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March 26, 2010

**Contents of Application for Regional Review and Compact Council Approval for a
“Intra-Basin Transfer” Exception to the Prohibition against Diversions**

This section applies to Applications for an exception to the general prohibition against Diversions (see Section 4.8 of the Compact {¹Article 200, Paragraph 1}) where the underlying Proposal is to transfer Water from the watershed of one of the Great Lakes into the watershed of another Great Lake, and such proposal will result in a New or Increased Consumptive Use of 5 million gallons per day (or 19 million litres per day) or greater average over any 90-day period (See Section 4.9.2.c of the Compact {Article 201, Paragraph 2.c of the Agreement})

Only the Originating Party may forward applications to the Compact Council {and Regional Body}. Applications may not be submitted directly to the Compact Council {and Regional Body} by the Applicant, but rather must be submitted to the Originating Party.

Any required information that was not included in the original Application to the Originating Party shall be added as an attachment to the original Application as appropriate.

If applicable or necessary, please provide a table of contents or index indicating the location in the Application where the information in response to Sections B and C below is provided. Responses to Section A, and brief descriptions of the information requested in B and C, may be provided as a cover memo.

Contents of Application.

A. **Basic Information.** All Applications should include, but not be limited to, the following information:

1. *Information about the Applicant.*
 - (i) Name of Applicant;
 - (ii) Mailing address of Applicant;
 - (iii) Name of contact person for application;
 - (iv) Applicant contact's phone number; and,
 - (v) Applicant contact's email address.
 - (vi) The entity or entities that are participants or otherwise involved in implementing any component of the Proposal, including but not limited to any entity or entities other than the Applicant that will Withdraw the Water, return Water to the Great Lakes-St. Lawrence River Watershed, etc... Information on these entities should include:
 - (a. Name of entity
 - (b. Mailing address of entity

¹ Please note that language surrounded by “{}” is language that would only be included in the Regional Body's Procedures.

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- (c. Name of contact person
- (d. Entity contact's phone number; and,
- (e. Entity contact's email address.

[Ref: Section 1.2 of the Compact ("Applicant" definition); Article 103 of the Agreement]

2. *Identification of the Originating Party including any and all government offices or partners, the mailing address of the same, the name of the individual authorized to act for the Originating Party, and any other points of contact on behalf of the Originating Party.*
3. *Identification of the specific Exception to the Prohibition of Diversions being applied for.* Please note in the Application that the Applicant is seeking an Exception to the Prohibition Against Diversions pursuant to Section 4.9.2.c of the Compact {and Article 201 Paragraph 2.c of the Agreement}, entitled "Intra-Basin Transfer."
[Ref: Section 4.9 of the Compact; Article 201 of the Agreement]²
4. *Timing of Additional Applications.*
Provide the date of any previous applications made to the Originating Party within the past 10 years and the daily volume averaged over a 90 day period of the water Withdrawal, Consumptive Use or Diversion approved, as applicable. Diversions, Consumptive Uses and Withdrawals that constitute a baseline pursuant to Section 4.12.2 of the Compact {and Article 207, Paragraph 1 of the Agreement} shall not be included in response to this section.
[Ref: Section 4.12.3 of the Compact; Article 207 Paragraph 2 of the Agreement]
5. *Source of the Withdrawal and location of the Diversion.*
Provide the following:
 - (i) Description of the location of the Withdrawal. If multiple wells or pump sites are to be used, provide information for them all.
 - (ii) A map or photo of the area identifying the Source Watershed³, proposed location of the Diversion including a

² All references to sections of the Compact enacted as U.S. Public Law No: 110-342. All references to sections of the Agreement are to the Agreement signed by the Great Lakes Governors and Premiers on December 13, 2005.

³ "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.

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description of the area that is proposed to receive the Diverted Water and location of the return flow and water supply service area.

- (iii) Identify the Source Watershed. Specify if the source is a groundwater source (and if so, indicate if confined or unconfined), or surface water source (if so, indicate the name of the lake, river, or stream).

6. *Total volume of the new or increased Diversion and associated Consumptive Use⁴.*

Identify:

- (i) The total maximum volume of the Diversion and associated Consumptive Use over the next 25 years (or the time period required by the Originating Party) as expressed in millions of gallons per day or millions of litres per day averaged over a calendar year as well as over the peak 90 day period during a calendar year.
- (ii) Include a monthly projection of the Diversion and information regarding whether the proposed use would be continuous, seasonal or temporary.
- (iii) The location of the point of measurement of the Diversion, and the technical method to be used for measuring the rate of the Diversion.
- (iv) The total volume of any existing Diversion and Consumptive Use registered pursuant to Section 4.12.2 of the Compact {Article 207, Paragraph 1 of the Agreement} that this Proposal will increase; or, the total volume of any previously approved Diversion that this Proposal will increase, as applicable.

Unless otherwise noted, all rates and volumes shall be expressed in millions of gallons and litres per day.

7. *Originating Party Technical Assessments.*

Any technical assessments made by the Originating Party must be included in the Application package.

[Ref: Section 4.5.4.a of the Compact; Article 505 Paragraph 1 of the Agreement]

8. *Purpose of the intra-basin Transfer.*

Provide detailed written explanation of what the water will be used for. Uses could include public water supply purposes, or other purposes. If the Water is to be used for multiple purposes, estimate percent usage by sector.

⁴ "Consumptive Use" means the portion of 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."

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- B. Exception Standard Criteria. All Applications should include information to show that the proposal meets the following Exception Standard criteria contained in Section 4.9.4 of the Compact {and Article 201 Paragraph 4 of the Agreement}.
1. *The need for all or part of the Exception [Diversion] cannot be reasonably avoided through the efficient use and conservation of existing water supplies.*
Applications shall include a narrative description of the need for the new or increased diversion. This description should include an analysis of the efficiency of current water uses, including the application of Environmentally Sound and Economically Feasible Water Conservation Measures. Any such analysis previously submitted to the Originating Party may be submitted in satisfaction of this requirement.
[Ref: Section 4.9.4.a of the Compact; Article 201 Paragraph 4.a. of the Agreement]
 2. *The Exception [Diversion] shall be limited to quantities that are considered reasonable for the purposes for which it is proposed.*
Applications shall include a narrative description as to why the quantities requested in Section A.6.(i) above are considered reasonable for the purposes for which it is proposed (for example, population projections). To that end, the Application must also include a Water use plan. For public water supply systems the plan must include: water use and population projections to support the term and daily volumes requested for the time period required by the Originating Party for water use plans, or up to 25 years if no time period is set by the Originating Party; a description of the capacity of the withdrawal, treatment and distribution portions of the system; an assessment of the water use savings of current and proposed water conservation and efficiency programs. Applications for other uses, such as industrial or agricultural, must include a plan that projects water use at the time of application and projected for up to 25 years or the time period required by the Originating Party.
[Ref: Section 4.9.4.b of the Compact; Article 201 Paragraph 4.b. of the Agreement]
 3. *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;*The application should include a description of how the Water will be returned. This description should include:

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- (i) An explanation as to how and when the Water will be returned. To the extent the local entity that will be discharging the return flow is not the Applicant, agreements for return of the water to the Great Lakes Basin must be presented;
- (ii) An estimate of total return flow by volume in gallons per day or litres per day averaged over a calendar year and as a percentage of Water Diverted including proposed measurement methods;
- (iii) A description of the discharge location(s) of the return flow;
- (iv) A description of the anticipated Water quality of the return flow including proposed methods for determining the Water quality;
- (v) A description of the Return Flow as identified in Section A.5.ii above, including what Water will be returned, where it will be returned, and how it will minimize the use of Water from outside the Basin.
- (vi) An estimate of Consumptive Use, including historical information, where applicable. These estimates may be presented in the form of project engineering design plans or utilizing United States Geological Survey's (USGS) compilation of Consumptive Use estimates or other Consumptive Use coefficients. To the extent the Consumptive Use estimates are different than "generally accepted Consumptive Use coefficients," the Application must include a detailed explanation and justification for projected Consumptive Use.

[Ref: Section 4.9.4.c of the Compact; Article 201 Paragraph 4.c. of the Agreement]

4. *The Exception [Diversion] shall be implemented so as to ensure that it shall 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.*

- (i) With regard to the Withdrawal, Diversion and return flow identified pursuant to Section A.5 above, provide the following additional information;
 - (a. Current conditions regarding hydrologic setting for both groundwater and surface water as well as the connection between the two, water quality and habitat;
 - (b. Statistics on the stream flow, if applicable and available;
 - (c. The relevant aquifer(s);
 - (d. Anticipated individual impacts to the quantity or quality of the Waters and Water Dependent Natural Resources; and,
 - (e. Mitigation measures that will be implemented to prevent or eliminate Significant Adverse Impacts.
- (ii) The Parties to the Compact {and the Agreement} will have the responsibility of conducting Cumulative Impact assessments. To

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assist with the development of this analysis, provide information about the potential cumulative impacts of the Proposal to the quantity or quality of the Waters and Water Dependent Natural Resources of the applicable Source Watershed. Information may also be included how the Proposal relates to other existing Withdrawals, Diversions and Consumptive Uses for purposes of enabling the Parties to collectively evaluate Cumulative Impacts from this Proposal. The Application should include data and analyses on Cumulative Impacts that are available from the Originating Party. To that end, all Originating Party Cumulative Impact assessments must be included in the Application including but not limited to 5 year cumulative impact assessments performed pursuant to the Compact {and the Agreement}. The application should also document any mitigation measures required by the Originating Party to address cumulative impacts.

[Ref: Section 4.9.4.d and Section 4.15.3 of the Compact; Article 201 Paragraph 4.d. and Article 209 Paragraph 6 of the Agreement]

5. *The Exception [Diversion] shall be implemented so as to incorporate Environmentally Sound and Economically Feasible Water Conservation Measures to minimize Water Withdrawals or Consumptive Use.*
- (i) The application shall provide a detailed description of the Environmentally Sound and Economically Feasible Water Conservation measures that have been and will be implemented to ensure that both existing and the proposed water use will result in efficient water use and reduce water loss or waste. Where a conservation and efficiency plan has been developed it should be provided. The description should outline how such measures are:
- (a) Environmentally Sound;
 - (b) Reflect best practices applicable to the water use sector;
 - (c) Technically feasible and readily available; and,
 - (d) Economically feasible and cost effective in comparison to other measures that are technically feasible and available and/or are best practices applicable to the water use sector, based on an analysis that considers direct and avoided economic and environmental costs. Factors about the particular facilities and processes that will be considered include:
 - i) Potential environmental impact(s);
 - ii) Age of equipment and facilities;
 - iii) Processes employed; and,
 - iv) Potential energy impacts.

[Ref: Section 1.2 and Section 4.9.4.e of the Compact; Article 103 and Article 201 Paragraph 4.e. of the Agreement]

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6. *The Exception [Diversion] shall be implemented so as to ensure that it is in compliance with all applicable municipal, State, {Provincial}⁵ and federal laws as well as regional interstate, {inter-provincial} and international agreements, including the Boundary Waters Treaty of 1909. Any approval of a diversion pursuant to the terms of the Compact {or relevant State or Provincial law} does not relieve the Applicant or the Originating Party of the responsibility to obtain authorizations required for the activity approved by the Compact Council {or relevant State or Provincial law}; and, if the Applicant is required by law to obtain approvals from any federal or other State agency to do the work, any approval given pursuant to Section 4.9.3 of the Compact is not effective until the federal and State approvals are obtained. If any environmental permits have already been received, they shall be included in the application.*
[Ref: Section 4.9.4.f of the Compact; Article 201 Paragraph 4.f. of the Agreement]

Comment [PRJ1]: Will be struck for Regional Body procedures.

7. *Additional Information.*
Provide any other additional information that the Applicant deems relevant for the Council's {and Regional Body's} consideration.

C. Additional Information—Intra-Basin Transfers Exception Applications.

All Applications should include information to show that the proposal meets the following additional criteria contained in Section 4.9.2.c of the Compact {and Article 201 Paragraph 2.c. of the Agreement}.

1. *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;*
As part of its Application addressing Section B.3. above, the Application must show how water will be returned to the Source Watershed where the Withdrawal occurs
[Ref: Section 4.9.2.c.i of the Compact; Article 201 Paragraph 2.c.i of the Agreement]
2. *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.*
The Application must include an analysis showing that there is no feasible, cost effective, and environmentally sound water supply alternative(s), including conservation and efficient use of existing water supplies, within the Great Lake watershed to which the Water will be transferred. Such

⁵ All items in {brackets} indicate that this language will appear only in the Procedures to be adopted by the Regional Body and not in the Compact Council rules.

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analysis shall address quantity and quality (including treatability) of alternative sources and shall describe the rationale for not using the other considered water supply alternatives.

[Ref: Section 4.9.2.c.ii of the Compact; Article 201 Paragraph 2.c.ii. of the Agreement]