

## Chapter NR 851

### MANAGEMENT OF GREAT LAKES DIVERSIONS

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#### 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 of Great Lakes basin 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.

**History:** CR 23-050; cr. Register June 2024 No. 822, eff. 7-1-24.

**NR 851.11 Definitions.** In this chapter:

**c1d** XApplicantY means a person who submits an application for a diversion approval.

**c2d** XCommunity within a straddling countyY has the meaning given in s. 281.346 c1d cdd, Stats.

**Note:** Section 281.346 c1d cdd, Stats., reads as follows: XCommunity within a straddling countyY 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.

**c3d** XConsumptive useY has the meaning given in s. 281.346 c1d ced, Stats.

**Note:** Section 281.346 c1d ced, Stats., reads as follows: XConsumptive useY 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of water that results in the loss of or failure to return some or all of the water to the basin from which the water is withdrawn due to evaporation, incorporation into products, or other processes.

**c3md** XDepartmentY means the department of natural resources.

**c4d** XDiversionY has the meaning given in s. 281.346 c1d chd, Stats. XDiversionY includes diversions to straddling communities, diversions to communities within a straddling county and intrabasin transfers.

**Note:** Section 281.346 c1d chd, Stats., reads as follows: XDiversionY 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 XDiversionY 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.

**c5d** XDiversion areaY means the area outside the Great Lakes basin that is approved by the department to be served water from the Great Lakes basin.

**c6d** XGreat Lakes basinY 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 c8-digitd 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 XFGDC Proposal, Version 1.0 - Federal Standards for Delineation of Hydrologic Unit Boundaries 3{01{02.Y

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

**c7d** XGreat Lakes councilY has the meaning given in s. 281.346 c1d cjjd, Stats.

**Note:** Section 281.346 c1d cjjd, Stats., reads as follows: XGreat Lakes councilY means the Great Lakes-St. Lawrence River Basin Water Resources Council, created under s. 281.343 c2d cad.

**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.

**c8d** XIntrabasin transferY has the meaning given in s. 281.346 c1d cjmd, Stats.

**Note:** Section 281.346 c1d cjmd, Stats., reads as follows: XIntrabasin transferY means the transfer of water from the watershed of one of the Great Lakes into the watershed of another of the Great Lakes.

**c9d** XPersonY has the meaning given in s. 281.346 c1d cnmd, Stats.

**Note:** Section 281.346 c1d cnmd, Stats., reads as follows: Notwithstanding s. 281.01 c9d, XPersonY 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.

**c10d** XPreexisting diversionY 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 c3md or c4d, Stats.

**c11d** XProposalY means a request for a new or increased diversion of Great Lakes water.

**c12d** XPublic water supplyY has the meaning given in s. 281.346 c1d cpmd, Stats.

**Note:** Section 281.346 c1d cpmd, Stats., reads as follows: XPublic water supplyY 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.

**c13d** XPublic water supply systemY means a physically connected system of treatment, storage, and distribution facilities that distributes public water supply that is treated for human consumption, and that is owned by a city, village, county, town, town sanitary district, utility district, public inland lake and rehabilitation district, or municipal water district, joint local water authorities, or a privately owned water utility serving any of these entities.

**c14d** XReasonable water supply alternativeY has the meaning given in s. 281.346 c1d cpsd, Stats.

**Note:** Section 281.346 c1d cpsd, Stats., reads as follows: XReasonable water supply alternativeY means a water supply alternative that is similar in cost to, and as environmentally sustainable and protective of public health as, the proposed new or increased diversion and that does not have a greater adverse environmental impact than the proposed new or increased diversion.

**c15d** XRegional bodyY has the meaning given in s. 281.346 c1d cq, Stats.

**Note:** Section 281.346 c1d cq, Stats., reads as follows: XRegional bodyY 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.

**c16d** XSewer service areaY has the meaning given in s. NR 110.03 c29td.

**Note:** Section NR 110.03 c29td reads as follows: XSewer service areaY means that area served or anticipated to be served by a sewage collection system.

**c17d** XSource watershedY has the meaning given in s. 281.346 c1d crd, Stats.

**Note:** Section 281.346 c1d crd, Stats., reads as follows: XSource watershedY 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.

**c18d** XStraddling communityY has the meaning given in s. 281.346 c1d ctd, Stats.

**Note:** Section 281.346 c1d ctd, Stats., reads as follows: XStraddling communityY 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.

**c19d** cad XStraddling countyY has the meaning given in s. 281.346 c1d ctmd, Stats.

cbd A county[s boundaries as of December 13, 2005, shall be used to determine whether the county is a straddling county.

**Note:** Section 281.346 c1d ctmd, Stats., reads as follows: XStraddling countyY means a county that lies partly within the Great Lakes basin.

**c20d** XTechnical reviewY has the meaning given in s. 281.346 c1d cud, Stats.

**Note:** Section 281.346 c1d cud, Stats., reads as follows: XTechnical reviewY 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 c4d, c5d, or c6d, Stats].

**c21d** XWater lossY has the meaning given in s. 281.346 c1d cwmd, Stats.

**Note:** Section 281.346 c1d cwmd, Stats., reads as follows: XWater lossY 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.

**c22d** XWater supply service areaY means an area in which the public water supply system provides water or may provide

water to the public during the planning period covered by the water supply service area plan.

**c23d** XWater supply service area planY means a document developed in compliance with s. 281.348, Stats., and ch. NR 854.

**c24d** XWaters of the stateY has the meaning given in s. 281.01 c18d, Stats.

**Note:** Section 281.01 c18d, Stats., reads as follows: XWaters of the stateY 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.

**c25d** XWithdrawY has the meaning given in s. 281.346 c1d cyd, Stats.

**Note:** Section 281.346 c1d cyd, Stats., reads as follows: XWithdrawY means to take water from surface water or groundwater.

**c26d** XWithdrawalY has the meaning given in s. 281.346 c1d czd, Stats.

**Note:** Section 281.346 c1d czd, Stats., reads as follows: XWithdrawalY 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.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24; c3d renumbered to c3md under s. 13.92 c4d cbd 1., Stats., and correction in c13d made under s. 35.17, Stats., Register June 2024 No. 822.

**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 c4d ccd, cdd, or ced, Stats., and this chapter.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24.

**NR 851.13 Responsible persons.** c1d Persons responsible for obtaining, requesting amendment, and complying with the terms of a diversion approval are as follows:

cad For a diversion to a straddling community or a diversion to a community in a straddling county, the person who owns or operates the public water supply system that receives or would receive water diverted from the Great Lakes basin.

cbd For intrabasin transfers, the person who transfers the Great Lakes water.

ccd For preexisting diversion approvals, the person named on the preexisting approval, or the person the department has approved for a transfer of the preexisting approval.

**c2d** The department may issue a diversion approval for a straddling community or a community in a straddling county only to the person who owns and operates a public water supply system.

**c3d** Operators of 2 or more public water supply systems may submit a joint application under subch. II or IV.

**c4d** The department may provide and require the use of forms for purposes of applying for a diversion or for annual reporting purposes.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24.

**NR 851.14 Fees.** c1d An applicant shall pay to the department a review fee of \$5,000 at the time the applicant submits the application.

**c2d** The department may not review an application under this chapter until the applicant submits the review fee.

**c3d** 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.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24.

**NR 851.15 Enforcement.** A person violating this chapter or an approval under this chapter may be subject to penalties

specified under s. 281.346 c14d, Stats., including all of the following:

**c1d** Forfeitures.

**c2d** Costs of investigation and prosecution.

**c3d** Abatement of nuisance.

**c4d** Restoration of a natural resource.

**c5d** Orders that the person take or refrain from taking any action necessary to eliminate or minimize any environmental damage caused by the violation.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24.

## Subchapter II — Straddling Community Diversions

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

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24.

**NR 851.21 Straddling community diversion application. c1d** A person seeking to begin a new or increased straddling community diversion shall contact the department prior to applying for a diversion.

**c2d** 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:

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

**cbd** The name, mailing address, telephone number, and email address of any person, other than the applicant, that is involved in withdrawing water from or returning 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.

**ccd** Documentation that the proposed diversion will be used solely for public water supply purposes.

**cdd** Information on valid contracts and border agreements related to water supply or wastewater, if applicable.

**ced** The source watershed and the waterbody from which the water will be diverted. The applicant shall specify if the source is surface water, including the name of the waterbody, or groundwater including the aquifer name.

**cf** The requested diversion volume expressed in millions of gallons per day, averaged over each calendar year.

**cgd** The requested diversion volume for the projected peak 30-day period, and projected peak 90-day period, during a calendar year.

**chd** The estimated consumptive use associated with the proposal, in any 90-day period.

**cid** Documentation that the proposed diversion quantity is reasonable for the purpose for which the diversion is proposed.

**cjd** A statement of whether the proposed diversion will be continuous, temporary, or seasonal.

**ckd** The location of the point of measurement and the technical method that will be used for measuring the diversion volume.

**cLd** 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 c1md, Stats.

**cmd** 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.

**cnd** 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.

**cod** A Tier 3 water conservation plan developed in compliance with ch. NR 852.

**cpd** 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. If surface water or groundwater from outside the basin will be returned to the source basin, 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. If surface water or groundwater from outside the basin will be returned to the source basin, 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. If surface water or groundwater from outside the basin will be returned to the source basin, strategies to reduce or minimize Mississippi River basin water in return flow to the Great Lakes basin.

**cqd** 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 waterbody from which the water is being diverted as a percentage.

**crd** Information regarding any other diversion applications or existing approved diversions the applicant has submitted or received.

**c3d** 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. c2d, the applicant shall submit application materials related to the exception standard under subch. V.

**c4d** 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. c2d, the applicant shall submit all of the following:

**cad** A description of 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.

**cbd** An analysis of the hydrologic setting for the source waterbody and the waterbody 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.

ccd A description of any land acquisitions, equipment, or the relocation or re-siting of any water supply or wastewater facility, right-of-way, or structure that will be required.

cdd A statement, with supporting materials, as to whether the diversion complies with all applicable plans developed under ch. 281 or s. 283.83, Stats.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24; correction in c2d cad made under s. 35.17, Stats., Register June 2024 No. 822.

### NR 851.22 Straddling community diversion review.

**c1d** 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.

**c2d** The department may issue a straddling community diversion approval if all of the following apply:

cad 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.

cbd The applicant owns or operates a public water supply system.

ccd The diverted water is solely for public water supply purposes in the straddling community.

cdd 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 c1md, Stats.

ced The amount of the diversion is reasonable for the purpose for which the diversion is proposed.

cfid The Tier 3 water conservation plan meets the requirements under ch. NR 852.

cgd 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.

chd 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.

cid No surface water or groundwater from outside the source watershed will be returned to the source watershed unless all of the following apply:

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.

cjd 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, or 283.31, Stats.

ckd 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 or return the volume needed and has demonstrated support for the proposal in the form of a letter or resolution.

cLd 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.

cmd 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.

cnd 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.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24; correction in c2d cjd made under s. 35.17, Stats., Register June 2024 No. 822.

### NR 851.23 Amendments to straddling community diversion approvals. c1d 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 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:

cad If the proposal expands the 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.

cbd The proposal does not exceed the total volume of the existing diversion approval.

ccd 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.

**c2d REQUEST TO AMEND.** cad 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 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 or 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.

cbd In addition to the information required under par. cad, the department may request additional information or documentation necessary to review the proposed amendment.

**c3d DEPARTMENT REVIEW.** The department may amend a straddling community diversion approval if it finds all of the following:

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

cbd The total water diverted does not exceed the existing approved volume in the diversion approval.

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

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

ced The amended diversion area is entirely within the sewer service area.

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

cgd The Tier 3 water conservation plan meets the requirements under ch. NR 852.

chd The amended diversion approval continues to satisfy the requirements under s. 281.346 c4d, Stats., and s. NR 851.22 c2d.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24.

### Subchapter III — Intrabasin Transfers

**NR 851.30 Applicability.** This subchapter applies to any person proposing a new or increased intrabasin transfer. No person may begin a new or increased intrabasin transfer until the person applies for and obtains approval from the department.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24.

**NR 851.31 Intrabasin transfer application. c1d** A person seeking to begin a new or increased intrabasin transfer shall contact the department prior to applying for an intrabasin transfer.

**c2d** A person seeking to begin a new or increased intrabasin transfer shall submit an application to the department including all of the following information:

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

cbd The name, mailing address, telephone number, and email address of any person, other than the applicant, that is involved in withdrawing water from or returning 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.

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

cdd 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.

ced 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.

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

cgd The maximum intrabasin transfer volume over any 90-day period and associated water loss expressed in millions of gallons per day.

chd Documentation that the proposed intrabasin transfer quantity is reasonable for the purpose for which the interbasin transfer is proposed.

cid The location of the point of measurement and the technical method that will be used for measuring the intrabasin transfer.

cjd 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 is being submitted simultaneously with the application under this section for review and approval under ch. NR 854.

ckd The location and watershed where the water will be returned to the Great Lakes basin.

cLd A description of how and when the water will be returned to the Great Lakes basin and the amount of water to be returned in gallons per day.

cmd Information about the potential impacts of the intrabasin transfer 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 waterbody from which the water is being diverted as a percentage.

cnd A list of all required department approvals or permits related to the diversion, including any applicable 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.

cod A Tier 3 water conservation plan developed in compliance with ch. NR 852.

cpd Information regarding any other intrabasin transfer applications or approvals the applicant has submitted or received.

cqd If the applicant proposes a new or increased intrabasin transfer that would average more than 100,000 gallons 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.

crd If the applicant proposes a new or increased intrabasin transfer with a new water loss or increase in water loss that aver-

ages 5,000,000 gallons per day 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. An analysis of the feasibility of water supply alternatives within the watershed, including costs and environmental impacts.
3. 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.
4. A description of any land acquisitions, equipment, or the relocation or re-siting of any water supply or wastewater facility, right-of-way, or structure that will be required.
5. A statement, with supporting materials, as to whether the diversion complies with any applicable plans developed under ch. 281 and s. 283.83, Stats.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24.

**NR 851.32 Intrabasin transfer review. c1d** 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.

**c2d** The department may approve an intrabasin transfer if it finds all of the following apply:

- cad The amount of the intrabasin transfer is reasonable for the purpose for which the intrabasin transfer is proposed.
- cbd The Tier 3 water conservation plan meets the requirements under ch. NR 852.
- ccd 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, or 283.31, Stats.
- cdd If the water is for public water supply purposes, the intrabasin transfer is consistent with an approved water supply service area plan that covers the public water supply system under s. 281.348, Stats.
- ced 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.
- cfid 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 part 125 before being discharged to a watershed in the Great Lakes basin.

cgd For intrabasin transfers that average more 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 average 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 c4d.

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.

chd For intrabasin transfers that result 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.

cid 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.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24; correction in c2d cfd made under s. 35.17, Stats., Register June 2024 No. 822.

#### 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 diversion to a community within a straddling county until the person applies for and obtains approval from the department.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24.

**NR 851.41 Community within a straddling county diversion application. c1d** A person seeking to begin a new or increased diversion to a community within a straddling county shall contact the department prior to applying for a diversion.

**c2d** 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:

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

cbd The name, mailing address, telephone number, and email address of any person, other than the applicant, that is involved in withdrawing water from or returning 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.

ccd Documentation that the proposed diversion will be used solely for public water supply purposes.

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

ced The source watershed and the waterbody from which the water will be diverted. The applicant shall specify if the source is surface water, including the name of the waterbody, or groundwater including the aquifer name.

cfđ The requested diversion volume expressed in millions of gallons per day, averaged over each calendar year.

cgd Documentation that the proposed diversion quantity is reasonable for the purpose for which the diversion is proposed.

chđ The requested diversion volume for the projected peak 30-day period, and projected peak 90-day period, during a calendar year.

cid The estimated consumptive use associated with the diversion in any 90-day period.

cjd A statement of whether the proposed diversion will be continuous, temporary, or seasonal.

ckđ The location of the point of measurement, and the technical method that will be used for measuring the diversion.

cLđ 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.

cmd 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.

cnd 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.

cod A Tier 3 water conservation plan developed in compliance with ch. NR 852.

cpđ Strategies to reduce or minimize Mississippi River basin return flow to the Great Lakes basin.

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

crđ 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.

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

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

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24.

#### NR 851.42 Department review for a community

**within a straddling county diversion. c1đ** 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.

**c2đ** 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:

cad 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.

cbd The applicant owns or operates a public water supply system.

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

cdd The community is without adequate supplies of potable water.

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

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

cgd 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.

chđ 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.

cid The proposed diversion has no significant adverse impact on the Great Lakes basin ecosystem.

cjd 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.

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

cLđ 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, or 283.31, Stats.

cmd The department conducted a technical review.

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

cod The Great Lakes council has approved the proposal.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24.

#### NR 851.43 Amendment to a community within a straddling county diversion approval. c1đ

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.

**c2đ** 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.

**c3d** 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.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24; correction in titled made under s. 13.92 c4d cbd 2., Stats., Register June 2024 No. 822.

### Subchapter V — The Exception Standard

**NR 851.50 Exception standard applicability.** The exception standard implements the criteria established under s. 281.346 c4d cfd, Stats. The exception standard applies to all of the following:

**c1d** 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.

**c2d** An intrabasin transfer proposal that results from a new withdrawal or an increase in a withdrawal that would average more than 100,000 gallons per day in any 90-day period.

**c3d** An intrabasin transfer proposal that results in a new or increased water loss that would average 5,000,000 gallons per day or more in any 90-day period.

**c4d** A new or increased community within a straddling county diversion proposal.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24.

**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:

**c1d** Documentation demonstrating that the proposal cannot be reasonably avoided through the efficient use and conservation of existing water supplies.

**c2d** Information to demonstrate all of the following related to return flow:

cad The amount of water that will be returned to the Great Lakes basin.

cbd If surface water or groundwater from outside the Great Lakes basin will be returned to the source basin, 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.

ccd If surface water or groundwater from outside the Great Lakes basin will be returned to the source basin, 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.

cdd If surface water or groundwater from outside the Great Lakes basin will be returned to the source basin and 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 applicable permit requirements under s. 30.12, Stats.

**c3d** 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 c2d, 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 documenta-

tion that returning water to a closer location is one of the following:

cad Not economically feasible.

cbd Not environmentally sound.

ccd Not in the interest of public health.

**c4d** An analysis of the hydrologic setting for the source waterbody and the waterbody 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.

**c5d** Documentation of how the physical, chemical, and biological integrity of the waterbody 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.

**c6d** 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 waterbody from which the water is being diverted as a percentage.

**c7d** 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.

**c8d** A statement that the applicant will continue to implement its Tier 3 water conservation plan developed in compliance with ch. NR 852.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24; correction in c4d made under s. 35.17, Stats., Register June 2024 No. 822.

**NR 851.52 Exception standard department review.** The department may determine that a proposal meets the exception standard if all of the following apply:

**c1d** 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.

**c2d** The diversion is limited to quantities that are reasonable for the purposes for which the diversion is proposed.

**c3d** 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.

**c4d** For applications described under s. NR 851.50 c1d, c3d, and c4d, 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:

cad Economic feasibility.

cbd Environmental impact such as impacts of the withdrawal on rivers or streams.

ccd Public health concerns.

**c5d** No water from outside the Great Lakes basin will be returned to the source watershed unless all of the following apply:

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

cbd 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.



ccd 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.

**c6d** 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.

**c7d** 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.

**c8d** The applicant has a Tier 3 water conservation plan developed in compliance with ch. NR 852 and commits to implementing the water conservation plan.

**c9d** 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.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24; correction in c5d cbd made under s. 35.17, Stats., Register June 2024 No. 822.

## Subchapter VI — Approvals, Conditions, and Reporting Requirements

**NR 851.60 Preexisting diversions. c1d** 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 c4d, Stats., and subch. II, III, or IV, as applicable.

**c2d** TRANSFER OF OWNERSHIP OF A PREEXISTING DIVERSION NOT FOR PUBLIC WATER SUPPLY. Within 30 days after a change in ownership of a property with a withdrawal that is the source for a preexisting diversion, the new property owner shall request in writing to the department a transfer of the preexisting diversion approval, including the new property owner[s name, mailing address, telephone number, and email. The department may approve the transfer of the preexisting diversion approval to a new property owner if the new owner agrees to comply with the preexisting diversion approval, conditions, and reporting requirements.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24; correction in c1d made under s. 35.17, Stats., Register June 2024 No. 822.

**NR 851.61 Approval, conditional approval, and denial. c1d** Each approval the department issues under this chapter shall specify, at a minimum, all of the following:

cad The purpose of the water diversion.

cbd The diversion volume expressed as an annual average in gallons per day, or for intrabasin transfers, the diversion volume expressed as an average in any 90-day period in gallons per day.

ccd The diversion area, consistent with the approved water supply service area plan if applicable.

cdd The place where the water shall be treated and location of where the water will be returned to the Great Lakes basin.

ced Tier 3 water conservation plan approval and water conservation plan implementation requirements.

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

cgd If the approval is for a temporary diversion, the expiration date or termination date of approval.

**c2d** The department may include in an approval or conditional approval any of the following, as applicable:

cad Additional reporting requirements.

cbd Requirements for monitoring potential environmental impacts to the Great Lakes basin and water-dependent natural resources.

ccd Conditions to protect the waters of the state from impacts of the diversion.

cdd Conditions necessary to comply with ss. 281.343 and 281.346, Stats., and this chapter.

ced Conditions enacting or considering a regional declaration of findings from a regional body review.

cfb Conditions enacting or adopting an approval from the Great Lakes council.

cgd Conditions necessary to comply with Great Lakes council or regional body procedures.

chd A determination of compliance with ch. NR 150.

**c3d** If the application is denied, the department shall provide notice to the applicant including the reason for denial.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24.

**NR 851.62 Termination of approval.** The department may terminate a diversion approval if any of the following apply:

**c1d** The person or public water supply system no longer has the capability to withdraw water or the water use registration has been terminated under ch. NR 856.

**c2d** Except for public water supply systems, the person no longer holds all applicable department approvals or permits under s. 30.12, 30.18, 281.346, 281.35, or 283.31, Stats.

**c3d** The intrabasin transfer approval was for a one-time transfer and the transfer is complete.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24.

## Subchapter VII — Public Notice and Participation

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

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24.

**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.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24.

**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:

**c1d** PUBLIC NOTICE CONTENT. The public notice shall contain all of the following:

cad Name and mailing address of the applicant.

cbd A brief description of the proposed diversion, including the amount of the proposed withdrawal or diversion.

ccd A brief description of the procedures for the formulation

of final determinations on applications, including the date public comments are due to the department.

cdd The name and address of a contact within the department who will receive comments and respond to questions.

ced The location on the department[s website where copies of the application materials are available for review.

cfđ The location, date, and time of any public meetings or hearings, if applicable.

**c2d PUBLIC NOTICE PROCEDURE.** cad 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.

cbd 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 XGreat Lakes CompactY at [dnr.wisconsin.gov](http://dnr.wisconsin.gov) and subscribe to receive email updates about the Great Lakes Compact.

ccd 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.

**c3d 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.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24.

**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.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24.

**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.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24.

**NR 851.75 Public hearings. c1d MANDATORY HEARINGS.** The department shall conduct a public hearing for any of the following:

cad 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.

cbd 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.

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

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

ced A new or increased diversion proposal to a community within a straddling county.

**c2d HEARING BY REQUEST.** cad If a hearing is not required under sub. c1d, within 30 days of the public notice posted on the department website under s. NR 851.72 c2d cbd 3., any interested person may request a public hearing regarding a diversion 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.

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

**c3d PUBLIC HEARING PROCEDURE.** cad The department shall provide public notice of a hearing under sub. c2d following the procedures under s. NR 851.72 c2d unless notice of the hearing has already been provided under s. NR 851.72 c2d. The hearing notice shall contain all relevant information listed under s. NR 851.72 c1d.

cbd A public hearing may be held in-person in the area where the diversion is located, online, or a combination of in-person and online.

ccd 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.

cdd 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, and explain the methods by which the decision may be reviewed in a public hearing.

ced 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.

cfđ 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.

cgd 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.

chđ Contemptuous conduct at a hearing shall be grounds for exclusion from the hearing by the hearing examiner.

cid The hearing examiner shall accept written comments from hearing attendees.

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

ckđ The hearing examiner shall make a written report of pub-

lic participation and public comments heard during the hearing process for the decision record.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24.

**NR 851.76 Open records requests.** The department may consider domestic security concerns when determining

whether public records provided to or obtained by the department under this chapter warrant confidential treatment, as allowed under s. 281.346 c3d ccmd and c9d ced, Stats.

**History:** CR 23-050: cr. Register June 2024 No. 822, eff. 7-1-24; correction made under s. 35.17, Stats., Register June 2024 No. 822.