

GREAT LAKES BASIN WATER RESOURCES COMPACT

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 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:

Agreement means the Great Lakes 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 Basin** means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivières, Québec within the jurisdiction of the Parties.

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Consumptive Use means that portion of Water Withdrawn or withheld from the Basin that is lost or otherwise not returned to the Basin due to evaporation, incorporation into products, or other processes.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 Basin Water Resources Council, created by this Compact.

Council Review means the collective review by all the Parties as described in Article 4 of this Compact.

County means the largest territorial division for local government in a State. The Counties will be defined as of the effective date of this Compact.

Cumulative Impacts mean the impact on the Great Lakes Basin Ecosystem that results from incremental effects of all aspects of a Withdrawal in addition to other past, present, and reasonably foreseeable future Withdrawals regardless of who undertakes the other

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Withdrawals. Cumulative Impacts can result from individually minor but collectively significant Withdrawals taking place over a period of time.

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. **Divert** has a corresponding meaning.

Environmentally Sound and Economically Feasible Water Conservation Measures mean any beneficial reduction in Water loss, waste, or use accomplished by the implementation of Water management practices and Water efficiency measures. Water management practices and Water efficiency measures must be economically feasible based on a cost-benefit analysis that includes avoided environmental and economic costs.

Exception means a transfer of Water that is excepted under Section 4.7 from the prohibition against Diversions.

Great Lakes Basin Ecosystem means the interacting components of air, land, Water and living organisms, including humankind, within the Basin.

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 increase in 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.

Proposal means a prospective Withdrawal, Diversion or Consumptive Use of Water that is subject to this Compact.

Province means Ontario or Québec.

Regional Body means the Great Lakes Water Resources Regional Body established by the Agreement.

Regional Review means the collective review by all States and Provinces as described in Article 4 of this Compact.

Return Flow means the remaining portion of Water Withdrawn which returns naturally or is returned to the Source Watershed after use and thus becomes available for further use in the Basin.

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 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, whose corporate boundary existing as of the effective date of this Compact, is partly within the Basin or partly within two Great Lakes watersheds.

Water means ground or surface Water contained within the Basin.

Water Dependent Natural Resources mean 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 Parties have an important, continuing and abiding role in the Great Lakes;

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- b. The Waters of the Basin are interconnected and part of a single hydrologic system. The multiple uses of these resources for municipal, industrial and agricultural water supply; mining; navigation; hydroelectric power and energy production; recreation; and the maintenance of fish and wildlife habitat and a balanced ecosystem are interdependent;
 - c. Future Diversions and Consumptive Uses of Basin Water Resources have the potential to significantly impact the environment, economy and welfare of the Great Lakes region; and,
 - d. 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 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;
 - 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 Water Withdrawals and losses on the Waters and Water Dependent Natural Resources of the Basin;
 - f. To promote a precautionary approach to prevent significant adverse impacts of Withdrawals and losses on the Basin's ecosystems and watersheds; and,
 - g. To promote interstate and State-Provincial comity.

ARTICLE 2
ORGANIZATION

Section 2.1. Council Created.

The Great Lakes 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 Standard of Review and Decision may be revised by regulation duly adopted in accordance with Section 3.3 of this Compact after consultation with the Provinces and upon unanimous vote by all eight Council members.
4. 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.
5. 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, 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 shall develop and effectuate 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 special 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.

The Council and each Party may promulgate and enforce such rules and regulations as may be necessary for the implementation and enforcement of this Compact. The Council may adopt practices and schedules, fees and charges for or in connection with the use, maintenance and administration of facilities it may own or operate, and any product or service rendered. 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. The Agreement, including its procedures manual, shall be used as a guide for review of Proposals and the implementation of the Standard of Review and Decision.

Section 3.4. Water Resources Inventory.

1. Each Party shall have the power and its duty shall be to develop and maintain, in cooperation with local, State, federal, and private agencies and entities, as well as the Council, 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 Diversions and Consumptive Uses. Each Party's agencies shall cooperate with that Party in the development and maintenance of the inventory.
2. Each Party shall cooperate with the other States and Provinces 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.

Section 3.5. Water Conservation Programs.

1. In cooperation with the Council, each Party shall have the power and its duty shall be to develop and implement Water conservation programs that, collectively, will ensure improvement of the Waters and Water Dependent Natural Resources; protection of the integrity of the Great Lakes Basin Ecosystem; and, specifically, will retain and

restore the quantity of surface Water and groundwater in the Basin. Conservation programs need to anticipate new demands and the potential impacts of cumulative effects and climate change.

2. Each Party shall have the power and its duty shall be to reduce demand for Water wherever feasible and to improve the efficiency of use by all users and reduce losses and waste of Water.
3. Conservation shall be achieved by each Party through demand and supply-side Measures or incentives that are Environmentally Sound and Economically Feasible.
4. Each Party shall have the power and its duty shall be to promote and address conservation through means such as:
 - a. Development and sharing of state of the art conservation technologies and best management practices;
 - b. Application of sound planning principles;
 - c. Development, transfer and application of science and research; and,
 - d. Establishment of reporting and performance standards and program monitoring.
5. Each Party shall have the power and its duty shall be to implement a water conservation program for all, including existing, Basin Water users, and shall fully implement no later than five years from the effective date of this Compact. Each Party shall formally notify the Council upon implementing this authority.

Section 3.6. Program Review and Findings.

The Council may periodically, in cooperation with the Provinces, review its Water management programs and those of the Parties that are established in this Compact and make findings on whether the Water management program requirements in this Compact are being met.

ARTICLE 4 WATER MANAGEMENT AND REGULATION

Section 4.1. Registration and Reporting of Withdrawals.

1. Any Person who Withdraws Water in an amount of 100,000 gallons per day or greater average in any 30-day period from all sources, or Diverts Water, shall register the Withdrawal or Diversion by a date set by the Council. The Person shall register the Withdrawal or Diversion with the Originating Party using a form prescribed by the Originating Party that shall include, 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 in accordance with the Originating Party's law.
2. Each Party shall gather accurate and comparable information on all Water Withdrawals of 100,000 gallons per day or greater average in any 30-day period and all Diversions, including Exceptions. Users shall annually report the monthly

volumes of the Withdrawal, Consumptive Use and Diversion in gallons to the Originating Party, in accordance with the Originating Party's law. This information will be annually reported to a Great Lakes regional water use data base repository and will be made publicly available.

3. Information gathered by the Parties pursuant to this Section will 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 Great Lakes 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 will be assessed.

Section 4.2. Party Powers and Duties.

1. Each Party, within its jurisdiction, shall have the power and its duty shall be to manage and regulate New or Increased Withdrawals, Consumptive Uses and Diversions, including Exceptions, in accordance with this Compact and the Standard of Review and Decision.
2. Each Party shall require any Person who seeks to undertake a Proposal, in accordance with this Compact, to submit such Applications 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 4.3. Proposal Submission.

No Proposal subject to management and regulation under this Compact shall hereafter be undertaken by any Person unless it shall have been submitted to and approved by the Originating Party.

Section 4.4. Regional Review.

1. 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. Such Regional Review may include, but not be limited to, notice, consultation and public

participation. The Parties and the Council shall consider any findings resulting from such review.

2. The following proposals shall be submitted by the Originating Party to the Regional Body for Regional Review:
 - a. A Proposal for an Exception as described in Section 4.7.2 and 4.7.3.
 - b. A Proposal for a New or Increased Consumptive Use of 5 million gallons per day or greater average in any 90-day period.
3. Parties may also, at their discretion, seek Regional Review for any Proposal within their jurisdiction that may have the potential to significantly impact the Waters and Water Dependent Natural Resources of the Basin, after consulting with the Applicant.

Section 4.5. Council Actions.

1. The Council shall have the power and its duty shall be to 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.
2. A Proposal for an Exception as described in Section 4.7.2 and 4.7.3 shall be submitted by the Originating Party to the Council for Council Review and action.

Section 4.6. Prohibition of New or Increased Diversions.

All New or Increased Diversions are prohibited, except as provided for in this Article.

Section 4.7. Exceptions

1. Straddling Communities. A Proposal to transfer Water to an area within a Straddling Community shall be excepted from the prohibition against Diversions and managed by the Originating Party as a Withdrawal and Consumptive Use under the provisions of this Compact, including but not limited to those provisions related to the requirement to meet the Standard and undergo Regional Review, provided that, regardless of the volume of Water transferred:
 - a. All the Water so transferred shall be used solely for public water supply purposes; and,
 - b. The Return Flow required for any such transferred Water shall be to the Source Watershed, not include any Water from outside the Basin and meet all applicable Water quality standards.
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 Article, 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 100,000 gallons per day or greater average over any 90-day period and if the Consumptive Use

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- resulting from the Withdrawal is less than 5 million gallons per day average over any 90-day period:
- i. The Proposal shall meet the Standard and be subject to management and regulation by the Originating Party;
 - ii. The Return Flow requirements of the Standard shall be met, recognizing that the Return Flow may be to another Great Lake watershed rather than the Source Watershed. The Return Flow shall not include any water from outside the Basin, and shall meet all applicable Water quality standards;
 - iii. The Applicant shall demonstrate that there is no reasonable water supply alternative within the Great Lake watershed to which the Water will be transferred, including conservation of existing water supplies; and,
 - iv. 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 5 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 Standard, ensure that the Return Flow shall be to the Source Watershed, shall not include any water from outside the Basin, and shall meet all applicable water quality standards;
 - ii. The Applicant shall demonstrate that there is no reasonable 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 Compact 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 a community that is without adequate supplies of potable water.
 - b. The Proposal meets the Standard.
 - 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. A precautionary approach 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 Great Lakes Basin Ecosystem.
 - f. The Proposal undergoes Regional Review.
 - g. The Proposal is approved by the Compact Council. Council approval shall be given unless one or more Council Members vote to disapprove.

Section 4.8. Withdrawals Subject to Management and Regulation

Each Party, within its jurisdiction, shall have the power and its duty shall be to manage and regulate all New or Increased Withdrawals of 100,000 gallons per day or greater average in any 90-day period and shall begin to exercise this authority no later than ten years from the effective date of this Compact. Each Party shall formally notify the Council upon implementing this authority.

Section 4.9. Decision-Making Standard.

The Decision-Making Standard in this Article shall apply to any review undertaken by any Party, the Regional Body or the Council. Proposals subject to management and regulation will be declared to meet this Decision-Making Standard and may be approved as appropriate only when the following criteria are met:

1. The need for all or part of the proposed Consumptive Use, Withdrawal, or Exception cannot be reasonably avoided through the efficient use and conservation of existing water supplies; and
2. The Consumptive Use, Withdrawal, or Exception will be limited to quantities that are considered reasonable for the purposes for which they are proposed; and,
3. All Water Withdrawn from the Basin shall be returned to the Source Watershed less an allowance for Consumptive Use of the applicable water use sector. No Water other than Basin Water shall be used in the Return Flow; and,
4. The Consumptive Use, Withdrawal, or 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; and,
5. The Consumptive Use, Withdrawal, or Exception will be implemented so as to incorporate Environmentally Sound and Economically Feasible Water Conservation Measures to minimize Water Withdrawals or Consumptive Use; and,
6. The Consumptive Use, Withdrawal, or 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.
7. For an Exception which is subject to this Standard, all applicable criteria in Section 4.7 have also been met.

Section 4.10. Applicability.

This Standard of Review and Decision shall be used as a minimum standard. Parties may impose a more restrictive decision making standard for Water 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.

Section 4.11. 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 non-commercial project on a short-term basis for firefighting or humanitarian purposes.

Section 4.12. 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 Québec, with respect to the proposed modification, use best efforts to facilitate the appropriate participation of the 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 4.7, 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 4.2, 4.3, 4.4, 4.6, 4.7, 4.9, 4.10 and 4.11 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 3.5.

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 4.12 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 4.13. Cumulative Impacts.

The Parties in cooperation with the Provinces will collectively conduct, 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 5 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 will form the basis for a review of the Standard of Review and Decision, Council and Party regulations and their application. This assessment will:

1. 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;
2. Take climate change fully into account; and,
3. Consider precautionary principles and approaches.

**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 will 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. The 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.
3. The Parties and the Council shall consider the comments received under this Section before approving, approving with modifications or disapproving any Proposal subject to this Compact.

**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 Resource 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 will 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 Great Lakes 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 pursuant to the authorities contained in this Compact shall be entitled to a hearing before the Council for a Council action, or for

a Party action pursuant to the relevant Party's administrative procedures and laws; and, after exhaustion of administrative remedies, they shall have the right to judicial review of such 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. Judicial review of a Council action will be 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. For the 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. Any Party may issue such orders within their respective jurisdictions and any Party or the Council may initiate such actions to compel compliance with the provisions granting authority to each by this Compact, the rules and regulations promulgated thereunder by each, and any order or approval issued in any court of competent jurisdiction. For a Party, jurisdiction is granted to the Party's judicial system. For the Council, jurisdiction 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.
3. Upon the affirmative vote of all Council members in good standing other than the Council member being considered for suspension, the Council may suspend a Party's right to vote on matters before the Council if the Council finds such party to be in violation of its duties under this Compact, but only after the alternative dispute resolution procedures established pursuant to this Article have been utilized. Such suspended Party may petition a court to set aside the Council's suspension. For the purposes of this Section, jurisdiction is granted to the United States District Courts for the District of Columbia or the District Court in which the Council maintains offices. Upon the petition from any Council member and majority vote of all Council members in good standing, the Council may reinstate a Party's right to vote.
4. Any aggrieved Person 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. The available remedies shall include equitable relief and the prevailing party may recover the costs of litigation, including reasonable attorney and expert witness fees.

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 international agreement or treaty.
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 with respect to boundary waters 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. Effective Date.

This Compact shall become effective when ratified through concurring legislation by the legislatures of each of the eight Parties and consented to by the Congress of the United States.

Section 8.8. 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 recommendation and provision of this Compact is considered material to the entire Compact, and failure to implement or adhere to any recommendation or provision may be considered a material breach. Unless otherwise noted in this Compact, any change or amendment made by any Party in its implementing legislation to the Compact or by the U.S. Congress when giving its consent to this Compact is not considered effective unless concurred in by all Parties.