

The statement of scope for this rule, SS 026-22, was approved by the Governor on March 24, 2022, published in Register No. 796A1 on April 4, 2022, and approved by the Natural Resources Board on June 22, 2022. This rule was approved by the Governor on insert date.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order **create** NR 851 relating to the management of diversions (transfers of water from the Great Lakes basin to outside of the Great Lakes basin) and intrabasin transfers including the application and review process and other related criteria.

DG-03-22

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: Sections 281.343 and 281.346, Wis. Stats.

2. Statutory Authority: Section 281.19(1), Wis. Stats., authorizes the department to adopt rules applicable throughout the state for the construction, installation, and use and operation of practicable and available systems, methods and means for preventing and abating pollution of the waters of the state.

The department has explicit authority to promulgate rules establishing department procedures for managing Great Lakes diversions and intrabasin transfers under the following statutes:

- Section 281.343(3)(c)2., Wis. Stats., authorizes the state, through the department, to adopt and enforce rules and regulations to implement and enforce the Great Lakes – St. Lawrence River Basin Water Resource Compact and the state’s management programs contemplated by the Compact.
- Section 281.343(4d), Wis. Stats., authorizes the state, through the department, to regulate new or increased diversions and require applications and documentation for new or increased diversions.
- Section 281.346(3)(b)10. and (e)2., Wis. Stats., authorize the department to promulgate rules to establish reporting requirements and reporting frequencies for any person who begins a diversion.
- Section 281.346(4)(b)4., Wis. Stats., authorizes the department to require by rule additional information from an applicant for a new or increased diversion.
- Section 281.346(4)(d)1., Wis. Stats., authorizes the department to establish requirements by rule for new and increased intrabasin transfers.

Section 281.346(4)(g), Wis. Stats., requires the department to promulgate rules for certain new or increased diversions that require a demonstration of efficient use and conservation of existing water supplies.

- Section 281.346(9)(b) to (d), Wis. Stats., requires the department to promulgate rules creating a procedure for providing to interested members of the public notices of each complete application the department receives for a diversion or intrabasin transfer; the authorizing statute includes specific minimum requirements for the public notice to be included in the rule, including the form and content of a public notice and procedures for the conduct of public hearings.

3. Explanation of Agency Authority: Wisconsin is a party to the Great Lakes – St. Lawrence River Water Resources Compact (Compact) and is required to, “within its jurisdiction, manage and regulate new or increased withdrawals, consumptive uses, and diversions, including exceptions, in accordance with this compact.” (s. 281.343(4d)(a), Wis. Stats.). The legislature ratified and implemented the Compact in ss. 14.95, 281.343, 281.344, 281.346, and 281.348, Wis. Stats. To accomplish Compact requirements, Wisconsin has authority to “adopt and enforce rules and regulations to implement and enforce this compact and programs adopted by such party to carry out the management programs contemplated by this compact.” (s. 281.343(3)(c)2., Wis. Stats.)

4. Related Statutes or Rules: Chapters NR 852 (Water Conservation and Water Use Efficiency) and 856 (Water Use Registration and Reporting), Wis. Adm. Code., already refer to requirements for diversions.

Proposed ch. NR 854, Wis. Adm. Code, (Water Supply Service Area Plans) is being developed simultaneously to this rule. It would create a process for approvable water supply service area plans, which are a required component for an application for a new or increased diversion or intrabasin transfer.

5. Plain Language Analysis: The Wisconsin Legislature ratified the Compact in 2007 Wisconsin Act 227. Section 281.343, Wis. Stats., is the ratification and text of the Compact, and s. 281.346, Wis. Stats., is Wisconsin's program for managing and regulating new or increased water withdrawals, diversions and consumptive uses consistent with the provisions of the Compact. The proposed rule establishes department procedures for managing Great Lakes diversions and intrabasin transfers.

Diversions are defined as a transfer of water from the Great Lakes basin into a watershed outside the Great Lakes basin, or from the watershed of one of the Great Lakes into that of another, by any means of transfer, including a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, tanker ship, tanker truck, or rail tanker, with few exceptions (s. 281.346(1)(h), Wis. Stats.). Intrabasin transfer means the transfer of water from the watershed of one of the Great Lakes into the watershed of another of the Great Lakes (s. 281.346(1)(jm), Wis. Stats.).

The Compact is a legally binding interstate agreement that became effective on December 8, 2008. The Compact and the adopted rules and guidance detail how the states party to the Compact – Wisconsin, Illinois, Indiana, Michigan, Minnesota, New York, Ohio, and Pennsylvania – will work together to manage and protect the Great Lakes - St. Lawrence River Basin (Basin). The Compact Council's adopted rules and guidance provide a framework for each state to create programs and enact rules and regulations within their own jurisdictions to protect the Basin. The proposed rule has built in flexibility for Wisconsin to comply with the Compact, Compact rules and guidance documents.

The Great Lakes Compact bans diversions of Great Lakes water with limited exceptions. These exceptions allow a "straddling community" or "community in a straddling county" to apply to divert water (i.e., to move water out of the Great Lakes basin). If certain requirements are met, water may be transferred in some cases from one Great Lakes basin to another through an intrabasin transfer. Currently, the department works with applicants for diversions and intrabasin transfers from the Great Lakes basin on a case-by-case basis, within the statutory authority and parameters in s. 281.346(4), Wis. Stats.

This rule specifies:

- diversion and intrabasin transfer application requirements
- department application review processes
- department determinations related to approvals, conditional approvals, and denials of diversion applications
- public notice and participation; and
- reporting requirements.

This rule also provides flexibility for Wisconsin to comply with Compact rules and guidance.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

There are no comparable federal regulations pertaining to the management of diversions and intrabasin transfers regulated under the Great Lakes – St. Lawrence River Basin Water Resource Compact. The Compact Council has adopted certain procedures laid out in the Compact Rules of Practice and Procedure, which have been considered while drafting this rule.

7. If Held, Summary of Comments Received During Preliminary Comment Period

and at Public Hearing on the Statement of Scope: The department held a preliminary public hearing on the statement of scope for this rule on June 3, 2022. One member of the public attended the preliminary hearing and did not provide comments. The department did not receive any written comments on the scope statement during the preliminary comment period.

8. Comparison with Similar Rules in Adjacent States: In comparison to adjacent states, Illinois' rules are the most similar to what Wisconsin is proposing for the diversion rule. Michigan and Minnesota have state statutes that mirror the Great Lakes Compact requirements but no corresponding rules. Iowa is not a party to the Great Lakes Compact, and diversions out of Iowa are reviewed under their rules for withdrawals.

Illinois: Illinois' program regulates diversions within the restrictions of the most recent U.S Supreme Court decree entered in *Wisconsin v. Illinois*, 278 U.S. 367 (1929). The decree limits Illinois' diversion of Lake Michigan water to 3,200 cubic feet per second. Illinois' administrative rules identify the following: requirements for the contents of an application, criteria for determining water needs, emergency conditions, process for transferring water use rights, required conservation practices, other permit conditions, the duration of permits and renewals, reporting requirements, the process for modifying a permit, Illinois' review and decision process, and penalties. Illinois' Part [3730 Administrative Rules](#) address the application and review of diversion proposals (Lake Michigan allocations) under the Great Lakes Compact and Agreement in Illinois.

Michigan: Michigan has no administrative rule related to the review of Great Lakes diversions or intrabasin transfers.

Minnesota: Minnesota has no administrative rule related to the review of Great Lakes diversions or intrabasin transfers. Minnesota's statute does contain additional requirements for all diversions greater than 5 million gallons per day. The statute states that Minnesota must notify and solicit comments from the office of the governors and premiers of the Great Lakes states and provinces, the water management agencies, and the international joint commission. The Minnesota state legislature must approve the diversion. The commissioner must consider any comments received, hold a meeting to resolve any objections and send notification of any final decision to the offices originally notified. (State Statutes Implementation: M.S. 103G.265, subd. 4)

Iowa: Iowa is not party to the Great Lakes Compact. Diversions of water outside of Iowa are reviewed under the same process as withdrawal applications. Iowa's administrative rules identify the fees for application, the information required in the application, the review process for applications, the public notice requirements, the decision requirements, and the appeals process for a decision. Iowa's rules also specify the criteria for authorizing a diversion, the duration of permits, monitoring and reporting requirements, modifications, designated protected flow streams, water conservation requirements, and priority allocation restrictions. The authority and process for when and how Iowa reviews water diversion applications is outlined in Code at: <https://www.legis.iowa.gov/docs/code/455B.265.pdf>. The details on how the code is implemented are included in the following chapters: <https://www.legis.iowa.gov/docs/iac/chapter/03-08-2023.567.50.pdf> and <https://www.legis.iowa.gov/docs/iac/chapter/03-08-2023.567.52.pdf>.

9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings

Support the Regulatory Approach Chosen: To support the regulatory approach taken for this rule, the department used the legislative framework that details the Compact and Wisconsin's diversion program in ss. 281.343 and 281.346, Wis. Stats. The department also relied on previous application and review

processes associated with diversion and intrabasin transfers since the Compact was ratified (the cities of New Berlin, Racine, and Waukesha, the Village of Somers, and Enbridge). Department staff interviewed municipalities or consultants that engaged in the process to see how the department could build in consistency and efficiency through this rule.

10. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report: The department anticipates no effect on small businesses as a result of this rule.

11. Effect on Small Business (initial regulatory flexibility analysis): This proposed rule has no economic impacts to small businesses.

12. Agency Contact Person: Nicole Clayton, 101 S. Webster St., PO Box 7921, Madison, WI 53703; Nicole.Clayton@wisconsin.gov; (608) 266-9254

13. Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by regular mail, or email to:

Nicole Clayton – DG/5
Department of Natural Resources
101 S. Webster St.
PO Box 7921
Madison, WI 53703
(608) 266-9254
Nicole.Clayton@wisconsin.gov

Comments may be submitted to the department contact person listed above or to DNRAAdministrativeRulesComments@wisconsin.gov until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and on the department's website, at <https://dnr.wi.gov/calendar/hearings/>. Comments may also be submitted through the Wisconsin Administrative Rules Website at <https://docs.legis.wisconsin.gov/code/chr/active>.

RULE TEXT

SECTION 1. NR 851 is created to read:

CHAPTER NR 851

MANAGEMENT OF GREAT LAKES DIVERSIONS

SUBCHAPTER I

PURPOSE, DEFINITIONS, AND GENERAL PROVISIONS

NR 851.10 Purpose. The purpose of this chapter is to establish an application process, requirements, and department review procedures related to diversions and intrabasin transfers of Great Lakes' water, in compliance with ss. 281.343 and 281.346, Stats., and consistent with the requirements of the Great Lakes – St. Lawrence River Basin Water Resources Compact.

NR 851.11 Definitions. In this chapter:

(1) “Applicant” means a person who submits an application for a diversion approval or intrabasin transfer approval.

(2) “Community within a straddling county” has the meaning specified under s. 281.346 (1) (d), Stats.

Note: Section 281.346 (1) (d), Stats., reads as follows: “Community within a straddling county” means any city, village, or town that is not a straddling community and that is located outside the Great Lakes basin but wholly within a county that lies partly within the Great Lakes basin.

(3) “Consumptive use” has the meaning specified under s. 281.346 (1) (e), Stats.

Note: Section 281.346 (1) (e), Stats., reads as follows: “Consumptive use” means a use of water that results in the loss of or failure to return some or all of the water to the basin from which the water is withdrawn due to evaporation, incorporation into products, or other processes.

(3) “Department” means the department of natural resources.

(4) “Diversion” has the meaning specified under s. 281.346 (1) (h), Stats.

Note: s. 281.346 (1) (h), Stats., reads as follows: “Diversion” means a transfer of water from the Great Lakes basin into a watershed outside the Great Lakes basin, or from the watershed of one of the Great Lakes into that of another, by any means of transfer, including a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, tanker ship, tanker truck, or rail tanker except that “diversion” does not include any of the following:

1. The transfer of a product produced in the Great Lakes basin or in the watershed of one of the Great Lakes, using waters of the Great Lakes basin, out of the Great Lakes basin or out of the watershed.

2. The transmission of water within a line that extends outside of the Great Lakes basin as it conveys water from one point to another within the Great Lakes basin if no water is used outside of the Great Lakes basin.

3. The transfer of bottled water from the Great Lakes basin in containers of 5.7 gallons or less.

(5) “Great Lakes basin” means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivieres, Quebec, within the jurisdiction of the parties. The boundary of the Great

Lakes basin is derived from the Subbasin (8-digit) 4th level hydrologic units from the digital Watershed Boundary Dataset for the State of Wisconsin, consisting of geo-referenced digital data and associated attributes created in accordance with the "FGDC Proposal, Version 1.0 - Federal Standards for Delineation of Hydrologic Unit Boundaries 3/01/02."

Note: A copy of the Great Lakes basin boundary dataset is available as the 'Major Basins' layer in the Wisconsin Department of Natural Resources GIS Open Data Portal, available at <https://data-wisconsin.dnr.opendata.arcgis.com/>.

(6) "Great Lakes council" has the meaning specified under s. 281.346 (1) (jj), Stats.

Note: Section 281.346 (1) (jj), Stats., reads as follows: "Great Lakes council" means the Great Lakes-St. Lawrence River Basin Water Resources Council, created under s. 281.343 (2) (a).

Note: The Great Lakes council is comprised of the Great Lake Governors, or their designees, who consult and coordinate with the Premiers of Ontario, Quebec, and the Great-Lakes St. Lawrence River Water Resources Regional Body to protect the Great Lakes and St. Lawrence River.

(7) "Intrabasin transfer" has the meaning specified under s. 281.346 (1) (jm), Stats.

Note: Section 281.346 (1) (jm), Stats., reads as follows: "Intrabasin transfer" means the transfer of water from the watershed of one of the Great Lakes into the watershed of another of the Great Lakes.

(8) "Person" has the meaning specified under s. 281.346 (1) (nm), Stats.

Note: Section 281.346 (1) (nm), Stats., reads as follows: Notwithstanding s. 281.01 (9), "Person" means an individual or other entity, including a government or nongovernmental organization, including any scientific, professional, business, nonprofit, or public interest organization or association that is neither affiliated with nor under the direction of a government.

(9) "Preexisting diversion" means a diversion of water from the Great Lakes basin into a watershed outside of the Great Lakes basin that existed prior to the ratification of the Great Lakes Compact on December 8, 2008, and received an approval from the department under s. 281.344 (3m) or (4), Stats.

(10) "Proposal" means a request for a new or increased diversion of Great Lakes water.

(11) "Public water supply" has the meaning specified under s. 281.346 (1) (pm), Stats.

Note: Section 281.346 (1) (pm), Stats., reads as follows: “Public water supply means water distributed to the public through a physically connected system of treatment, storage, and distribution facilities that serve a group of largely residential customers and that may also serve industrial, commercial, and other institutional customers.

(12) “Public water supply system” means water treated for human consumption distributed to the public through a physically connected system of treatment, storage, and distribution facilities that is all of the following:

(a) Distributed to the public serving a group of largely residential customers and that may also serve commercial, industrial, or public authority customers, and consecutive water systems.

(b) Owned by a city, village, county, town, town sanitary district, utility district, public inland lake and rehabilitation district, municipal water district, or a privately owned water utility serving any of these entities.

(13) “Reasonable water supply alternative” means a water alternative that, when compared to the proposed diversion, is similar in cost, is similarly environmentally sustainable, is similarly protective of public health, and does not have greater adverse environmental impacts.

(14) “Regional body” has the meaning specified under s. 281.346 (1) (q), Stats.

Note: Section 281.346 (1) (q), Stats., reads as follows “Regional body” means the body consisting of the governors of the parties and the premiers of Ontario and Quebec, Canada, or their designees as established by the Great Lakes – St. Lawrence River Basin Sustainable Water Resources Agreement.

(15) “Sewer service area” has the meaning specified under s. NR 110.03 (29t).

Note: Section NR 110.03 (29t) reads as follows: NR 110.03 (29t) “Sewer service area” means that area served or anticipated to be served by a sewage collection system.

(16) “Source watershed” has the meaning specified under s. 281.346 (1) (r), Stats.

Note: Section 281.346 (1) (r), Stats., reads as follows: “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 is 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 is the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively.

(17) “Straddling community” has the meaning specified under s. 281.346 (1) (t), Stats.

Note: Section 281.346 (1) (t), Stats., reads as follows: “Straddling community” means any city, village, or town that, based on its boundary existing as of the compact’s effective date [December 8, 2008], is partly within the Great Lakes basin or partly within the watersheds of 2 of the Great Lakes and that is wholly within any county that lies partly or completely within the Great Lakes basin.

(18) (a) “Straddling county” has the meaning specified under s. 281.346 (1) (tm), Stats.

(b) A county’s boundaries as of December 13, 2005, shall be used to determine whether the county.

Note: Section 281.346 (1) (tm), Stats., reads as follows “Straddling county” means a county that lies partly within the Great Lakes basin.

(19) “Technical review” has the meaning specified under s. 281.346 (1) (u), Stats.

Note: Section 281.346 (1) (u), Stats., reads as follows: “Technical review” means a thorough analysis and evaluation conducted to determine whether a proposal that is subject to regional review under this section meets the criteria for approval under [s. 281.346 (4), (5), or (6), Stats].

(20) “Water loss” has the meaning specified under s. 281.346 (1) (wm), Stats.

Note: Section 281.346 (1) (wm), Stats., reads as follows: “Water loss” means the amount of water that is withheld from or not returned to the basin from which it is withdrawn as a result of a diversion or consumptive use or both.

(21) (a) “Water supply service area” means an area in which the public water supply system provides water or may provide water to the public during the 20-year planning period covered by the water supply service area plan.

(22) “Water supply service area plan” means a document developed in compliance with s. 281.348, Stats., and ch. NR 854.

(23) “Water supply system” has the meaning specified under s. 281.346 (1) (wp), Stats.

Note: Section 281.346 (1) (wp), Stats., reads as follows: “Water supply system,” when not preceded by “public,” means one of the following:

1. Except as provided under subd. 2., the equipment handling water from the point of intake of the water to the first point at which the water is used.

2. For a system for providing a public water supply, the equipment from the point of intake of the water to the first point at which the water is distributed.”

(24) “Waters of the state” has the meaning specified under s. 281.01 (18), Stats.

Note: Section 281.01 (18), Stats., reads as follows: “Waters of the state” includes those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.

(25) “Withdraw” has the meaning specified under s. 281.346 (1) (y), Stats.

Note: Section 281.346 (1) (y), Stats., reads as follows: “Withdraw” means to take water from surface water or groundwater.

(26) “Withdrawal” has the meaning specified under s. 281.346 (1) (z), Stats.

Note: Section 281.346 (1) (z), Stats., reads as follows: “Withdrawal” means the taking of water from surface water or groundwater, including the taking of surface water or groundwater for the purpose of bottling the water.

NR 851.12 Prohibitions. No person may begin a new diversion or increase the amount of a diversion or preexisting diversion over the amount specified in an approval, except as authorized under s. 281.346 (4) (c), (d), or (e), Stats., and this chapter.

NR 851.13 Responsibility of owners or operators. (1) The person who owns or operates the water supply system is responsible for obtaining, amending, terminating, and complying with the terms and conditions within a preexisting diversion approval, diversion approval, or intrabasin transfer approval.

(2) The department shall issue a diversion approval or intrabasin transfer only to the person who owns or operates the water supply system.

(3) Operators of 2 or more water supply systems may submit a joint application under subch. II, III, or IV.

NR 851.14 Fees. (1) An applicant shall pay to the department a review fee of \$5,000 at the time the applicant submits the application.

(2) The department may not review an application under this chapter until the applicant submits the review fee.

(3) If the application requires review by the Great Lakes council or regional body, the applicant shall pay to the department an amount equal to any fees imposed on the state by the Great Lakes council or regional body.

NR 851.15 Enforcement. (1) Violations of this chapter may be prosecuted under ch. 281, Stats.

(2) Any violation of this chapter shall be treated as a violation of the statutes they interpret or under which they are promulgated.

(3) A person violating this chapter may be subject to penalties specified under s. 281.346 (14), Stats., including all of the following:

1. Forfeitures
2. Costs of investigation and prosecution
3. Abatement of nuisance
4. Restoration of a natural resource
5. Orders that the person take or refrain from taking any action necessary to eliminate or minimize any environmental damage.

(4) Failure to comply with the conditions of an approval issued under this chapter may result in termination of the approval.

SUBCHAPTER II

STRADDLING COMMUNITY DIVERSIONS

NR 851.20 Applicability. This subchapter applies to any person proposing a new or increased straddling community diversion from the Lake Michigan basin or Lake Superior basin to the Mississippi River basin. No person may begin a new or increased straddling community diversion until the person applies for and obtains approval from the department.

NR 851.21 Straddling community diversion application. (1) A person seeking to begin a new or increased straddling community diversion shall contact the department prior to applying for a diversion.

(2) A person seeking to begin a new or increased straddling community diversion shall submit an application to the department, including all of the following information:

(a) The name, mailing address, telephone number, and email address of the applicant, and the primary point of contact, if it differs from the applicant.

(b) The name, mailing address, telephone number, and email address of any person, other than the applicant, that is a participant or otherwise involved in implementing any component of the diversion, including withdrawals of water and returning the water to the Great Lakes basin. The person shall provide evidence in the form of a letter or resolution that the person supports the proposal, has the capacity to withdraw, or return the water for the applicant, and is willing to negotiate a contract with the applicant.

(c) Documentation that the proposed diversion will be used solely for public water supply purposes.

(d) Information on valid contracts and border agreements related to water supply or wastewater, if applicable.

(e) The source watershed and the waterbody from which the water will be diverted. Specify if the source is surface water, including the name of the waterbody, or groundwater including the aquifer name.

(f) The maximum volume of the proposed diversion, projected over the next 20 years. The volume shall be expressed in millions of gallons per day, averaged over each calendar year.

(g) The volume of water of the proposed diversion for the projected peak 30-day period, and projected peak 90-day period, during a calendar year.

(h) The estimated consumptive use associated with the proposal, in any 90-day period.

(i) Documentation that the proposed diversion quantity is reasonable for the purpose for which the diversion is proposed.

(j) A statement of whether the proposed diversion will be continuous, temporary, or seasonal.

(k) The location of the point of measurement and the technical method that will be used for measuring the rate or volume of the diversion.

(L) An approved water supply service area plan developed and approved under ch. NR 854, or a water supply service area plan that is being submitted simultaneously with the diversion application for department review and approval under ch. NR 854, unless the proposal is to provide water to a straddling community that includes an electronics and information technology manufacturing zone designated under s. 238.396 (1m), Stats.

(m) Maps of the area that include the approved or proposed water supply service area, the proposed area to be served diverted water, the sewer service area, and the location where the water will be returned to the Great Lakes basin.

(n) A list of all required department approvals or permits related to the diversion, including any approval or permits issued under s. 30.12, 30.18, 281.15, 281.34, 281.41, or 283.31, Stats., and the status of each application for the approval or permit at the time the list is submitted to the department.

(o) A Tier 3 water conservation plan developed in compliance with ch. NR 852.

(p) Information to demonstrate all of the following related to return flow:

1. The amount of water to be returned to the source watershed in gallons per day.
2. That the returned water will be from a water supply or wastewater treatment system that combines water from inside and outside the Great Lakes basin.
3. That the returned water will be treated to meet applicable permit requirements under s. 283.31, Stats., and to prevent the introduction of invasive species into the Great Lakes basin.
4. Strategies to reduce or minimize Mississippi River basin water in return flow to the Great Lakes basin.

(q) Information about the potential impacts of the diversion on the waters of the Great Lakes basin and water dependent natural resources. This information shall include the ratio of the amount diverted to the total volume of the water body from which the water is being diverted as a percentage.

(r) Information regarding any other diversion applications or existing approved diversions the applicant has submitted or received.

(3) If the proposed diversion would result from a new withdrawal or an increase in a withdrawal that would average 100,000 gallons or more per day in any 90-day period, in addition to sub. (2), the applicant shall submit application materials related to the exception standard under subch. V.

(4) If the proposed diversion results in a new or increased consumptive use that would average 5,000,000 gallons or more per day in any 90-day period, in addition to sub. (2), the applicant shall submit all of the following:

(a) The anticipated effects, if any, the proposed diversion and the construction of pipelines for the purpose of diverting water or returning water will have on existing uses of water resources and related land uses in the Great Lakes basin, including effects on all of the following:

1. Public and potable water supplies.
2. Other use sectors including industrial or commercial water use, commercial navigation use, thermoelectric power production, and agricultural water use.
3. Fish and wildlife, including impacts on wetlands, fish spawning areas, and threatened and endangered species.
4. Recreation, tourism, and scenic beauty.

(b) An analysis of the hydrologic setting for the source water body and the water body receiving the return flow, including consideration of groundwater, surface water, the connection between groundwater and surface water, and the general characteristics of the water bodies such as water availability, water quality, and habitat.

(c) A description of any land acquisitions, equipment, energy consumption, or the relocation or re-siting of any existing community, facility, right-of-way, or structure that will be required.

(d) A statement, with supporting materials, as to whether the diversion complies with any applicable plans developed under ch. 281 or s. 283.83, Stats.

NR 851.22 Straddling community diversion review. (1) Upon receipt of an application for a straddling community diversion, and at any time during its review, the department may request from the applicant additional information, documentation, and materials necessary to complete or review the application. When the department determines an application is complete, it shall follow the applicable public notice and participation requirements under subch. VII.

(2) The department may issue a straddling community diversion approval if all of the following apply:

(a) The proposal is properly characterized as a straddling community diversion based on the boundaries of the city, village, or town to which the water is being diverted in relation to the Great Lakes basin.

(b) The applicant owns or operates a public water supply system.

(c) The diverted water is solely for public water supply purposes in the straddling community.

(d) The proposal is consistent with an approved water supply service area plan under ch. NR 854, unless the proposal is to provide water to a straddling community that includes an electronics and information technology manufacturing zone designated under s. 238.396 (1m), Stats.

(e) The amount of the diversion is reasonable for the purpose for which the diversion is proposed.

(f) The Tier 3 water conservation plan meets the requirements under ch. NR 852.

(g) The diversion area is entirely within a sewer service area or the applicant has another mechanism to return the water to the Great Lakes basin.

(h) An amount of water equal to the amount of water withdrawn will be treated and returned to the Great Lakes basin, less an allowance for consumptive use.

(i) Water returned to the Great Lakes basin will meet all of the following requirements:

1. The returned water will be from a water supply or wastewater treatment system that combines water from inside and outside the Great Lakes basin.

2. The returned water will be treated to meet applicable permit requirements under s. 283.31, Stats., and to prevent the introduction of invasive species into the Great Lakes basin.

3. The diversion will maximize the amount of water withdrawn from the Great Lakes basin that will be returned to the source watershed and will minimize the amount of water from outside of the Great Lakes basin that will be returned to the source watershed.

(j) The applicant has obtained all applicable permits or approvals for the withdrawal and discharge of Great Lakes water under s. 30.12, 30.18, 281.15, 281.34, 281.41, 281.15, or 283.31, Stats.

(k) If the applicant is relying on another entity to withdraw or return the water, the entity withdrawing or returning the water has the capacity to withdraw the volume needed and has demonstrated support for the proposal in the form of a letter or resolution.

(L) If the proposal is for a new withdrawal or increased withdrawal that would average 100,000 gallons or more per day in any 90-day period, the proposal meets the exception standard under subch V.

(m) If the proposal would result in a new or increased consumptive use that would average 5,000,000 gallons or more per day in any 90-day period, all of the following findings apply:

1. The department conducted a technical review of the proposal.
2. The department submitted the proposal to the regional body for review.
3. The department considered the regional declaration of findings.

(n) If a majority of the regional body request regional review of a regionally significant or potentially precedent-setting proposal, all of the following apply:

1. The department conducted a technical review of the proposal.
2. The department submitted the proposal to the regional body for review.
3. The department considered the regional declaration of findings.

NR 851.23 Amendments to straddling community diversion approvals. (1) GENERAL REQUIREMENTS. The department may amend a straddling community diversion approval to reflect changes in fact and accuracy of the approval, including expansion of the approved diversion area. The

department may issue an amendment in the form of a letter stating the changes to the approval or approval conditions. The department may amend an approval if all of the following apply:

(a) If the proposal expands the approved diversion area, the expanded area is within the municipal boundaries of the city, village, or town to where the water is diverted and is within the sewer service area.

(b) The proposal does not exceed the total volume of the existing diversion approval.

(c) The proposal does not result in a new or increased consumptive use that would average 5,000,000 gallons or more per day in any 90-day period.

(2) REQUEST TO AMEND. (a) The person requesting an amendment to a straddling community diversion approval shall provide the department all of the following information and documentation to support and describe the proposed amendment:

1. The purpose of the expansion of the diversion approval area.
2. A statement confirming that the total diversion will not exceed the diversion volume in the existing approval.
3. A statement confirming that the area served diverted water will be within the municipal boundaries of the straddling community.
4. A statement confirming that the proposed transfer of water for the amended diversion will not result in a total consumptive use that averages 5,000,000 gallons per more per day in any 90-day period.
5. Documentation that the diversion will be used for public water supply purposes.
6. A statement of whether the diversion will be continuous, temporary, or seasonal.
7. A statement confirming that the requested diversion area is within an approved water supply service area plan developed and approved under ch. NR 854, or a water supply service area plan that is being submitted simultaneously with the diversion application for department review and approval under ch. NR 854.
8. An updated Tier 3 water conservation plan developed in compliance with ch. NR 852, if applicable.

9. A statement confirming that any water supply customers within the diversion area will be connected to the sewer system simultaneously to water supply to ensure water is returned to the Great Lakes basin.

10. Maps of the area that include the approved or proposed water supply service area, the proposed area to be served diverted water, the sewer service area, and the location where the water will be returned to the Great Lakes basin.

(b) In addition to the information required under par. (a), the department may request additional information or documentation necessary to review the proposed amendment.

(3) Department Review. The department may amend a straddling community diversion approval if it finds all of the following:

(a) The owner or operator of the public water system continues to use the diverted water for public water supply purposes within the straddling community.

(b) The total water diverted does not exceed the existing approved volume amount in the diversion approval.

(c) The amended diversion does not result in a total consumptive use that averages 5,000,000 gallons of water per day or more in any 90-day period.

(d) The amended diversion is consistent with an approved water supply service area plan under s. 281.348, Stats. and ch. NR 854.

(e) The amended diversion area is entirely within the sewer service area.

(f) The water will be returned to the Great Lakes basin, less an amount for consumptive use.

(g) The Tier 3 water conservation plan meets the requirements under ch. NR 852.

(h) The amended diversion approval continues to satisfy the requirements under s. 281.346 (4), Stats., and s. NR 851.22 (2).

SUBCHAPTER III

INTRABASIN TRANSFERS

NR 851.30 Applicability. This subchapter applies to any person proposing a new or increased intrabasin transfer of water from one basin of the Great Lakes to the basin of another one of the Great Lakes. No person may begin a new or increased intrabasin transfer until the person applies for and obtains approval from the department.

NR 851.31 Intrabasin transfer application. (1) A person seeking to begin a new or increased intrabasin transfer shall contact the department prior to applying for an intrabasin transfer.

(2) A person seeking to begin a new or increased intrabasin transfer shall submit an application to the department including all of the following information:

(a) The name, mailing address, telephone number, and email address of the applicant, and the primary point of contact, if it differs from the applicant.

(b) The name, mailing address, telephone number, and email address of any person, other than the applicant, that is a participant or otherwise involved in implementing any component of the intrabasin transfer, including withdrawals of water and returning the water to the Great Lakes basin. The person shall provide evidence in the form of a letter or resolution that the person supports the proposal, has the capacity to withdraw or return the water for the applicant, and is willing to negotiate a contract with the applicant.

(c) A description of the intrabasin transfer and map of the area where water will be withdrawn and transferred.

(d) The purpose of the intrabasin transfer and whether the transfer will be continuous, temporary, or seasonal. If the intrabasin transfer is for multiple purposes, indicate the percentage for each water use sector.

(e) The source watershed and the waterbody from which the water will be transferred, specifying if the source is surface water, including the name of the waterbody, or groundwater, including the aquifer name.

(f) The maximum volume of the proposed intrabasin transfer and associated water loss over any 90-day period expressed in millions of gallons per day.

(g) The expected daily average of the intrabasin transfer and, if temporary in use, the total volume of the intrabasin transfer.

(h) Documentation that the proposed intrabasin transfer quantity is reasonable for the purpose for which the interbasin transfer is proposed.

(i) The location of the point of measurement and the technical method that will be used for measuring the rate or volume of the intrabasin transfer.

(j) If the intrabasin transfer will be used for public water supply purposes, documentation that the intrabasin transfer will be used for public water supply purposes and a water supply service area plan has been approved under ch. NR 854 or a water supply service area plan that is being submitted simultaneously with the application under this section for review and approval under ch. NR 854.

(k) The location and watershed where the water will be returned to the Great Lakes basin.

(l) A description of how and when the water will be returned to the Great Lakes basin, the amount of water to be returned in gallons per day, and a description of how the applicant will minimize the portion of water from outside the basin in the return flow.

(m) Information about the potential impacts of the diversion on the waters of the Great Lakes basin and water dependent natural resources, including the ratio of the amount diverted to the total volume of the water body from which the water is being diverted as a percentage.

(n) A list of all required department approvals or permits related to the diversion, including any approval or permits issued under s. 30.12, 30.18, 281.15, 281.34, 281.41, or 283.31, Stats., and the status of each application for the approval or permit at the time the list is submitted to the department.

(o) A Tier 3 water conservation plan developed in compliance with ch. NR 852.

(p) Information regarding any other intrabasin transfer applications or approvals the applicant has submitted or received.

(q) If the applicant proposes a new or increased intrabasin transfer that would average 100,000 gallons or more per day in any 90-day period, the applicant shall submit all of the following:

1. Materials related to the exception standard under subch. V.
2. An analysis of the feasibility of water supply alternatives within the watershed, including costs and environmental impacts.

(r) If the applicant proposes a new or increased intrabasin transfer with a new water loss or increase in water loss that averages 5,000,000 gallons or more in any 90-day period, the applicant shall submit all of the following:

1. Materials related to the exception standard under subch. V.

2. The anticipated effects, if any, of the proposed intrabasin transfer and related construction on existing uses of water resources and related land uses in the Great Lakes basin, including effects on all of the following:

a. Public and potable water supplies.

b. Water use sectors including industrial or commercial water use, commercial navigation use, thermoelectric power production, and agricultural water use.

c. Fish and wildlife, including impacts on wetlands, fish spawning areas, and threatened and endangered species.

d. Recreation, tourism, and scenic beauty.

3. A description of any land acquisitions, equipment, energy consumption, or the relocation or re-siting of any existing community, facility, right-of-way, or structure that will be required.

4. A statement, with supporting materials, as to whether the diversion complies with any applicable plans developed under ch. 281 and s. 283.83, Stats.

NR 851.32 Intrabasin transfers review. (1) Upon receipt of an application for an intrabasin transfer and at any time during its review, the department may request from the applicant additional information, documentation, and materials necessary to complete or review the application. When the department determines the application is complete, it shall follow the public notice and participation process under subch. VII.

(2) The department may approve an intrabasin transfer if it finds all of the following apply:

(a) The amount of the intrabasin transfer is reasonable for the purpose for which the intrabasin transfer is proposed.

(b) The Tier 3 water conservation plan meets the requirements under ch. NR 852.

(c) The applicant has received all applicable permits or approvals for the withdrawal and discharge of Great Lakes water under s. 30.12, 30.18, 281.15, 281.34, 281.41, or 283.31, Stats.

(d) If the water is for public water supply purposes, the intrabasin transfer is consistent with an approved water supply service plan that covers the public water supply system under s. 281.348, Stats.

(e) If the applicant is relying on another entity to withdraw or return the water, the entity withdrawing or returning the water has demonstrated support for the proposal in the form of a letter or resolution.

(f) All water shall be treated to meet applicable standards under s. 283.31, Stats., before being discharged to a watershed in the Great Lakes basin. If the intrabasin transfer does not terminate in the state, then all water shall be treated to meet applicable standards under 40 CFR 125 before being discharged to a watershed in the Great Lakes basin.

(g) For intrabasin transfers that average greater than 100,000 gallons per day in any 90-day period that result in a new water loss or an increase in water loss that would equal less than 5,000,000 gallons per day in every 90-day period, all of the following apply:

1. The intrabasin transfer meets the exception standard under subch. V, except that the water may be returned to a watershed within the Great Lakes basin other than the source watershed and the applicant does not need to satisfy s. NR 851.52 (4).

2. There is no feasible, cost-effective, and environmentally sound water supply alternative within the watershed to which the water will be transferred, including conservation of existing water supplies.

(h) For intrabasin transfers that results in a water loss that would average 5,000,000 gallons per day or more in any 90-day period, all of the following apply:

1. The proposal meets the exception standard under subch. V.

2. There is no feasible, cost-effective, and environmentally sound water supply alternative within the watershed to which the water will be transferred, including conservation of existing water supplies.

3. If the water is for public water supply purposes, the proposal is consistent with an approved water supply service area plan under ch. NR 854.

4. The department conducted a technical review.

5. The proposal has undergone regional body review and the department considered the regional declaration of findings.

6. The Great Lakes council has approved the proposal.

(i) If a majority of the regional body request regional review of a regionally significant or potentially precedent setting proposal, all of the following apply:

1. The department conducted a technical review.

2. The department submitted the proposal to the regional body for review.

3. The department considered the regional declaration of findings.

SUBCHAPTER IV

COMMUNITY WITHIN A STRADDLING COUNTY DIVERSIONS

NR 851.40 Applicability. This subchapter applies to any person proposing a new or increased diversion of Great Lakes basin water to a community within a straddling county or a community partly within a straddling county and partly within a county that lies entirely outside the Great Lakes basin as long as the water will be used solely for public water supply purposes in the portion of the community within the straddling county. No person may begin a new or increased community within a straddling county diversion until the person applies for and obtains approval from the department.

NR 851.41 Community within a straddling county diversion application. (1) A person seeking to begin a new or increased community within a straddling county diversion shall contact the department prior to applying for a diversion.

(2) A person seeking to begin a new or increased diversion for a community within a straddling county shall submit an application to the department, including all of the following information:

(a) The name, mailing address, telephone number, and email address of the applicant, and the primary point of contact, if it differs from the applicant.

(b) The name, mailing address, telephone number, and email address of any person, other than the applicant, that is a participant or otherwise involved in implementing any component of the diversion, including withdrawals of water and returning the water to the Great Lakes basin. The person shall provide

evidence in the form of a letter or resolution that the person supports the diversion proposal, has the capacity to withdraw or return the water for the applicant, and is willing to negotiate a contract with the applicant.

(c) Documentation that the proposed diversion will be used solely for public water supply purposes.

(d) Information on valid contracts and border agreements related to water supply or wastewater, if applicable.

(e) The source watershed and the waterbody from which the water will be diverted. Specify if the source is surface water, including the name of the waterbody, or groundwater including the aquifer name.

(f) The maximum volume of the proposed diversion, projected over the next 20 years. The volume shall be expressed in millions of gallons per day, averaged over each calendar year.

(g) Documentation that the proposed diversion quantity is reasonable for the purpose for which the diversion is proposed.

(h) The volume of water of the proposed diversion for the projected peak 30-day period, and projected peak 90-day period, during a calendar year.

(i) The estimated consumptive use associated with the diversion in any 90-day period.

(j) A statement of whether the proposed diversion will be continuous, temporary, or seasonal.

(k) The location of the point of measurement, and the technical method that will be used for measuring the rate or volume of the diversion.

(L) An approved water supply service area plan developed and approved under ch. NR 854, or a water supply service area plan that is being submitted simultaneously with the diversion application for department review and approval under ch. NR 854.

(m) Maps of the area that include the approved or proposed water supply service area, the proposed area to be served diverted water, the sewer service area, and the location where the water will be returned to the Great Lakes basin.

(n) A list of all required department approvals or permits related to the diversion, including any

approval or permits issued under s. 30.12, 30.18, 281.15, 281.34, 281.41, or 283.31, Stats., and the status of each approval or permit at the time the list is submitted to the department.

(o) A Tier 3 water conservation plan developed in compliance with ch. NR 852.

(p) Strategies to reduce or minimize Mississippi River basin water in return flow to the Great Lakes basin.

(q) Supporting documentation and evidence that the community is without adequate current water supply in either quantity or quality of water.

(r) Supporting documentation that there are no reasonable water supply alternatives, including that the volume needed cannot be obtained by conservation of the existing water supply. Documentation shall include an analysis of water supply alternatives and quantitative evidence, which may include hydrogeologic modeling, relative costs, environmental sustainability, and public health impacts of the water supply alternatives, and if applicable and available, scientifically based evidence that the existing groundwater supply is hydrologically interconnected to waters of the Great Lakes basin.

(s) Materials related to the exception standard under subch. V.

(t) Information regarding any other diversion applications or existing approved diversions the applicant has submitted or received.

NR 851.42 Department review for a community within a straddling county diversion. (1)

Upon receipt of an application for a community within a straddling county diversion, and at any time during its review, the department may request from the applicant additional information, documentation, and materials necessary to complete or review the application. When the department determines an application is complete, it shall follow the applicable public notice and participation requirements under subch. VII.

(2) The department may approve a proposal for a community within a straddling county for a new or increased diversion, if the department finds all of the following apply:

(a) The proposal is properly characterized as a community within a straddling county diversion based on the boundaries of the county and the city, village, or town to which water will be diverted in relation to the Great Lakes basin.

(b) The applicant owns or operates a public water supply system.

(c) The diverted water is solely for public water supply purposes in a community within a straddling county based on the boundaries of the county, city, village, or town.

(d) The community is without adequate supplies of potable water.

(e) The proposal meets the exception standard under subch. V.

(f) There is no reasonable water supply alternative within the watershed to which the water will be transferred, including conservation of existing water supplies.

(g) If applicable and available, the department has considered scientifically based evidence regarding the interconnection between existing groundwater supplies and the waters of the Great Lakes basin.

(h) The diversion maximizes the amount of water withdrawn from the Great Lakes basin that will be returned to the source watershed and minimizes the amount of water from outside of the Great Lakes basin that will be returned to the source watershed.

(i) The proposed diversion has no significant adverse impact on the Great Lakes basin ecosystem.

(j) The diversion area is entirely within a sewer service area or the applicant has another mechanism to return the water to the Great Lakes basin.

(k) The proposal is consistent with an approved water supply service area plan under ch. NR 854.

(L) The applicant has received all applicable permits or approvals for the withdrawal and discharge of Great Lakes water under s. 30.12, 30.18, 281.15, 281.34, 281.41, or 283.31, Stats.

(m) The department conducted a technical review.

(n) The proposal has undergone regional body review and the department considered the regional declaration of findings.

(o) The Great Lakes council has approved the proposal.

NR 851.43 Amendments to community within a straddling county diversion approvals.

(1) A person seeking to amend an approval for a community within a straddling county diversion shall contact the department to discuss the scope of the request. A person seeking an amendment shall

submit to the department the amendment request and documentation to support all relevant application requirements under s. NR 851.41. Upon receipt of the request and at any time during its review, the department may request additional information, documentation, and materials necessary to review the request.

(2) The department shall work with the applicant to follow regional body and Great Lakes council procedures to amend a community within a straddling county diversion approval.

(3) The department may amend a community within a straddling county diversion approval if it is consistent with the regional body and Great Lakes council approval and findings.

SUBCHAPTER V

THE EXCEPTION STANDARD

NR 851.50 Exception standard applicability. The exception standard implements the criteria established under s. 281.346 (4) (f), Wis. Stats. The exception standard applies to all of the following:

(1) A new or increased straddling community diversion proposal that results from a new withdrawal or an increase in a withdrawal that would average 100,000 gallons or more per day in any 90-day period.

(2) An intrabasin transfer proposal that results from a new withdrawal or an increase in a withdrawal that would average 100,000 gallons or more per day in any 90-day period.

(3) An intrabasin transfer proposal that results in a new or increased water loss that would average 5,000,000 gallons or more per day in any 90-day period.

(4) A new or increased community within a straddling county diversion proposal.

NR 851.51 Exception standard application requirements. In addition to the applicable application requirements under subch. II, III, or IV, the applicant shall provide all of the following information with any application submitted under subch. II, III, or IV:

(1) Documentation demonstrating that the proposal cannot be reasonably avoided through the efficient use and conservation of existing water supplies.

(2) Documentation that the proposed diversion quantity is reasonable for the purpose for which

the diversion is proposed.

(3) Information to demonstrate all of the following related to return flow:

(a) The amount of water that will be returned to the Great Lakes basin.

(b) That the returned water will be from a water supply or wastewater treatment system that combines water from inside and outside the Great Lakes basin.

(c) That the returned water will be treated to meet applicable requirements under s. 283.31 and prevent the introduction of invasive species into the Great Lakes basin.

(d) If the water is returned through a structure on the bed of a navigable water, the structure is designed and will be operated to meet the requirements of an approved permit under s. 30.12, Stats.

(4) The distance between where the water will be withdrawn for the proposal and where the water will be returned to the Great Lakes. The applicant shall provide information on the economics, environmental impacts, and public health impacts considered in determining the return flow location. Except for applicants described under s. NR 851.50 (2), if the place at which the water is to be returned is not as close as practicable to the place at which the water is withdrawn, the applicant shall provide documentation that returning water to a closer location is one of the following:

(a) Not economically feasible.

(b) Not environmentally sound.

(c) Not in the interest of public health.

(5) An analysis of the hydrologic setting for the source water body and the water body receiving the returned water, including consideration of groundwater, surface water, the connection between groundwater and surface water, and the general characteristics of the water bodies such as water availability, water quality and habitat.

(6) Documentation of how the physical, chemical and biological integrity of the water body receiving the returned water will be protected and sustained as required under ss. 30.12, 281.15, and 283.31, Stats. The applicant shall provide scientific information and data statistics on the state of the receiving water before the proposal is implemented, low and high flow conditions if the receiving water is a stream tributary, and potential adverse impacts due to changes in temperature and nutrient loadings.

(7) A cumulative impacts analysis that determines the percentage of water that will be withdrawn, diverted and returned to the Great Lakes basin, including the ratio of the amount that will be diverted to the total volume of the water body from which the water is being diverted as a percentage.

(8) An analysis of the potential for significant adverse individual impacts or cumulative impacts to the quantity or quality of the waters of the Great Lakes basin or to water dependent natural resources.

(9) A Tier 3 water conservation plan developed in compliance with ch. NR 852 and a statement that the applicant will continue to implement the plan.

(10) A list of all required department approvals or permits related to the diversion, including any approval or permits issued under s. 30.12, 30.18, 281.15, 281.34, 281.41, or 283.31, Stats., and the status of each application for the approval or permit at the time the list is submitted to the department.

NR 851.52 Exception standard. DEPARTMENT REVIEW. A proposal meets the exception standard if all of the following apply:

(1) The need for the proposed diversion cannot reasonably be avoided through the efficient use and conservation of existing water supplies as determined by the applicant's Tier 3 water conservation plan developed in compliance with ch. NR 852.

(2) The diversion is limited to quantities that are reasonable for the purposes for which the diversion is proposed.

(3) An amount of water equal to the amount of water withdrawn from the Great Lakes basin will be treated and returned to the source watershed, less an allowance for consumptive use.

(4) For applications described under s. NR 851.50 (1), (3), and (4), the place at which the water is returned to the source watershed is as close as practicable to the place at which the water is withdrawn, including consideration of the following:

(a) Economic feasibility.

(b) Environmental impact such as impacts of the withdrawal on rivers or streams.

(c) Public health concerns.

(5) If water from outside the Great Lakes basin will be returned to the source watershed, pars. (a)

to (c) apply. For any application described in s. NR 851.50, the department may require any of the following:

(a) The returned water is from a water supply or wastewater treatment system that combines water from inside and outside the Great Lakes basin.

(b) The returned water will be treated to meet applicable permit requirements under s. 283.31, Stats. and to prevent the introduction of invasive species into the Great Lakes basin and the department has approved the permit under s. 283.31, Stats.

(c) If the water is returned through a structure on a bed of a navigable water, the structure is designed and will be operated to meet the applicable permit requirements under s. 30.12, Stats. and the department has approved a permit under s. 30.12, Stats.

(6) If water is returned to the source watershed through a stream tributary to one of the Great Lakes, the physical, chemical, and biological integrity of the receiving water will be protected and sustained as required under ss. 30.12, 281.15, and 283.31, Stats., considering the state of the receiving water before the proposal is implemented and considering both low and high flow conditions and potential adverse impacts due to the changes in temperature and nutrient loadings.

(7) The diversion will result in no significant adverse individual impacts or cumulative impacts to the quantity or quality of the waters of the Great Lakes basin or to water-dependent natural resources, including cumulative impacts that might result due to any precedent-setting aspects of the proposed diversion, based upon a determination that the proposed diversion does not have any significant adverse impacts on the sustainable management of the waters of the Great Lakes basin.

(8) The applicant has a Tier 3 water conservation plan developed in compliance with ch. NR 852 and commits to implementing the water conservation plan.

(9) The diversion will be in compliance with all applicable local, state, and federal laws and interstate and international agreements, including the Boundary Waters Treaty of 1909.

SUBCHAPTER VI

APPROVALS, CONDITIONS AND REPORTING REQUIREMENTS

NR 851.60 Preexisting diversions. (1) PUBLIC WATER SUPPLY SYSTEMS. If an owner or operator of a public water supply system with a preexisting diversion plans to change operations in a manner that

does not comply with the preexisting approval or conditions, the owner or operator shall apply for a new or increased diversion approval under s. 281.346 (4), Stats. and subch. II, III, or IV, as applicable.

(2) **TRANSFER OF OWNERSHIP OF A PREEXISTING DIVERSION NOT FOR PUBLIC WATER SUPPLY SYSTEMS.** Within 30 days after a change in property ownership, the new owner shall request in writing to the department a transfer of the preexisting diversion approval, including the new owner's name, mailing address, telephone number, and email. The department may approve the transfer of the preexisting diversion approval to a new owner if the new owner agrees to comply with the preexisting diversion approval, conditions, and reporting requirements.

(3) **REPLACING EQUIPMENT.** The owner or operator of a preexisting diversion approval is not required to notify the department when replacing equipment of the same capacity, same water use, and same operating parameters.

NR 851.61 Approval, conditional approval, and denial. (1) Each approval the department issues under this chapter shall specify, at a minimum, all of the following:

(a) The purpose of the water diversion or intrabasin transfer, including the water use sectors served.

(b) The diversion amount in millions of gallons per day.

(c) The diversion or intrabasin transfer area, consistent with the approved water supply service area plan.

(d) The places where the water shall be treated, if applicable, and location of where the water will be returned to the Great Lakes basin.

(e) Tier 3 water conservation plan approval and water conservation plan implementation requirements.

(f) Recordkeeping and reporting requirements, including requirements under ch. NR 856 including the volume of water transferred or diverted and volume of water returned.

(g) If the approval is for a temporary diversion or intrabasin transfer, the expiration date or termination date of approval.

(2) The department may include in an approval or conditional approval any of the following:

- (a) Additional reporting requirements.
 - (b) Requirements for monitoring potential environmental impacts to the Great Lakes basin and water-dependent natural resources.
 - (c) Conditions to protect the waters of the state from impacts of the diversion or intrabasin transfer.
 - (d) Conditions necessary to comply with ss. 281.343 and 281.346, Stats., and this chapter.
 - (e) Conditions enacting or considering a regional declaration of findings from a regional body review.
 - (f) Conditions enacting or adopting an approval from the Great Lakes council.
 - (g) Conditions necessary to comply with Great Lakes council or regional body procedures.
 - (h) A determination of compliance with ch. NR 150.
- (3) If the application is denied, the department shall provide notice to the applicant including the reason for denial.

NR 851.62 Termination of approval. (1) The department may terminate a diversion or intrabasin transfer approval if any of the following apply:

- (a) The person or public water supply system no longer has the capability to withdraw water and the water use registration has been terminated under ch. NR 856.
- (b) The person or owner or operator of the public water supply system no longer holds all applicable department approvals or permits to withdraw or discharge water under s. 30.12, 30.18, 281.346, 281.35, or 283.31, Stats.
- (c) The purpose of the water diversion or intrabasin transfer is no longer consistent with the approval.
- (d) The approval for the intrabasin transfer was for a one-time transfer and the transfer is complete.

(2) Termination of a diversion approval also terminates any withdrawal baselines established

under ss. 281.344 (3e) and 281.346 (2) (e), Stats., or an approved diversion amount issued under s. 281.346 (4), Stats., or this chapter.

SUBCHAPTER VII

PUBLIC NOTICE AND PARTICIPATION

NR 851.70 Applicability. The department may issue an approval or conditional approval for a diversion or intrabasin transfer under s. NR 851.61 if all applicable requirements of this subchapter have been met.

NR. 851.71 Receipt of application and preliminary review. Prior to determining an application is complete, the department may inform the public and the Great Lakes council and regional body that an application has been received and the department will begin a preliminary review.

NR 851.72 Public notice and comment. The department shall provide public notice and a public comment period for any complete application received under subch. II, III, or IV. The public notice and comment period shall comply with all of the following:

(1) PUBLIC NOTICE CONTENT. The public notice shall contain all of the following:

- (a) Name and mailing address of the applicant.
- (b) A brief description of the proposed diversion or intrabasin transfer, including the amount of the proposed withdrawal or diversion.
- (c) A brief description of the procedures for the formulation of final determinations on applications, including the date public comments are due to the department.
- (d) The name and address of a contact within the department who will receive comments and respond to questions.
- (e) The location where copies of the application materials are available for review.
- (f) The location, date, and time of any public meetings or hearings, if applicable.

(2) PUBLIC NOTICE PROCEDURE. (a) The department shall publish a class 1 notice under ch. 985, Stats. in the county or counties where the water is proposed to be withdrawn and where the water will be diverted or transferred.

(b) The department shall publish the notice by electronic notification to all of the following:

1. All local and regional units of government that have jurisdiction over the area that may be affected by the proposal or reasonable alternatives to the proposal.
2. All relevant department electronic notification systems.
3. The department website.
4. Information outlets accessible in the local, regional, or statewide areas affected by the proposal.
5. All individuals, groups, clubs, committees, local governments, or state agencies that have demonstrated an interest in and requested receipt of such notice.

Note: The department has a service to notify interested parties. Search “Great Lakes Compact” at dnr.wi.gov and subscribe to receive email updates about the Great Lakes Compact.

(c) Upon request, the department shall mail or provide a copy of the application to any individual or group requesting a copy. A charge may be assessed to cover reproduction and handling costs for requests for paper copies of documents.

(3) PUBLIC COMMENT PERIOD. The department shall receive written public comment for 30 days, beginning the date the department posts the public notice on the department website. All comments shall be sent to the department at the email or physical address specified in the public notice and shall be received by email or at the physical address by the date specified in the public notice. The department shall retain all written comments received during the comment period, consistent with the department’s records retention policy and shall consider the comments in making its decisions on the application.

NR 851.73 Notice to Great Lakes council and regional body. The department shall notify the Great Lakes council and regional body of all complete applications under subch. II, III, or IV.

NR 851.74 Tribal notice and consultation. The department shall notify all recognized American Indian tribes or bands in this state of complete applications under subch. II, III, or IV. For an application requiring regional body review or Great Lakes council approval, the department shall consult with federally recognized American Indian tribes or bands in this state concerning a proposal that may affect the tribe or band.

NR 851.75 Public hearings. (1) MANDATORY HEARINGS. The department shall conduct a public

hearing for any of the following:

(a) A new or increased straddling community diversion proposal that results from a new withdrawal or an increase in a withdrawal that would average 100,000 gallons or more per day in any 90-day period.

(b) A new or increased straddling community diversion proposal that results in a new or increased consumptive use that would average 5,000,000 gallons or more per day in any 90-day period.

(c) An intrabasin transfer proposal that results in a new withdrawal or an increase in a withdrawal that would average 100,000 gallons or more per day in any 90-day period.

(d) An intrabasin transfer proposal that results in a new or increased consumptive use that would average 5,000,000 gallons or more per day in any 90-day period.

(e) A new or increased diversion proposal to a community within a straddling county.

(2) HEARING BY REQUEST. (a) If a hearing is not required under sub. (1), within 30 days of the public notice posted on the department website under s. NR 851.73 (2) (b) 3., any interested person may request a public hearing regarding a diversion or intrabasin transfer application submitted to the department under subch. II, III or IV. The person making the request shall indicate the person's interest in the proposal and the reason a hearing is warranted.

(b) The department shall conduct a public hearing if it determines that there is a significant public interest in holding a hearing.

(3) PUBLIC HEARING PROCEDURE. (a) The department shall provide public notice of a hearing under sub. (2) following the procedures under s. NR 851.72 (2) unless notice of the hearing has already been provided under s. NR 851.72 (2). The hearing notice shall contain all relevant information listed under s. NR 851.72 (1).

(b) A public hearing may be held in-person in the area where the diversion or intrabasin transfer is located, online, or a combination of in-person and virtual.

(c) The public hearing shall be conducted by a hearing examiner. The hearing examiner may implement procedures to ensure that the hearing is conducted in an orderly and expeditious manner, provided those procedures are consistent with broad public participation in the hearing.

(d) The hearing examiner shall open the hearing, make a concise statement of the scope and purpose of the hearing, explain the procedures for the hearing, explain the method of notification of the final decision to approve or deny the diversion or intrabasin transfer, and explain the methods by which the decision may be reviewed in a public adjudicatory hearing.

(e) Appearance slips or online registration shall be recorded for all attendees at the hearing. Persons shall state on their appearance slips or online registration their intent to present or not present an oral or written statement at the hearing.

(f) The hearing examiner may establish reasonable time limits on individual oral statements to ensure the opportunity for all attendees to make statements. The hearing examiner may limit the number of representatives that may make oral statements on behalf of the same organized group.

(g) Attendees at the hearing may ask informational and clarifying questions by submitting the questions in writing to the hearing examiner who may direct the questions to the person making the oral statement. In no instance shall cross-examination be allowed at the hearing.

(h) Contemptuous conduct at a hearing shall be grounds for exclusion from the hearing by the hearing examiner.

(i) The hearing examiner shall accept written comments from hearing attendees.

(j) A hearing held under this section is not a contested case hearing under s. 227.44, Stats.

(k) The hearing examiner shall make a written report of public participation during the hearing process for the decision record.

NR 851.76 Open records requests. (1) Any record or other information provided to or obtained by the department regarding an application under this chapter is a public record for purposes of subch. II of ch. 19, Stats. A person submitting a record or other information to the department regarding an application may apply for confidential status under s. NR 2.19. The department may consider domestic security concerns when determining whether information may be released to the public.

(2) The department may request all of the following with respect to open records requests seeking information on Great Lakes water diversions:

(a) That the request be put in writing.

(b) The name, mailing address, telephone number, and email address of the requester and the company or organization that the requester represents.

(c) The specific information requested.

(d) The reason the information is requested and how it will be used.

(3) In considering the public's interest in domestic security when reviewing requests submitted under subs. (1) and (2), the department may place conditions on the use of the information or may provide the requested information in a different format when necessary to protect the public's interest in domestic security.

SECTION 2. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 3. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

BY _____

For Adam N. Payne, Secretary