of another Great Lake.

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

“New or increased diversion” means a new diversion, an increase in an existing diversion, or the alteration of an existing withdrawal so that it becomes a diversion.

“New or increased withdrawal or consumptive use” means a new withdrawal or consumptive use or an increase in an existing withdrawal or consumptive use.

“Originating party” means the party within whose jurisdiction an application or registration is made or required.

“Party” means a state party to this compact.

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

“Product” means something produced in the basin by human or mechanical effort or through agricultural processes and used in manufacturing, commercial or other processes or intended for intermediate or end use consumers. (i) Water used as part of the packaging of a product shall be considered to be part of the product. (ii) Other than water used as part of the packaging of a product, water that is used primarily to transport materials in or out of the

basin is not a product or part of a product. (iii) Except as provided in (i) above, water which is transferred as part of a public or private supply is not a product or part of a product. (iv) Water in its natural state such as in lakes, rivers, reservoirs, aquifers, or water basins is not a product.

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

“Province” means Ontario or Quebec.

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

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

“Regional review” means the collective review by the regional body as described in Article 4 of this compact.

“Source watershed” means the watershed from which a withdrawal originates. If water is withdrawn directly from a Great Lake or from the St. Lawrence River, then the source watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively. If water is withdrawn from the watershed of a stream that is a direct tributary to a Great Lake or a direct tributary to the St. Lawrence River, then the source watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively, with a preference to the direct tributary stream watershed from which it was withdrawn.

“Standard of review and decision” means the exception standard, decision-making standard and reviews as outlined in Article 4 of this compact.

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

“Straddling community” means any incorporated city, town or the equivalent thereof, wholly within any county that lies partly or completely within the basin, whose corporate boundary existing as of the effective date of this compact, is partly within the basin or partly within two Great Lakes watersheds.

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

“Water” means ground or surface water contained within the basin.

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

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

“Withdrawal” means the taking of water from surface water or groundwater. “Withdraw” has a corresponding meaning.

### **Section 1.3. Findings and purposes.**

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

#### **1. Findings:**

- a. the waters of the basin are precious public natural resources shared and held in trust by the states;
- b. the waters of the basin are interconnected and part of a single hydrologic system;
- c. the waters of the basin can concurrently serve multiple uses. Such multiple uses include municipal, public, industrial, commercial, agriculture, mining, navigation, energy development and production, recreation, the subsistence, economic and cultural activities of native peoples, water quality maintenance, and the maintenance of fish and wildlife habitat

and a balanced ecosystem. And, other purposes are encouraged, recognizing that such uses are interdependent and must be balanced;

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

e. continued sustainable, accessible and adequate water supplies for the people and economy of the basin are of vital importance; and

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

2. Purposes:

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

b. to remove causes of present and future controversies;

c. to provide for cooperative planning and action by the parties with respect to such water resources;

d. to facilitate consistent approaches to water management across the basin while retaining state management authority over water management decisions within the basin;

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

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

g. to promote interstate and state-provincial comity; and

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

**Section 1.4. Science.**

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

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

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

b. the periodic assessment of cumulative impacts of withdrawals, diversions and consumptive uses on a Great Lake and St. Lawrence River watershed basis;

c. improved scientific understanding of the waters of the basin;

d. improved understanding of the role of groundwater in basin water resources management; and

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

## ARTICLE 2

## ORGANIZATION

**Section 2.1. Council created.**

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

**Section 2.2. Council membership.**

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

**Section 2.3. Alternates.**

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

**Section 2.4. Voting.**

1. Each member is entitled to one vote on all matters that may come before the council.
2. Unless otherwise stated, the rule of decision shall be by a simple majority.
3. The council shall annually adopt a budget for each fiscal year and the amount required to balance the budget shall be apportioned equitably among the parties by unanimous vote of the council. The appropriation of such amounts shall be subject to such review and approval as may be required by the budgetary processes of the respective parties.
4. The participation of council members from a majority of the parties shall constitute a quorum for the transaction of business at any meeting of the council.

**Section 2.5. Organization and procedure.**

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

**Section 2.6. Use of existing offices and agencies.**

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

1. advise, consult, contract, assist or otherwise cooperate with any and all such agencies;
2. employ any other agency or instrumentality of any of the parties for any purpose; and
3. develop and adopt plans consistent with the water resources plans of the parties.

**Section 2.7. Jurisdiction.**

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



**Section 2.8. Status, immunities and privileges.**

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

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

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

**Section 2.9. Advisory committees.**

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

**ARTICLE 3****GENERAL POWERS AND DUTIES****Section 3.1. General.**

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

The council may revise the standard of review and decision, after consultation with the provinces and upon unanimous vote of all council members, by regulation duly adopted in accordance with Section 3.3 of this compact and in accordance with each party's respective statutory authorities and applicable procedures.

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

**Section 3.2. Council powers.**

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

**Section 3.3. Rules and regulations.**

1. The council may promulgate and enforce such rules and regulations as may be necessary for the implementation and enforcement of this compact. The council may adopt by regulation, after public notice and public hearing, reasonable application fees with respect to

those proposals for exceptions that are subject to council review under Section 4.9. Any rule or regulation of the council, other than one which deals solely with the internal management of the council or its property, shall be adopted only after public notice and hearing.

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

#### **Section 3.4. Program review and findings.**

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

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

- a. 30 days after the first report is submitted by all parties; and
- b. every five years after the effective date of this compact; and
- c. at any other time at the request of one of the parties.

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

### **ARTICLE 4**

#### **WATER MANAGEMENT AND REGULATION**

##### **Section 4.1. Water resources inventory, registration and reporting.**

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

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

3. To develop and maintain a compatible base of water use information, within five years of the effective date of this compact any person who withdraws water in an amount of 100,000 gallons per day or greater average in any 30-day period (including consumptive uses) from all sources, or diverts water of any amount, shall register the withdrawal or diversion by a date set by the council unless the person has previously registered in accordance with an existing state program. The person shall register the withdrawal or diversion with the originating party using a form prescribed by the originating party that shall include, at a minimum and without limitation: the name and address of the registrant and date of registration;

the locations and sources of the withdrawal or diversion; the capacity of the withdrawal or diversion per day and the amount withdrawn or diverted from each source; the uses made of the water; places of use and places of discharge; and, such other information as the originating party may require. All registrations shall include an estimate of the volume of the withdrawal or diversion in terms of gallons per day average in any 30-day period.

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

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

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

#### **Section 4.2. Water conservation and efficiency programs.**

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

- a. ensuring improvement of the waters and water dependent natural resources;
- b. protecting and restoring the hydrologic and ecosystem integrity of the basin;
- c. retaining the quantity of surface water and groundwater in the basin;
- d. ensuring sustainable use of waters of the basin; and
- e. promoting the efficiency of use and reducing losses and waste of water.

2. Within two years of the effective date of this compact, each party shall develop its own water conservation and efficiency goals and objectives consistent with the basin-wide goals and objectives, and shall develop and implement a water conservation and efficiency program, either voluntary or mandatory, within its jurisdiction based on the party's goals and objectives. Each party shall annually assess its programs in meeting the party's goals and objectives, report to the council and the regional body and make this annual assessment available to the public.

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

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

- a. measures that promote efficient use of water;
- b. identification and sharing of best management practices and state of the art conservation and efficiency technologies;
- c. application of sound planning principles;
- d. demand-side and supply-side measures or incentives; and
- e. development, transfer and application of science and research.

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

**Section 4.3. Party powers and duties.**

1. Each party, within its jurisdiction, shall manage and regulate new or increased withdrawals, consumptive uses and diversions, including exceptions, in accordance with this compact.

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

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

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

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

**Section 4.4. Requirement for originating party approval.**

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

**Section 4.5. Regional review.****1. General.**

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

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

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

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

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

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

**2. Notice from originating party to the regional body.**

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

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

c. An originating party may:

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

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

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

3. Public participation.

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

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

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

d. The regional body shall consider the comments received before issuing a declaration of finding.

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

4. Technical review.

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

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

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

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

e. All parties shall exercise their best efforts to ensure that a technical review undertaken under Sections 4.5.4.c and 4.5.4.d does not unnecessarily delay the decision by the originating party on the application. Unless the applicant or the originating party otherwise requests, all technical reviews shall be completed no later than 60 days after the date the notice of the proposal was given to the regional body.

5. Declaration of finding.

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

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

i. meets the standard of review and decision;

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

iii. would meet the standard of review and decision if certain conditions were met.

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

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

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

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

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

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

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

#### **Section 4.6. Proposals subject to prior notice.**

1. Beginning no later than five years of the effective date of this compact, the originating party shall provide all parties and the provinces with detailed and timely notice and an opportunity to comment within 90 days on any proposal for a new or increased consumptive use of five million gallons per day or greater average in any 90-day period. Comments shall address whether or not the proposal is consistent with the standard of review and decision. The originating party shall provide a response to any such comment received from another party.

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

#### **Section 4.7. Council actions.**

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

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

#### **Section 4.8. Prohibition of new or increased diversions.**

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

#### **Section 4.9. Exceptions to the prohibition of diversions.**

1. Straddling communities. A proposal to transfer water to an area within a straddling community but outside the basin or outside the source Great Lake watershed shall be excepted from the prohibition against diversions and be managed and regulated by the originating party provided that, regardless of the volume of water transferred, all the water so transferred shall be used solely for public water supply purposes within the straddling community, and:

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

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

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

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

b. if the proposal results from a new or increased withdrawal of 100,000 gallons per day or greater average over any 90-day period, the proposal shall also meet the exception standard;

c. if the proposal results in a new or increased consumptive use of five million gallons per day or greater average over any 90-day period, the proposal shall also undergo regional review.

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

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

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

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

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

iii. the originating party shall provide notice to the other parties prior to making any decision with respect to the proposal.

c. If the proposal results in a new or increased consumptive use of five million gallons per day or greater average over any 90-day period:

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

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

iii. the proposal undergoes regional review; and

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

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

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

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

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

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

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

f. the proposal undergoes regional review; and

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

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

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

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

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

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

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

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

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

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

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

g. all other applicable criteria in Section 4.9 have also been met.

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

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

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

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

**Section 4.11. Decision-making standard.**

Proposals subject to management and regulation in Section 4.10 shall be declared to meet this decision-making standard and may be approved as appropriate only when the following criteria are met:

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

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



3. the withdrawal or consumptive use will be implemented so as to incorporate environmentally sound and economically feasible water conservation measures;
4. the withdrawal or consumptive use will be implemented so as to ensure that it is in compliance with all applicable municipal, state, and federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909;
5. the proposed use is reasonable, based upon a consideration of the following factors:
  - a. whether the proposed withdrawal or consumptive use is planned in a fashion that provides for efficient use of the water, and will avoid or minimize the waste of water;
  - b. if the proposal is for an increased withdrawal or consumptive use, whether efficient use is made of existing water supplies;
  - c. the balance between economic development, social development, and environmental protection of the proposed withdrawal and use and other existing or planned withdrawals and water uses sharing the water source;
  - d. the supply potential of the water source, considering quantity, quality, and reliability and safe yield of hydrologically interconnected water sources;
  - e. the probable degree and duration of any adverse impacts caused or expected to be caused by the proposed withdrawal and use under foreseeable conditions, to other lawful consumptive or nonconsumptive uses of water or to the quantity or quality of the waters and water dependent natural resources of the basin, and the proposed plans and arrangements for avoidance or mitigation of such impacts; and
  - f. if a proposal includes restoration of hydrologic conditions and functions of the source watershed, the party may consider that.

#### **Section 4.12. Applicability.**

1. Minimum standard. This standard of review and decision shall be used as a minimum standard. Parties may impose a more restrictive decision-making standard for withdrawals under their authority. It is also acknowledged that although a proposal meets the standard of review and decision it may not be approved under the laws of the originating party that has implemented more restrictive measures.
2. Baseline.
  - a. To establish a baseline for determining a new or increased diversion, consumptive use or withdrawal, each party shall develop either or both of the following lists for their jurisdiction:
    - i. a list of existing withdrawal approvals as of the effective date of the compact;
    - ii. a list of the capacity of existing systems as of the effective date of this compact. The capacity of the existing systems should be presented in terms of withdrawal capacity, treatment capacity, distribution capacity, or other capacity limiting factors. The capacity of the existing systems must represent the state of the systems. Existing capacity determinations shall be based upon approval limits or the most restrictive capacity information.
  - b. For all purposes of this compact, volumes of diversions, consumptive uses, or withdrawals of water set forth in the list(s) prepared by each party in accordance with this section, shall constitute the baseline volume.
  - c. The list(s) shall be furnished to the regional body and the council within one year of the effective date of this compact.
3. Timing of additional applications. Applications for new or increased withdrawals, consumptive uses or exceptions shall be considered cumulatively within ten years of any application.
4. Change of ownership. Unless a new owner proposes a project that shall result in a proposal for a new or increased diversion or consumptive use subject to regional review or council approval, the change of ownership in and of itself shall not require regional review or council approval.
5. Groundwater. The basin surface water divide shall be used for the purpose of managing and regulating new or increased diversions, consumptive uses or withdrawals of surface water and groundwater.

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

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

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

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

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

#### **Section 4.13. Exemptions.**

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

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

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

#### **Section 4.14. U. S. Supreme Court decree: Wisconsin et al. v. Illinois et al.**

1. Notwithstanding any terms of this compact to the contrary, with the exception of paragraph 5 of this section, current, new, or increased withdrawals, consumptive uses, and diversions of basin water by the state of Illinois shall be governed by the terms of the United States Supreme Court decree in Wisconsin et al. v. Illinois et al. and shall not be subject to the terms of this compact nor any rules or regulations promulgated pursuant to this compact. This means that, with the exception of paragraph 5 of this section, for purposes of this compact, current, new, or increased withdrawals, consumptive uses, and diversions of basin water within the state of Illinois shall be allowed unless prohibited by the terms of the United States Supreme Court decree in Wisconsin et al. v. Illinois et al.

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

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

4. With the exception of paragraph 5 of this section, because Sections 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12 (paragraphs 1, 2, 3, 4, 6 and 10 only), and 4.13 of this compact all relate to current, new, or increased withdrawals, consumptive uses, and diversions of basin waters, said provisions do not apply to the state of Illinois. All other provisions of this compact not listed in the preceding sentence shall apply to the state of Illinois, including the water conservation programs provision of Section 4.2.

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

6. For purposes of the state of Illinois' participation in this compact, the entirety of this Section 4.14 is necessary for the continued implementation of this compact and, if severed, this compact shall no longer be binding on or enforceable by or against the state of Illinois.

#### **Section 4.15. Assessment of cumulative impacts.**

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

a. utilize the most current and appropriate guidelines for such a review, which may include but not be limited to Council on Environmental Quality and Environment Canada guidelines;

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

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

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

3. 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 their proposal meets the no significant adverse cumulative impact provision of the standard of review and decision.

## **ARTICLE 5**

### **TRIBAL CONSULTATION**

#### **Section 5.1. Consultation with tribes.**

1. In addition to all other opportunities to comment pursuant to Section 6.2, appropriate consultations shall occur with federally recognized tribes in the originating party for all proposals subject to council or regional review pursuant to this compact. Such consultations shall be organized in the manner suitable to the individual proposal and the laws and policies of the originating party.

2. All federally recognized tribes within the basin shall receive reasonable notice indicating that they have an opportunity to comment in writing to the council or the regional

body, or both, and other relevant organizations on whether the proposal meets the requirements of the standard of review and decision when a proposal is subject to regional review or council approval. Any notice from the council shall inform the tribes of any meeting or hearing that is to be held under Section 6.2 and invite them to attend. The parties and the council shall consider the comments received under this section before approving, approving with modifications, or disapproving any proposal subject to council or regional review.

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

## ARTICLE 6

### PUBLIC PARTICIPATION

#### Section 6.1. Meetings, public hearings and records.

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

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

#### Section 6.2. Public participation.

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

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

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

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

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

## ARTICLE 7

### DISPUTE RESOLUTION AND ENFORCEMENT

#### Section 7.1. Good faith implementation.

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

#### Section 7.2. Alternative dispute resolution.

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

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

**Section 7.3. Enforcement.**

1. Any person aggrieved by any action taken by the council pursuant to the authorities contained in this compact shall be entitled to a hearing before the council. Any person aggrieved by a party action shall be entitled to a hearing pursuant to the relevant party's administrative procedures and laws. After exhaustion of such administrative remedies, (i) any aggrieved person shall have the right to judicial review of a council action in the United States District Courts for the District of Columbia or the district court in which the council maintains offices, provided such action is commenced within 90 days; and (ii) any aggrieved person shall have the right to judicial review of a party's action in the relevant party's court of competent jurisdiction, provided that an action or proceeding for such review is commenced within the time frames provided for by the party's law. For purposes of this paragraph, a state or province is deemed to be an aggrieved person with respect to any party action pursuant to this compact.

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

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

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

a. No action under this subsection may be commenced if:

i. the originating party or council approval for the new or increased withdrawal, consumptive use, or diversion has been granted; or

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

b. No action under this subsection may be commenced unless:

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

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

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

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

**ARTICLE 8****ADDITIONAL PROVISIONS****Section 8.1. Effect on existing rights.**

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

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

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

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

### **Section 8.2. Relationship to agreements concluded by the United States of America.**

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

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

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

### **Section 8.3. Confidentiality.**

1. Nothing in this compact requires a party to breach confidentiality obligations or requirements prohibiting disclosure, or to compromise security of commercially sensitive or proprietary information.

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

### **Section 8.4. Additional laws.**

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

### **Section 8.5. Amendments and supplements.**

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

### **Section 8.6. Severability.**

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

### **Section 8.7. Duration of compact and termination.**

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

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

## ARTICLE 9

## EFFECTUATION

**Section 9.1. Repealer.**

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

**Section 9.2. Effectuation by chief executive.**

The governor is authorized to take such action as may be necessary and proper in his or her discretion to effectuate the compact and the initial organization and operation thereunder.

**Section 9.3. Entire agreement.**

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

**Section 9.4. Effective date and execution.**

This compact shall become binding and effective when ratified through concurring legislation by the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the Commonwealth of Pennsylvania and consented to by the Congress of the United States. This compact shall be signed and sealed in nine identical original copies by the respective chief executives of the signatory parties. One such copy shall be filed with the secretary of state of each of the signatory parties or in accordance with the laws of the state in which the filing is made, and one copy shall be filed and retained in the archives of the council upon its organization. The signatures shall be affixed and attested under the following form:

In witness whereof, and in evidence of the adoption and enactment into law of this compact by the legislatures of the signatory parties and consent by the Congress of the United States, the respective governors do hereby, in accordance with the authority conferred by law, sign this compact in nine duplicate original copies, attested by the respective secretaries of state, and have caused the seals of the respective states to be hereunto affixed this ..... day of (month), (year).

**History:** 2007 c 2 s 1