

SB0050



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB0050

Introduced 1/31/2007, by Sen. John J. Cullerton

SYNOPSIS AS INTRODUCED:

New Act

Creates the Great Lakes-St. Lawrence River Basin Water Resources Compact Act and authorizes the Governor to enter into the Compact. Provides that the Compact is an agreement between the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, and Pennsylvania. Provides that the Compact creates the Great Lakes-St. Lawrence River Basin Water Resources Council, which shall consist of the governors of the parties to the Compact ex officio. Sets forth the jurisdiction, organization, powers, and purposes of the Council. Sets forth the purposes of the Compact, including the protection and conservation of waters and water dependent resources and the promotion of interstate and state-provincial comity. Effective immediately.

LRB095 03782 HLH 23811 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning natural resources.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Great
5 Lakes-St. Lawrence River Basin Water Resources Compact Act.

6 Section 5. Great Lakes-St. Lawrence River Basin Water
7 Resources Compact. The Governor of this State is authorized to
8 take such action as may be necessary and proper in his or her
9 discretion to effectuate the following Compact and the initial
10 organization and operation thereunder:

11 **AGREEMENT**

12 **Section 1.** The states of Illinois, Indiana, Michigan,
13 Minnesota, New York, Ohio and Wisconsin and the Commonwealth of
14 Pennsylvania hereby solemnly covenant and agree with each
15 other, upon enactment of concurrent legislation by the
16 respective state legislatures and consent by the Congress of
17 the United States as follows:

18 **GREAT LAKES-ST. LAWRENCE RIVER BASIN WATER RESOURCES**
19 **COMPACT**

1 of the Parties.

2 **Basin Ecosystem** or **Great Lakes-St. Lawrence River Basin**
3 **Ecosystem** means the interacting components of air, land, Water
4 and living organisms, including humankind, within the Basin.

5 **Community within a Straddling County** means any
6 incorporated city, town or the equivalent thereof, that is
7 located outside the Basin but wholly within a County that lies
8 partly within the Basin and that is not a Straddling Community.

9 **Compact** means this Compact.

10 **Consumptive Use** means that portion of the Water Withdrawn
11 or withheld from the Basin that is lost or otherwise not
12 returned to the Basin due to evaporation, incorporation into
13 Products, or other processes.

14 **Council** means the Great Lakes-St. Lawrence River Basin
15 Water Resources Council, created by this Compact.

16 **Council Review** means the collective review by the Council
17 members as described in Article 4 of this Compact.

18 **County** means the largest territorial division for local
19 government in a State. The County boundaries shall be defined
20 as those boundaries that exist as of December 13, 2005.

21 **Cumulative Impacts** mean the impact on the Basin Ecosystem
22 that results from incremental effects of all aspects of a
23 Withdrawal, Diversion or Consumptive Use in addition to other
24 past, present, and reasonably foreseeable future Withdrawals,
25 Diversions and Consumptive Uses regardless of who undertakes
26 the other Withdrawals, Diversions and Consumptive Uses.

1 Cumulative Impacts can result from individually minor but
2 collectively significant Withdrawals, Diversions and
3 Consumptive Uses taking place over a period of time.

4 **Decision-Making Standard** means the decision-making
5 standard established by Section 4.11 for Proposals subject to
6 management and regulation in Section 4.10.

7 **Diversion** means a transfer of Water from the Basin into
8 another watershed, or from the watershed of one of the Great
9 Lakes into that of another by any means of transfer, including
10 but not limited to a pipeline, canal, tunnel, aqueduct,
11 channel, modification of the direction of a water course, a
12 tanker ship, tanker truck or rail tanker but does not apply to
13 Water that is used in the Basin or a Great Lake watershed to
14 manufacture or produce a Product that is then transferred out
15 of the Basin or watershed. Divert has a corresponding meaning.

16 **Environmentally Sound and Economically Feasible Water**
17 **Conservation Measures** mean those measures, methods,
18 technologies or practices for efficient water use and for
19 reduction of water loss and waste or for reducing a Withdrawal,
20 Consumptive Use or Diversion that i) are environmentally sound,
21 ii) reflect best practices applicable to the water use sector,
22 iii) are technically feasible and available, iv) are
23 economically feasible and cost effective based on an analysis
24 that considers direct and avoided economic and environmental
25 costs and v) consider the particular facilities and processes
26 involved, taking into account the environmental impact, age of

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

3 **Exception** means a transfer of Water that is excepted under
4 Section 4.9 from the prohibition against Diversions in Section
5 4.8.

6 **Exception Standard** means the standard for Exceptions
7 established in Section 4.9.4.

8 **Intra-Basin Transfer** means the transfer of Water from the
9 watershed of one of the Great Lakes into the watershed of
10 another Great Lake.

11 **Measures** means any legislation, law, regulation,
12 directive, requirement, guideline, program, policy,
13 administrative practice or other procedure.

14 **New or Increased Diversion** means a new Diversion, an
15 increase in an existing Diversion, or the alteration of an
16 existing Withdrawal so that it becomes a Diversion.

17 **New or Increased Withdrawal or Consumptive Use** means a new
18 Withdrawal or Consumptive Use or an increase in an existing
19 Withdrawal or Consumptive Use.

20 **Originating Party** means the Party within whose
21 jurisdiction an Application or registration is made or
22 required.

23 **Party** means a State party to this Compact.

24 **Person** means a human being or a legal person, including a
25 government or a non-governmental organization, including any
26 scientific, professional, business, non-profit, or public

1 interest organization or association that is neither
2 affiliated with, nor under the direction of a government.

3 **Product** means something produced in the Basin by human or
4 mechanical effort or through agricultural processes and used in
5 manufacturing, commercial or other processes or intended for
6 intermediate or end use consumers. (i) Water used as part of
7 the packaging of a Product shall be considered to be part of
8 the Product. (ii) Other than Water used as part of the
9 packaging of a Product, Water that is used primarily to
10 transport materials in or out of the Basin is not a Product or
11 part of a Product. (iii) Except as provided in (i) above, Water
12 which is transferred as part of a public or private supply is
13 not a Product or part of a Product. (iv) Water in its natural
14 state such as in lakes, rivers, reservoirs, aquifers, or water
15 basins is not a Product.

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

18 **Province** means Ontario or Québec.

19 **Public Water Supply Purposes** means water distributed to the
20 public through a physically connected system of treatment,
21 storage and distribution facilities serving a group of largely
22 residential customers that may also serve industrial,
23 commercial, and other institutional operators. Water Withdrawn
24 directly from the Basin and not through such a system shall not
25 be considered to be used for Public Water Supply Purposes.

26 **Regional Body** means the members of the Council and the

1 Premiers of Ontario and Québec or their designee as established
2 by the Agreement.

3 **Regional Review** means the collective review by the Regional
4 Body as described in Article 4 of this Compact.

5 **Source Watershed** means the watershed from which a
6 Withdrawal originates. If Water is Withdrawn directly from a
7 Great Lake or from the St. Lawrence River, then the Source
8 Watershed shall be considered to be the watershed of that Great
9 Lake or the watershed of the St. Lawrence River, respectively.
10 If Water is Withdrawn from the watershed of a stream that is a
11 direct tributary to a Great Lake or a direct tributary to the
12 St. Lawrence River, then the Source Watershed shall be
13 considered to be the watershed of that Great Lake or the
14 watershed of the St. Lawrence River, respectively, with a
15 preference to the direct tributary stream watershed from which
16 it was Withdrawn.

17 **Standard of Review and Decision** means the Exception
18 Standard, Decision-Making Standard and reviews as outlined in
19 Article 4 of this Compact.

20 **State** means one of the states of Illinois, Indiana,
21 Michigan, Minnesota, New York, Ohio or Wisconsin or the
22 Commonwealth of Pennsylvania.

23 **Straddling Community** means any incorporated city, town or
24 the equivalent thereof, wholly within any County that lies
25 partly or completely within the Basin, whose corporate boundary
26 existing as of the effective date of this Compact, is partly

1 within the Basin or partly within two Great Lakes watersheds.

2 **Technical Review** means a detailed review conducted to
3 determine whether or not a Proposal that requires Regional
4 Review under this Compact meets the Standard of Review and
5 Decision following procedures and guidelines as set out in this
6 Compact.

7 **Water** means ground or surface water contained within the
8 Basin.

9 **Water Dependent Natural Resources** means the interacting
10 components of land, Water and living organisms affected by the
11 Waters of the Basin.

12 **Waters of the Basin or Basin Water** means the Great Lakes
13 and all streams, rivers, lakes, connecting channels and other
14 bodies of water, including tributary groundwater, within the
15 Basin.

16 **Withdrawal** means the taking of water from surface water or
17 groundwater. **Withdraw** has a corresponding meaning.

18 **Section 1.3. Findings and Purposes.** The legislative bodies
19 of the respective Parties hereby find and declare:

20 1. Findings:

21 a. The Waters of the Basin are precious public natural
22 resources shared and held in trust by the States;

23 b. The Waters of the Basin are interconnected and part
24 of a single hydrologic system;

25 c. The Waters of the Basin can concurrently serve

1 multiple uses. Such multiple uses include municipal,
2 public, industrial, commercial, agriculture, mining,
3 navigation, energy development and production, recreation,
4 the subsistence, economic and cultural activities of
5 native peoples, Water quality maintenance, and the
6 maintenance of fish and wildlife habitat and a balanced
7 ecosystem. And, other purposes are encouraged, recognizing
8 that such uses are interdependent and must be balanced;

9 d. Future Diversions and Consumptive Uses of Basin
10 Water resources have the potential to significantly impact
11 the environment, economy and welfare of the Great Lakes-St.
12 Lawrence River region;

13 e. Continued sustainable, accessible and adequate
14 Water supplies for the people and economy of the Basin are
15 of vital importance; and,

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

25 2. Purposes:

26 a. To act together to protect, conserve, restore,

1 improve and effectively manage the Waters and Water
2 Dependent Natural Resources of the Basin under appropriate
3 arrangements for intergovernmental cooperation and
4 consultation because current lack of full scientific
5 certainty should not be used as a reason for postponing
6 measures to protect the Basin Ecosystem;

7 b. To remove causes of present and future
8 controversies;

9 c. To provide for cooperative planning and action by
10 the Parties with respect to such Water resources;

11 d. To facilitate consistent approaches to Water
12 management across the Basin while retaining State
13 management authority over Water management decisions
14 within the Basin;

15 e. To facilitate the exchange of data, strengthen the
16 scientific information base upon which decisions are made
17 and engage in consultation on the potential effects of
18 proposed Withdrawals and losses on the Waters and Water
19 Dependent Natural Resources of the Basin;

20 f. To prevent significant adverse impacts of
21 Withdrawals and losses on the Basin's ecosystems and
22 watersheds;

23 g. To promote interstate and State-Provincial comity;
24 and,

25 h. To promote an Adaptive Management approach to the
26 conservation and management of Basin Water resources,

1 which recognizes, considers and provides adjustments for
2 the uncertainties in, and evolution of, scientific
3 knowledge concerning the Basin's Waters and Water
4 Dependent Natural Resources.

5 **Section 1.4. Science.**

6 1. The Parties commit to provide leadership for the
7 development of a collaborative strategy with other regional
8 partners to strengthen the scientific basis for sound Water
9 management decision making under this Compact.

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

12 a. An improved understanding of the individual and
13 Cumulative Impacts of Withdrawals from various locations
14 and Water sources on the Basin Ecosystem and to develop a
15 mechanism by which impacts of Withdrawals may be assessed;

16 b. The periodic assessment of Cumulative Impacts of
17 Withdrawals, Diversions and Consumptive Uses on a Great
18 Lake and St. Lawrence River watershed basis;

19 c. Improved scientific understanding of the Waters of
20 the Basin;

21 d. Improved understanding of the role of groundwater in
22 Basin Water resources management; and,

23 e. The development, transfer and application of
24 science and research related to Water conservation and
25 Water use efficiency.

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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.

1 **Section 2.4. Voting.**

2 1. Each member is entitled to one vote on all matters that
3 may come before the Council.

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

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

12 4. The participation of Council members from a majority of
13 the Parties shall constitute a quorum for the transaction of
14 business at any meeting of the Council.

15 **Section 2.5. Organization and Procedure.**

16 The Council shall provide for its own organization and
17 procedure, and may adopt rules and regulations governing its
18 meetings and transactions, as well as the procedures and
19 timeline for submission, review and consideration of Proposals
20 that come before the Council for its review and action. The
21 Council shall organize, annually, by the election of a Chair
22 and Vice Chair from among its members. Each member may appoint
23 an advisor, who may attend all meetings of the Council and its
24 committees, but shall not have voting power. The Council may
25 employ or appoint professional and administrative personnel,

1 including an Executive Director, as it may deem advisable, to
2 carry out the purposes of this Compact.

3 **Section 2.6. Use of Existing Offices and Agencies.**

4 It is the policy of the Parties to preserve and utilize the
5 functions, powers and duties of existing offices and agencies
6 of government to the extent consistent with this Compact.
7 Further, the Council shall promote and aid the coordination of
8 the activities and programs of the Parties concerned with Water
9 resources management in the Basin. To this end, but without
10 limitation, the Council may:

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

13 2. Employ any other agency or instrumentality of any of the
14 Parties for any purpose; and,

15 3. Develop and adopt plans consistent with the Water
16 resources plans of the Parties.

17 **Section 2.7. Jurisdiction.**

18 The Council shall have, exercise and discharge its
19 functions, powers and duties within the limits of the Basin.
20 Outside the Basin, it may act in its discretion, but only to
21 the extent such action may be necessary or convenient to
22 effectuate or implement its powers or responsibilities within
23 the Basin and subject to the consent of the jurisdiction
24 wherein it proposes to act.

1 **Section 2.8. Status, Immunities and Privileges.**

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

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

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

23 **Section 2.9. Advisory Committees.**

24 The Council may constitute and empower advisory

1 committees, which may be comprised of representatives of the
2 public and of federal, State, tribal, county and local
3 governments, water resources agencies, water-using industries
4 and sectors, water-interest groups and academic experts in
5 related fields.

6 **ARTICLE 3**

7 **GENERAL POWERS AND DUTIES**

8 **Section 3.1. General.**

9 The Waters and Water Dependent Natural Resources of the
10 Basin are subject to the sovereign right and responsibilities
11 of the Parties, and it is the purpose of this Compact to
12 provide for joint exercise of such powers of sovereignty by the
13 Council in the common interests of the people of the region, in
14 the manner and to the extent provided in this Compact. The
15 Council and the Parties shall use the Standard of Review and
16 Decision and procedures contained in or adopted pursuant to
17 this Compact as the means to exercise their authority under
18 this Compact.

19 The Council may revise the Standard of Review and Decision,
20 after consultation with the Provinces and upon unanimous vote
21 of all Council members, by regulation duly adopted in
22 accordance with Section 3.3 of this Compact and in accordance
23 with each Party's respective statutory authorities and
24 applicable procedures.

1 The Council shall identify priorities and develop plans and
2 policies relating to Basin Water resources. It shall adopt and
3 promote uniform and coordinated policies for Water resources
4 conservation and management in the Basin.

5 **Section 3.2. Council Powers.**

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

22 **Section 3.3. Rules and Regulations.**

23 1. The Council may promulgate and enforce such rules and
24 regulations as may be necessary for the implementation and

1 enforcement of this Compact. The Council may adopt by
2 regulation, after public notice and public hearing, reasonable
3 Application fees with respect to those Proposals for Exceptions
4 that are subject to Council review under Section 4.9. Any rule
5 or regulation of the Council, other than one which deals solely
6 with the internal management of the Council or its property,
7 shall be adopted only after public notice and hearing.

8 2. Each Party, in accordance with its respective statutory
9 authorities and applicable procedures, may adopt and enforce
10 rules and regulations to implement and enforce this Compact and
11 the programs adopted by such Party to carry out the management
12 programs contemplated by this Compact.

13 **Section 3.4. Program Review and Findings.**

14 1. Each Party shall submit a report to the Council and the
15 Regional Body detailing its Water management and conservation
16 and efficiency programs that implement this Compact. The report
17 shall set out the manner in which Water Withdrawals are managed
18 by sector, Water source, quantity or any other means, and how
19 the provisions of the Standard of Review and Decision and
20 conservation and efficiency programs are implemented. The
21 first report shall be provided by each Party one year from the
22 effective date of this Compact and thereafter every 5 years.

23 2. The Council, in cooperation with the Provinces, shall
24 review its Water management and conservation and efficiency
25 programs and those of the Parties that are established in this

1 Compact and make findings on whether the Water management
2 program provisions in this Compact are being met, and if not,
3 recommend options to assist the Parties in meeting the
4 provisions of this Compact. Such review shall take place:

5 a. 30 days after the first report is submitted by all
6 Parties; and,

7 b. Every five years after the effective date of this
8 Compact; and,

9 c. At any other time at the request of one of the
10 Parties.

11 3. As one of its duties and responsibilities, the Council
12 may recommend a range of approaches to the Parties with respect
13 to the development, enhancement and application of Water
14 management and conservation and efficiency programs to
15 implement the Standard of Review and Decision reflecting
16 improved scientific understanding of the Waters of the Basin,
17 including groundwater, and the impacts of Withdrawals on the
18 Basin Ecosystem.

19 **ARTICLE 4**

20 **WATER MANAGEMENT AND REGULATION**

21 **Section 4.1. Water Resources Inventory, Registration and**
22 **Reporting.**

23 1. Within five years of the effective date of this Compact,
24 each Party shall develop and maintain a Water resources

1 inventory for the collection, interpretation, storage,
2 retrieval exchange, and dissemination of information
3 concerning the Water resources of the Party, including, but not
4 limited to, information on the location, type, quantity, and
5 use of those resources and the location, type, and quantity of
6 Withdrawals, Diversions and Consumptive Uses. To the extent
7 feasible, the Water resources inventory shall be developed in
8 cooperation with local, State, federal, tribal and other
9 private agencies and entities, as well as the Council. Each
10 Party's agencies shall cooperate with that Party in the
11 development and maintenance of the inventory.

12 2. The Council shall assist each Party to develop a common
13 base of data regarding the management of the Water Resources of
14 the Basin and to establish systematic arrangements for the
15 exchange of those data with other States and Provinces.

16 3. To develop and maintain a compatible base of Water use
17 information, within five years of the effective date of this
18 Compact any Person who Withdraws Water in an amount of 100,000
19 gallons per day or greater average in any 30-day period
20 (including Consumptive Uses) from all sources, or Diverts Water
21 of any amount, shall register the Withdrawal or Diversion by a
22 date set by the Council unless the Person has previously
23 registered in accordance with an existing State program. The
24 Person shall register the Withdrawal or Diversion with the
25 Originating Party using a form prescribed by the Originating
26 Party that shall include, at a minimum and without limitation:

1 the name and address of the registrant and date of
2 registration; the locations and sources of the Withdrawal or
3 Diversion; the capacity of the Withdrawal or Diversion per day
4 and the amount Withdrawn or Diverted from each source; the uses
5 made of the Water; places of use and places of discharge; and,
6 such other information as the Originating Party may require.
7 All registrations shall include an estimate of the volume of
8 the Withdrawal or Diversion in terms of gallons per day average
9 in any 30-day period.

10 4. All registrants shall annually report the monthly
11 volumes of the Withdrawal, Consumptive Use and Diversion in
12 gallons to the Originating Party and any other information
13 requested by the Originating Party.

14 5. Each Party shall annually report the information
15 gathered pursuant to this Section to a Great Lakes-St. Lawrence
16 River Water use data base repository and aggregated information
17 shall be made publicly available, consistent with the
18 confidentiality requirements in Section 8.3.

19 6. Information gathered by the Parties pursuant to this
20 Section shall be used to improve the sources and applications
21 of scientific information regarding the Waters of the Basin and
22 the impacts of the Withdrawals and Diversions from various
23 locations and Water sources on the Basin Ecosystem, and to
24 better understand the role of groundwater in the Basin. The
25 Council and the Parties shall coordinate the collection and
26 application of scientific information to further develop a

1 mechanism by which individual and Cumulative Impacts of
2 Withdrawals, Consumptive Uses and Diversions shall be
3 assessed.

4 **Section 4.2. Water Conservation and Efficiency Programs.**

5 1. The Council commits to identify, in cooperation with the
6 Provinces, Basin-wide Water conservation and efficiency
7 objectives to assist the Parties in developing their Water
8 conservation and efficiency program. These objectives are
9 based on the goals of:

10 a. Ensuring improvement of the Waters and Water
11 Dependent Natural Resources;

12 b. Protecting and restoring the hydrologic and
13 ecosystem integrity of the Basin;

14 c. Retaining the quantity of surface water and
15 groundwater in the Basin;

16 d. Ensuring sustainable use of Waters of the Basin;
17 and,

18 e. Promoting the efficiency of use and reducing losses
19 and waste of Water.

20 2. Within two years of the effective date of this Compact,
21 each Party shall develop its own Water conservation and
22 efficiency goals and objectives consistent with the Basin-wide
23 goals and objectives, and shall develop and implement a Water
24 conservation and efficiency program, either voluntary or
25 mandatory, within its jurisdiction based on the Party's goals

1 and objectives. Each Party shall annually assess its programs
2 in meeting the Party's goals and objectives, report to the
3 Council and the Regional Body and make this annual assessment
4 available to the public.

5 3. Beginning five years after the effective date of this
6 Compact, and every five years thereafter, the Council, in
7 cooperation with the Provinces, shall review and modify as
8 appropriate the Basin-wide objectives, and the Parties shall
9 have regard for any such modifications in implementing their
10 programs. This assessment will be based on examining new
11 technologies, new patterns of Water use, new resource demands
12 and threats, and Cumulative Impact assessment under Section
13 4.15.

14 4. Within two years of the effective date of this Compact,
15 the Parties commit to promote Environmentally Sound and
16 Economically Feasible Water Conservation Measures such as:

- 17 a. Measures that promote efficient use of Water;
- 18 b. Identification and sharing of best management
19 practices and state of the art conservation and efficiency
20 technologies;
- 21 c. Application of sound planning principles;
- 22 d. Demand-side and supply-side Measures or incentives;
- 23 and,
- 24 e. Development, transfer and application of science
25 and research.

26 5. Each Party shall implement in accordance with paragraph

1 2 above a voluntary or mandatory Water conservation program for
2 all, including existing, Basin Water users. Conservation
3 programs need to adjust to new demands and the potential
4 impacts of cumulative effects and climate.

5 **Section 4.3. Party Powers and Duties.**

6 1. Each Party, within its jurisdiction, shall manage and
7 regulate New or Increased Withdrawals, Consumptive Uses and
8 Diversions, including Exceptions, in accordance with this
9 Compact.

10 2. Each Party shall require an Applicant to submit an
11 Application in such manner and with such accompanying
12 information as the Party shall prescribe.

13 3. No Party may approve a Proposal if the Party determines
14 that the Proposal is inconsistent with this Compact or the
15 Standard of Review and Decision or any implementing rules or
16 regulations promulgated thereunder. The Party may approve,
17 approve with modifications or disapprove any Proposal
18 depending on the Proposal's consistency with this Compact and
19 the Standard of Review and Decision.

20 4. Each Party shall monitor the implementation of any
21 approved Proposal to ensure consistency with the approval and
22 may take all necessary enforcement actions.

23 5. No Party shall approve a Proposal subject to Council or
24 Regional Review, or both, pursuant to this Compact unless it
25 shall have been first submitted to and reviewed by either the

1 Council or Regional Body, or both, and approved by the Council,
2 as applicable. Sufficient opportunity shall be provided for
3 comment on the Proposal's consistency with this Compact and the
4 Standard of Review and Decision. All such comments shall become
5 part of the Party's formal record of decision, and the Party
6 shall take into consideration any such comments received.

7 **Section 4.4. Requirement for Originating Party Approval.**

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

11 **Section 4.5. Regional Review.**

12 1. *General.*

13 a. It is the intention of the Parties to participate in
14 Regional Review of Proposals with the Provinces, as
15 described in this Compact and the Agreement.

16 b. Unless the Applicant or the Originating Party
17 otherwise requests, it shall be the goal of the Regional
18 Body to conclude its review no later than 90 days after
19 notice under Section 4.5.2 of such Proposal is received
20 from the Originating Party.

21 c. Proposals for Exceptions subject to Regional Review
22 shall be submitted by the Originating Party to the Regional
23 Body for Regional Review, and where applicable, to the
24 Council for concurrent review.

1 d. The Parties agree that the protection of the
2 integrity of the Great Lakes - St. Lawrence River Basin
3 Ecosystem shall be the overarching principle for reviewing
4 Proposals subject to Regional Review, recognizing
5 uncertainties with respect to demands that may be placed on
6 Basin Water, including groundwater, levels and flows of the
7 Great Lakes and the St. Lawrence River, future changes in
8 environmental conditions, the reliability of existing data
9 and the extent to which Diversions may harm the integrity
10 of the Basin Ecosystem.

11 e. The Originating Party shall have lead
12 responsibility for coordinating information for resolution
13 of issues related to evaluation of a Proposal, and shall
14 consult with the Applicant throughout the Regional Review
15 Process.

16 f. A majority of the members of the Regional Body may
17 request Regional Review of a regionally significant or
18 potentially precedent setting Proposal. Such Regional
19 Review must be conducted, to the extent possible, within
20 the time frames set forth in this Section. Any such
21 Regional Review shall be undertaken only after consulting
22 the Applicant.

23 2. *Notice from Originating Party to the Regional Body.*

24 a. The Originating Party shall determine if a Proposal
25 is subject to Regional Review. If so, the Originating Party
26 shall provide timely notice to the Regional Body and the

1 public.

2 b. Such notice shall not be given unless and until all
3 information, documents and the Originating Party's
4 Technical Review needed to evaluate whether the Proposal
5 meets the Standard of Review and Decision have been
6 provided.

7 c. An Originating Party may:

8 i. Provide notice to the Regional Body of an
9 Application, even if notification is not required; or,

10 ii. Request Regional Review of an application,
11 even if Regional Review is not required. Any such
12 Regional Review shall be undertaken only after
13 consulting the Applicant.

14 d. An Originating Party may provide preliminary notice
15 of a potential Proposal.

16 3. *Public Participation.*

17 a. To ensure adequate public participation, the
18 Regional Body shall adopt procedures for the review of
19 Proposals that are subject to Regional Review in accordance
20 with this Article.

21 b. The Regional Body shall provide notice to the public
22 of a Proposal undergoing Regional Review. Such notice shall
23 indicate that the public has an opportunity to comment in
24 writing to the Regional Body on whether the Proposal meets
25 the Standard of Review and Decision.

26 c. The Regional Body shall hold a public meeting in the

1 State or Province of the Originating Party in order to
2 receive public comment on the issue of whether the Proposal
3 under consideration meets the Standard of Review and
4 Decision.

5 d. The Regional Body shall consider the comments
6 received before issuing a Declaration of Finding.

7 e. The Regional Body shall forward the comments it
8 receives to the Originating Party.

9 *4. Technical Review.*

10 a. The Originating Party shall provide the Regional
11 Body with its Technical Review of the Proposal under
12 consideration.

13 b. The Originating Party's Technical Review shall
14 thoroughly analyze the Proposal and provide an evaluation
15 of the Proposal sufficient for a determination of whether
16 the Proposal meets the Standard of Review and Decision.

17 c. Any member of the Regional Body may conduct their
18 own Technical Review of any Proposal subject to Regional
19 Review.

20 d. At the request of the majority of its members, the
21 Regional Body shall make such arrangements as it considers
22 appropriate for an independent Technical Review of a
23 Proposal.

24 e. All Parties shall exercise their best efforts to
25 ensure that a Technical Review undertaken under Sections
26 4.5.4.c and 4.5.4.d does not unnecessarily delay the

1 decision by the Originating Party on the Application.
2 Unless the Applicant or the Originating Party otherwise
3 requests, all Technical Reviews shall be completed no later
4 than 60 days after the date the notice of the Proposal was
5 given to the Regional Body.

6 *5. Declaration of Finding.*

7 a. The Regional Body shall meet to consider a Proposal.
8 The Applicant shall be provided with an opportunity to
9 present the Proposal to the Regional Body at such time.

10 b. The Regional Body, having considered the notice, the
11 Originating Party's Technical Review, any other
12 independent Technical Review that is made, any comments or
13 objections including the analysis of comments made by the
14 public, First Nations and federally recognized Tribes, and
15 any other information that is provided under this Compact
16 shall issue a Declaration of Finding that the Proposal
17 under consideration:

18 i. Meets the Standard of Review and Decision;

19 ii. Does not meet the Standard of Review and
20 Decision; or,

21 iii. Would meet the Standard of Review and Decision
22 if certain conditions were met.

23 c. An Originating Party may decline to participate in
24 a Declaration of Finding made by the Regional Body.

25 d. The Parties recognize and affirm that it is
26 preferable for all members of the Regional Body to agree

1 whether the Proposal meets the Standard of Review and
2 Decision.

3 e. If the members of the Regional Body who participate
4 in the Declaration of Finding all agree, they shall issue a
5 written Declaration of Finding with consensus.

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

9 g. Should consensus not be achieved, the Regional Body
10 may issue a Declaration of Finding that presents different
11 points of view and indicates each Party's conclusions.

12 h. The Regional Body shall release the Declarations of
13 Finding to the public.

14 i. The Originating Party and the Council shall consider
15 the Declaration of Finding before making a decision on the
16 Proposal.

17 **Section 4.6. Proposals Subject to Prior Notice.**

18 1. Beginning no later than five years of the effective date
19 of this Compact, the Originating Party shall provide all
20 Parties and the Provinces with detailed and timely notice and
21 an opportunity to comment within 90 days on any Proposal for a
22 New or Increased Consumptive Use of 5 million gallons per day
23 or greater average in any 90- day period. Comments shall
24 address whether or not the Proposal is consistent with the
25 Standard of Review and Decision. The Originating Party shall

1 provide a response to any such comment received from another
2 Party.

3 2. A Party may provide notice, an opportunity to comment
4 and a response to comments even if this is not required under
5 paragraph 1 of this Section. Any provision of such notice and
6 opportunity to comment shall be undertaken only after
7 consulting the Applicant.

8 **Section 4.7. Council Actions.**

9 1. Proposals for Exceptions subject to Council Review shall
10 be submitted by the Originating Party to the Council for
11 Council Review, and where applicable, to the Regional Body for
12 concurrent review.

13 2. The Council shall review and take action on Proposals in
14 accordance with this Compact and the Standard of Review and
15 Decision. The Council shall not take action on a Proposal
16 subject to Regional Review pursuant to this Compact unless the
17 Proposal shall have been first submitted to and reviewed by the
18 Regional Body. The Council shall consider any findings
19 resulting from such review.

20 **Section 4.8. Prohibition of New or Increased Diversions.**

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

23 **Section 4.9. Exceptions to the Prohibition of Diversions.**

1 1. *Straddling Communities*. A Proposal to transfer Water to
2 an area within a Straddling Community but outside the Basin or
3 outside the source Great Lake Watershed shall be excepted from
4 the prohibition against Diversions and be managed and regulated
5 by the Originating Party provided that, regardless of the
6 volume of Water transferred, all the Water so transferred shall
7 be used solely for Public Water Supply Purposes within the
8 Straddling Community, and:

9 a. All Water Withdrawn from the Basin shall be
10 returned, either naturally or after use, to the Source
11 Watershed less an allowance for Consumptive Use. No surface
12 water or groundwater from outside the Basin may be used to
13 satisfy any portion of this criterion except if it:

14 i. Is part of a water supply or wastewater
15 treatment system that combines water from inside and
16 outside of the Basin;

17 ii. Is treated to meet applicable water quality
18 discharge standards and to prevent the introduction of
19 invasive species into the Basin;

20 iii. Maximizes the portion of water returned to the
21 Source Watershed as Basin Water and minimizes the
22 surface water or groundwater from outside the Basin;

23 b. If the Proposal results from a New or Increased
24 Withdrawal of 100,000 gallons per day or greater average
25 over any 90-day period, the Proposal shall also meet the
26 Exception Standard; and,

1 c. If the Proposal results in a New or Increased
2 Consumptive Use of 5 million gallons per day or greater
3 average over any 90-day period, the Proposal shall also
4 undergo Regional Review.

5 2. *Intra-Basin Transfer.* A Proposal for an Intra-Basin
6 Transfer that would be considered a Diversion under this
7 Compact, and not already excepted pursuant to paragraph 1 of
8 this Section, shall be excepted from the prohibition against
9 Divisions, provided that:

10 a. If the Proposal results from a New or Increased
11 Withdrawal less than 100,000 gallons per day average over
12 any 90-day period, the Proposal shall be subject to
13 management and regulation at the discretion of the
14 Originating Party.

15 b. If the Proposal results from a New or Increased
16 Withdrawal 100,000 gallons per day or greater average over
17 any 90-day period and if the Consumptive Use resulting from
18 the Withdrawal is less than 5 million gallons per day
19 average over any 90-day period:

20 i. The Proposal shall meet the Exception Standard
21 and be subject to management and regulation by the
22 Originating Party, except that the Water may be
23 returned to another Great Lake watershed rather than
24 the Source Watershed;

25 ii. The Applicant shall demonstrate that there is
26 no feasible, cost effective, and environmentally sound

1 water supply alternative within the Great Lake
2 watershed to which the Water will be transferred,
3 including conservation of existing water supplies;
4 and,

5 iii. The Originating Party shall provide notice to
6 the other Parties prior to making any decision with
7 respect to the Proposal.

8 c. If the Proposal results in a New or Increased
9 Consumptive Use of 5 million gallons per day or greater
10 average over any 90-day period:

11 i. The Proposal shall be subject to management and
12 regulation by the Originating Party and shall meet the
13 Exception Standard, ensuring that Water Withdrawn
14 shall be returned to the Source Watershed;

15 ii. The Applicant shall demonstrate that there is
16 no feasible, cost effective, and environmentally sound
17 water supply alternative within the Great Lake
18 watershed to which the Water will be transferred,
19 including conservation of existing water supplies;

20 iii. The Proposal undergoes Regional Review; and,

21 iv. The Proposal is approved by the Council.
22 Council approval shall be given unless one or more
23 Council Members vote to disapprove.

24 3. *Straddling Counties.* A Proposal to transfer Water to a
25 Community within a Straddling County that would be considered a
26 Diversion under this Compact shall be excepted from the

1 prohibition against Diversions, provided that it satisfies all
2 of the following conditions:

3 a. The Water shall be used solely for the Public Water
4 Supply Purposes of the Community within a Straddling County
5 that is without adequate supplies of potable water;

6 b. The Proposal meets the Exception Standard,
7 maximizing the portion of water returned to the Source
8 Watershed as Basin Water and minimizing the surface water
9 or groundwater from outside the Basin;

10 c. The Proposal shall be subject to management and
11 regulation by the Originating Party, regardless of its
12 size;

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

16 e. Caution shall be used in determining whether or not
17 the Proposal meets the conditions for this Exception. This
18 Exception should not be authorized unless it can be shown
19 that it will not endanger the integrity of the Basin
20 Ecosystem;

21 f. The Proposal undergoes Regional Review; and,

22 g. The Proposal is approved by the Council. Council
23 approval shall be given unless one or more Council Members
24 vote to disapprove.

25 A Proposal must satisfy all of the conditions listed above.
26 Further, substantive consideration will also be given to

1 whether or not the Proposal can provide sufficient
2 scientifically based evidence that the existing water supply is
3 derived from groundwater that is hydrologically interconnected
4 to Waters of the Basin.

5 4. *Exception Standard.* Proposals subject to management and
6 regulation in this Section shall be declared to meet this
7 Exception Standard and may be approved as appropriate only when
8 the following criteria are met:

9 a. The need for all or part of the proposed Exception
10 cannot be reasonably avoided through the efficient use and
11 conservation of existing water supplies;

12 b. The Exception will be limited to quantities that are
13 considered reasonable for the purposes for which it is
14 proposed;

15 c. All Water Withdrawn shall be returned, either
16 naturally or after use, to the Source Watershed less an
17 allowance for Consumptive Use. No surface water or
18 groundwater from the outside the Basin may be used to
19 satisfy any portion of this criterion except if it:

20 i. Is part of a water supply or wastewater
21 treatment system that combines water from inside and
22 outside of the Basin;

23 ii. Is treated to meet applicable water quality
24 discharge standards and to prevent the introduction of
25 invasive species into the Basin;

26 d. The Exception will be implemented so as to ensure

1 that it will result in no significant individual or
2 cumulative adverse impacts to the quantity or quality of
3 the Waters and Water Dependent Natural Resources of the
4 Basin with consideration given to the potential Cumulative
5 Impacts of any precedent-setting consequences associated
6 with the Proposal;

7 e. The Exception will be implemented so as to
8 incorporate Environmentally Sound and Economically
9 Feasible Water Conservation Measures to minimize Water
10 Withdrawals or Consumptive Use;

11 f. The Exception will be implemented so as to ensure
12 that it is in compliance with all applicable municipal,
13 State and federal laws as well as regional interstate and
14 international agreements, including the Boundary Waters
15 Treaty of 1909; and,

16 g. All other applicable criteria in Section 4.9 have
17 also been met.

18 **Section 4.10. Management and Regulation of New or Increased**
19 **Withdrawals and Consumptive Uses.**

20 1. Within five years of the effective date of this Compact,
21 each Party shall create a program for the management and
22 regulation of New or Increased Withdrawals and Consumptive Uses
23 by adopting and implementing Measures consistent with the
24 Decision-Making Standard. Each Party, through a considered
25 process, shall set and may modify threshold levels for the

1 regulation of New or Increased Withdrawals in order to assure
2 an effective and efficient Water management program that will
3 ensure that uses overall are reasonable, that Withdrawals
4 overall will not result in significant impacts to the Waters
5 and Water Dependent Natural Resources of the Basin, determined
6 on the basis of significant impacts to the physical, chemical,
7 and biological integrity of Source Watersheds, and that all
8 other objectives of the Compact are achieved. Each Party may
9 determine the scope and thresholds of its program, including
10 which New or Increased Withdrawals and Consumptive Uses will be
11 subject to the program.

12 2. Any Party that fails to set threshold levels that comply
13 with Section 4.10.1 any time before 10 years after the
14 effective date of this Compact shall apply a threshold level
15 for management and regulation of all New or Increased
16 Withdrawals of 100,000 gallons per day or greater average in
17 any 90 day period.

18 3. The Parties intend programs for New or Increased
19 Withdrawals and Consumptive Uses to evolve as may be necessary
20 to protect Basin Waters. Pursuant to Section 3.4, the Council,
21 in cooperation with the Provinces, shall periodically assess
22 the Water management programs of the Parties. Such assessments
23 may produce recommendations for the strengthening of the
24 programs, including without limitation, establishing lower
25 thresholds for management and regulation in accordance with the
26 Decision-Making Standard.

1 **Section 4.11. Decision-Making Standard.** Proposals subject
2 to management and regulation in Section 4.10 shall be declared
3 to meet this Decision-Making Standard and may be approved as
4 appropriate only when the following criteria are met:

5 1. All Water Withdrawn shall be returned, either naturally
6 or after use, to the Source Watershed less an allowance for
7 Consumptive Use;

8 2. The Withdrawal or Consumptive Use will be implemented so
9 as to ensure that the Proposal will result in no significant
10 individual or cumulative adverse impacts to the quantity or
11 quality of the Waters and Water Dependent Natural Resources and
12 the applicable Source Watershed;

13 3. The Withdrawal or Consumptive Use will be implemented so
14 as to incorporate Environmentally Sound and Economically
15 Feasible Water Conservation Measures;

16 4. The Withdrawal or Consumptive Use will be implemented so
17 as to ensure that it is in compliance with all applicable
18 municipal, State and federal laws as well as regional
19 interstate and international agreements, including the
20 Boundary Waters Treaty of 1909;

21 5. The proposed use is reasonable, based upon a
22 consideration of the following factors:

23 a. Whether the proposed Withdrawal or Consumptive Use
24 is planned in a fashion that provides for efficient use of
25 the water, and will avoid or minimize the waste of Water;

1 b. If the Proposal is for an increased Withdrawal or
2 Consumptive use, whether efficient use is made of existing
3 water supplies;

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

8 d. The supply potential of the water source,
9 considering quantity, quality, and reliability and safe
10 yield of hydrologically interconnected water sources;

11 e. The probable degree and duration of any adverse
12 impacts caused or expected to be caused by the proposed
13 Withdrawal and use under foreseeable conditions, to other
14 lawful consumptive or non-consumptive uses of water or to
15 the quantity or quality of the Waters and Water Dependent
16 Natural Resources of the Basin, and the proposed plans and
17 arrangements for avoidance or mitigation of such impacts;
18 and,

19 f. If a Proposal includes restoration of hydrologic
20 conditions and functions of the Source Watershed, the Party
21 may consider that.

22 **Section 4.12. Applicability.**

23 1. *Minimum Standard.* This Standard of Review and Decision
24 shall be used as a minimum standard. Parties may impose a more
25 restrictive decision-making standard for Withdrawals under

1 their authority. It is also acknowledged that although a
2 Proposal meets the Standard of Review and Decision it may not
3 be approved under the laws of the Originating Party that has
4 implemented more restrictive Measures.

5 *2. Baseline.*

6 a. To establish a baseline for determining a New or
7 Increased Diversion, Consumptive Use or Withdrawal, each
8 Party shall develop either or both of the following lists
9 for their jurisdiction:

10 i. A list of existing Withdrawal approvals as of
11 the effective date of the Compact;

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

21 b. For all purposes of this Compact, volumes of
22 Diversions, Consumptive Uses, or Withdrawals of Water set
23 forth in the list(s) prepared by each Party in accordance
24 with this Section, shall constitute the baseline volume.

25 c. The list(s) shall be furnished to the Regional Body
26 and the Council within one year of the effective date of

1 this Compact.

2 3. *Timing of Additional Applications.* Applications for New
3 or Increased Withdrawals, Consumptive Uses or Exceptions shall
4 be considered cumulatively within ten years of any application.

5 4. *Change of Ownership.* Unless a new owner proposes a
6 project that shall result in a Proposal for a New or Increased
7 Diversion or Consumptive Use subject to Regional Review or
8 Council approval, the change of ownership in and of itself
9 shall not require Regional Review or Council approval.

10 5. *Groundwater.* The Basin surface water divide shall be
11 used for the purpose of managing and regulating New or
12 Increased Diversions, Consumptive Uses or Withdrawals of
13 surface water and groundwater.

14 6. *Withdrawal Systems.* The total volume of surface water
15 and groundwater resources that supply a common distribution
16 system shall determine the volume of a Withdrawal, Consumptive
17 Use or Diversion.

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

20 8. *Transmission in Water Lines.* Transmission of Water
21 within a line that extends outside the Basin as it conveys
22 Water from one point to another within the Basin shall not be
23 considered a Diversion if none of the Water is used outside the
24 Basin.

25 9. *Hydrologic Units.* The Lake Michigan and Lake Huron
26 watersheds shall be considered to be a single hydrologic unit

1 and watershed.

2 10. *Bulk Water Transfer.* A Proposal to Withdraw Water and
3 to remove it from the Basin in any container greater than 5.7
4 gallons shall be treated under this Compact in the same manner
5 as a Proposal for a Diversion. Each Party shall have the
6 discretion, within its jurisdiction, to determine the
7 treatment of Proposals to Withdraw Water and to remove it from
8 the Basin in any container of 5.7 gallons or less.

9 **Section 4.13. Exemptions.** Withdrawals from the Basin for the
10 following purposes are exempt from the requirements of Article
11 4.

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

16 2. To use in a non-commercial project on a short-term basis
17 for firefighting, humanitarian, or emergency response
18 purposes.

19 **Section 4.14. U.S. Supreme Court Decree:** *Wisconsin et al.*
20 *v. Illinois et al.*

21 1. Notwithstanding any terms of this Compact to the
22 contrary, with the exception of Paragraph 5 of this Section,
23 current, New or Increased Withdrawals, Consumptive Uses and
24 Diversions of Basin Water by the State of Illinois shall be

1 governed by the terms of the United States Supreme Court decree
2 in *Wisconsin et al. v. Illinois et al.* and shall not be subject
3 to the terms of this Compact nor any rules or regulations
4 promulgated pursuant to this Compact. This means that, with the
5 exception of Paragraph 5 of this Section, for purposes of this
6 Compact, current, New or Increased Withdrawals, Consumptive
7 Uses and Diversions of Basin Water within the State of Illinois
8 shall be allowed unless prohibited by the terms of the United
9 States Supreme Court decree in *Wisconsin et al. v. Illinois et*
10 *al.*

11 2. The Parties acknowledge that the United States Supreme
12 Court decree in *Wisconsin et al. v. Illinois et al.* shall
13 continue in full force and effect, that this Compact shall not
14 modify any terms thereof, and that this Compact shall grant the
15 parties no additional rights, obligations, remedies or
16 defenses thereto. The Parties specifically acknowledge that
17 this Compact shall not prohibit or limit the State of Illinois
18 in any manner from seeking additional Basin Water as allowed
19 under the terms of the United States Supreme Court decree in
20 *Wisconsin et al. v. Illinois et al.*, any other party from
21 objecting to any request by the State of Illinois for
22 additional Basin Water under the terms of said decree, or any
23 party from seeking any other type of modification to said
24 decree. If an application is made by any party to the Supreme
25 Court of the United States to modify said decree, the Parties
26 to this Compact who are also parties to the decree shall seek

1 formal input from the Canadian Provinces of Ontario and Québec,
2 with respect to the proposed modification, use best efforts to
3 facilitate the appropriate participation of said Provinces in
4 the proceedings to modify the decree, and shall not
5 unreasonably impede or restrict such participation.

6 3. With the exception of Paragraph 5 of this Section,
7 because current, New or Increased Withdrawals, Consumptive
8 Uses and Diversions of Basin Water by the State of Illinois are
9 not subject to the terms of this Compact, the State of Illinois
10 is prohibited from using any term of this Compact, including
11 Section 4.9, to seek New or Increased Withdrawals, Consumptive
12 Uses or Diversions of Basin Water.

13 4. With the exception of Paragraph 5 of this Section,
14 because Sections 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11,
15 4.12 (Paragraphs 1, 2, 3, 4, 6 and 10 only), and 4.13 of this
16 Compact all relate to current, New or Increased Withdrawals,
17 Consumptive Uses and Diversions of Basin Waters, said
18 provisions do not apply to the State of Illinois. All other
19 provisions of this Compact not listed in the preceding sentence
20 shall apply to the State of Illinois, including the Water
21 Conservation Programs provision of Section 4.2.

22 5. In the event of a Proposal for a Diversion of Basin
23 Water for use outside the territorial boundaries of the Parties
24 to this Compact, decisions by the State of Illinois regarding
25 such a Proposal would be subject to all terms of this Compact,
26 except Paragraphs 1, 3 and 4 of this Section.

1 6. For purposes of the State of Illinois' participation in
2 this Compact, the entirety of this Section 4.14 is necessary
3 for the continued implementation of this Compact and, if
4 severed, this Compact shall no longer be binding on or
5 enforceable by or against the State of Illinois.

6 **Section 4.15. Assessment of Cumulative Impacts.**

7 1. The Parties in cooperation with the Provinces shall
8 collectively conduct within the Basin, on a Lake watershed and
9 St. Lawrence River Basin basis, a periodic assessment of the
10 Cumulative Impacts of Withdrawals, Diversions and Consumptive
11 Uses from the Waters of the Basin, every 5 years or each time
12 the incremental Basin Water losses reach 50 million gallons per
13 day average in any 90-day period in excess of the quantity at
14 the time of the most recent assessment, whichever comes first,
15 or at the request of one or more of the Parties. The assessment
16 shall form the basis for a review of the Standard of Review and
17 Decision, Council and Party regulations and their application.
18 This assessment shall:

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

23 b. Give substantive consideration to climate change or
24 other significant threats to Basin Waters and take into
25 account the current state of scientific knowledge, or

1 pursuant to Section 6.2, appropriate consultations shall occur
2 with federally recognized Tribes in the Originating Party for
3 all Proposals subject to Council or Regional Review pursuant to
4 this Compact. Such consultations shall be organized in the
5 manner suitable to the individual Proposal and the laws and
6 policies of the Originating Party.

7 2. All federally recognized Tribes within the Basin shall
8 receive reasonable notice indicating that they have an
9 opportunity to comment in writing to the Council or the
10 Regional Body, or both, and other relevant organizations on
11 whether the Proposal meets the requirements of the Standard of
12 Review and Decision when a Proposal is subject to Regional
13 Review or Council approval. Any notice from the Council shall
14 inform the Tribes of any meeting or hearing that is to be held
15 under Section 6.2 and invite them to attend. The Parties and
16 the Council shall consider the comments received under this
17 Section before approving, approving with modifications or
18 disapproving any Proposal subject to Council or Regional
19 Review.

20 3. In addition to the specific consultation mechanisms
21 described above, the Council shall seek to establish mutually
22 agreed upon mechanisms or processes to facilitate dialogue
23 with, and input from federally recognized Tribes on matters to
24 be dealt with by the Council; and, the Council shall seek to
25 establish mechanisms and processes with federally recognized
26 Tribes designed to facilitate on-going scientific and

1 technical interaction and data exchange regarding matters
2 falling within the scope of this Compact. This may include
3 participation of tribal representatives on advisory committees
4 established under this Compact or such other processes that are
5 mutually-agreed upon with federally recognized Tribes
6 individually or through duly-authorized intertribal agencies
7 or bodies.

8 **ARTICLE 6**

9 **PUBLIC PARTICIPATION**

10 **Section 6.1. Meetings, Public Hearings and Records.**

11 1. The Parties recognize the importance and necessity of
12 public participation in promoting management of the Water
13 Resources of the Basin. Consequently, all meetings of the
14 Council shall be open to the public, except with respect to
15 issues of personnel.

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

18 **Section 6.2. Public Participation.**

19 It is the intent of the Council to conduct public
20 participation processes concurrently and jointly with
21 processes undertaken by the Parties and through Regional
22 Review. To ensure adequate public participation, each Party or
23 the Council shall ensure procedures for the review of Proposals

1 subject to the Standard of Review and Decision consistent with
2 the following requirements:

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

6 2. Assure public accessibility to all documents relevant to
7 an Application, including public comment received.

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

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

15 **ARTICLE 7**

16 **DISPUTE RESOLUTION AND ENFORCEMENT**

17 **Section 7.1. Good Faith Implementation.**

18 Each of the Parties pledges to support implementation of
19 all provisions of this Compact, and covenants that its officers
20 and agencies shall not hinder, impair, or prevent any other
21 Party carrying out any provision of this Compact.

22 **Section 7.2. Alternative Dispute Resolution.**

23 1. Desiring that this Compact be carried out in full, the

1 Parties agree that disputes between the Parties regarding
2 interpretation, application and implementation of this Compact
3 shall be settled by alternative dispute resolution.

4 2. The Council, in consultation with the Provinces, shall
5 provide by rule procedures for the resolution of disputes
6 pursuant to this section.

7 **Section 7.3. Enforcement.**

8 1. Any Person aggrieved by any action taken by the Council
9 pursuant to the authorities contained in this Compact shall be
10 entitled to a hearing before the Council. Any Person aggrieved
11 by a Party action shall be entitled to a hearing pursuant to
12 the relevant Party's administrative procedures and laws. After
13 exhaustion of such administrative remedies, (i) any aggrieved
14 Person shall have the right to judicial review of a Council
15 action in the United States District Courts for the District of
16 Columbia or the District Court in which the Council maintains
17 offices, provided such action is commenced within 90 days; and,
18 (ii) any aggrieved Person shall have the right to judicial
19 review of a Party's action in the relevant Party's court of
20 competent jurisdiction, provided that an action or proceeding
21 for such review is commenced within the time frames provided
22 for by the Party's law. For the purposes of this paragraph, a
23 State or Province is deemed to be an aggrieved Person with
24 respect to any Party action pursuant to this Compact.

25 2. a. Any Party or the Council may initiate actions to

1 compel compliance with the provisions of this Compact, and
2 the rules and regulations promulgated hereunder by the
3 Council. Jurisdiction over such actions is granted to the
4 court of the relevant Party, as well as the United States
5 District Courts for the District of Columbia and the
6 District Court in which the Council maintains offices. The
7 remedies available to any such court shall include, but not
8 be limited to, equitable relief and civil penalties.

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

16 3. Any aggrieved Person, Party or the Council may commence
17 a civil action in the relevant Party's courts and
18 administrative systems to compel any Person to comply with this
19 Compact should any such Person, without approval having been
20 given, undertake a New or Increased Withdrawal, Consumptive Use
21 or Diversion that is prohibited or subject to approval pursuant
22 to this Compact.

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

24 i. The Originating Party or Council approval for
25 the New or Increased Withdrawal, Consumptive Use or
26 Diversion has been granted; or,

1 **Section 8.1. Effect on Existing Rights.**

2 1. Nothing in this Compact shall be construed to affect,
3 limit, diminish or impair any rights validly established and
4 existing as of the effective date of this Compact under State
5 or federal law governing the Withdrawal of Waters of the Basin.

6 2. Nothing contained in this Compact shall be construed as
7 affecting or intending to affect or in any way to interfere
8 with the law of the respective Parties relating to common law
9 Water rights.

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

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

24 **Section 8.2. Relationship to Agreements Concluded by the**
25 **United States of America.**

1 1. Nothing in this Compact is intended to provide nor shall
2 be construed to provide, directly or indirectly, to any Person
3 any right, claim or remedy under any treaty or international
4 agreement nor is it intended to derogate any right, claim, or
5 remedy that already exists under any treaty or international
6 agreement.

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

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

17 **Section 8.3. Confidentiality.**

18 1. Nothing in this Compact requires a Party to breach
19 confidentiality obligations or requirements prohibiting
20 disclosure, or to compromise security of commercially
21 sensitive or proprietary information.

22 2. A Party may take measures, including but not limited to
23 deletion and redaction, deemed necessary to protect any
24 confidential, proprietary or commercially sensitive
25 information when distributing information to other Parties.

1 The Party shall summarize or paraphrase any such information in
2 a manner sufficient for the Council to exercise its authorities
3 contained in this Compact.

4 **Section 8.4. Additional Laws.**

5 Nothing in this Compact shall be construed to repeal,
6 modify or qualify the authority of any Party to enact any
7 legislation or enforce any additional conditions and
8 restrictions regarding the management and regulation of Waters
9 within its jurisdiction.

10 **Section 8.5. Amendments and Supplements.**

11 The provisions of this Compact shall remain in full force
12 and effect until amended by action of the governing bodies of
13 the Parties and consented to and approved by any other
14 necessary authority in the same manner as this Compact is
15 required to be ratified to become effective.

16 **Section 8.6. Severability.**

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

1 legislation or by the U.S. Congress when giving its consent to
2 this Compact is not considered effective unless concurred in by
3 all Parties.

4 **Section 9.4. Effective Date and Execution.**

5 This Compact shall become binding and effective when
6 ratified through concurring legislation by the states of
7 Illinois, Indiana, Michigan, Minnesota, New York, Ohio and
8 Wisconsin and the Commonwealth of Pennsylvania and consented to
9 by the Congress of the United States. This Compact shall be
10 signed and sealed in nine identical original copies by the
11 respective chief executives of the signatory Parties. One such
12 copy shall be filed with the Secretary of State of each of the
13 signatory Parties or in accordance with the laws of the state
14 in which the filing is made, and one copy shall be filed and
15 retained in the archives of the Council upon its organization.
16 The signatures shall be affixed and attested under the
17 following form:

18 In Witness Whereof, and in evidence of the adoption and
19 enactment into law of this Compact by the legislatures of
20 the signatory parties and consent by the Congress of the
21 United States, the respective Governors do hereby, in
22 accordance with the authority conferred by law, sign this
23 Compact in nine duplicate original copies, attested by the
24 respective Secretaries of State, and have caused the seals
25 of the respective states to be hereunto affixed this_____

1 day of (*month*), (*year*).

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.