

August 28, 2015

Ms. Ashley Hoekstra
DNR Bureau of Drinking Water and Groundwater
PO Box 7921
Madison, WI 53707-7921

Dear Ms. Hoekstra:

This letter provides additional information regarding the Application for Great Lakes Water from the City of Waukesha. During the public hearings, a water supply alternative was proposed by the Compact Implementation Coalition (CIC) and assertions were made by the CIC related to this alternative and the impacts of Root River return flow on the Great Lakes basin. The water supply comments herein are specific to the water supply alternative analysis prepared by their consultant, GZA GeoEnvironmental, Inc. and supplement our comments submitted August 18, 2015:

CIC Water Supply Alternative

CIC claims that its water supply alternative is reasonable and was not considered. This assertion is incorrect for three fundamental reasons. First, the CIC proposal is not reasonable because it fails to comply with Wisconsin law on Water Supply Service Areas and Water Supply Plans. Second, it is based on assumptions concerning water demand that are not based on sound planning practices. Third, to the extent the alternative proposes a limited water demand (by limiting water supply to just to the area currently served by Waukesha), the environmental impacts of this alternative have already been examined by the WDNR.

Failure to Comply with State Law

The State law was written to implement the Compact by providing detailed requirements in Wisconsin that are necessary to comply with the Compact. Wisconsin's water supply planning law requires the water supply service area to be consistent with the sewer service area, and prohibits it from being restricted by municipal boundaries. Waukesha has followed the state water supply planning requirements for the water supply service area to meet its needs now and in the future. The CIC alternative does not conform to regulatory requirements and consequently is invalid.

Unrealistic Water Demand Assumptions

The CIC average day demand (ADD) for water -- for the City of Waukesha alone at ultimate buildout -- of 6.7 million gallons per day (mgd) is unrealistic and contrary to City of Waukesha, Southeastern Wisconsin Regional Planning Commission, and the Wisconsin Department of Natural Resources (WDNR) water demand projections. Waukesha's water demand in 2014 was 6.6 mgd, with the Water Conservation Program in place. For the City alone, the water projections at buildout are 8.2 mgd ADD. The CIC projection for industrial use is unrealistically low, based on recent historical industrial customer demand and approved land use plans documented in Volume 2 of the Application.

WDNR Has Considered the Impacts from the CIC Alternative.

Even if one were to limit the water demand to that projected for the City alone, the environmental impacts of continued groundwater withdrawals have already been evaluated. The EIS considered a hypothetically low ADD of 8.5 mgd, the approximate amount for supplying

water to the City alone. This alternative would require the City to develop 4.7 mgd of additional shallow well capacity. At this low water demand, the EIS found 900 to 1,000 acres of wetlands were adversely impacted for the deep/shallow aquifer alternative (WDNR Draft Technical Report, Table 10). The multi-source alternative used even less shallow groundwater (3.2 mgd) and 700 to 900 acres of wetlands were adversely impacted (WDNR Draft Technical Report, Table 10). The CIC alternative ignored the adverse environmental impacts of pumping shallow groundwater. However, the Lake Michigan alternative only impacts 5 acres of wetlands due to pipeline construction. Clearly, the groundwater alternatives have greater adverse environmental impacts than a Lake Michigan alternative and are not reasonable.

Thus, an alternative using the same water supply sources (shallow and deep aquifers) as the CIC alternative and with limited water supply demand has been evaluated in the EIS and was found to have significant adverse environmental impacts.

Last Resort Argument

The Great Lakes-St. Lawrence River Basin Compact prohibits diversions from the Great Lakes unless the community proposing the diversion demonstrates that "[t]here is no reasonable water supply alternative within the basin in which the community is located, including conservation of existing water supplies." Great Lakes Compact § 4.9(3)(d). The Compact does not define a "reasonable water supply alternative." However, Wisconsin law which uses the exact same term defines a "reasonable water supply alternative" as "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 greater adverse environmental impacts than the proposed new or increased diversion." Wis. Stat. § 281.346(1)(ps).

Nothing in the language of the Compact or Wisconsin's implementing legislation provides that a diversion may only be approved if it is the "last resort." To the contrary, the Compact provides that a diversion proposal will be rejected if there is any "reasonable water supply alternative" available to the community requesting the diversion. Wisconsin's implementing legislation, adopted in accordance with the Compact, explains how the State will determine whether a reasonable supply alternative exists, taking into consideration a number of factors including environmental impacts.

Final Comment

We also disagree with the CIC assertion that somehow submitting this application poses a threat to the Compact. One key purpose of the Compact is to conduct a regional review of requests to determine their compliance with the provisions of the Compact. If it turns out the application does not comply, that will be described in detail in the findings of fact. This application is using the Compact as it was intended and demonstrating that in fact the Compact works. Either an approval or disapproval will be a good precedent as opposed to having projects not even able to reach a threshold for review.

Please contact me if you have any questions or need any further information on this or any other issue.

Sincerely,

Waukesha Water Utility



Daniel S. Duchniak, PE
General Manager



Waukesha Water Utility

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August 28, 2015

Ashley Hoekstra
WDNR Bureau of Drinking Water and Groundwater
Box 7921
Madison, WI 53707-7921

Subject: City of Waukesha Water Diversion Application draft Environmental Impact Statement
and draft Technical Review

To: WDNR Bureau of Drinking Water and Groundwater

Thank you for the opportunity to review the June 2015 Draft Technical Review (TR) For the City of Waukesha's Proposed Diversion of Great Lakes Water for Public Water Supply with Return Flow to Lake Michigan and the City of Waukesha Proposed Great Lakes Diversion Draft Environmental Impact Statement (EIS). The review and analysis by Wisconsin Department of Natural Resources (WDNR) of the City of Waukesha's Application for a Lake Michigan Supply with Return Flow (Application) are comprehensive and well documented. The comments listed in the attached Table 1 are offered for consideration by the WDNR.

Sincerely,

Waukesha Water Utility

Daniel S. Duchniak, PE
General Manager

Table 1 Comments on draft Technical Review and draft EIS
TR (draft Technical Review) and EIS (draft Environmental Impact Statement)

Reference	Comment
TR, p. ix.	We recommend either striking "that would combine water from inside and outside the GLB." at the end of the first sentence in the <i>Wastewater return flow</i> section or adding a statement explaining that water from outside the basin is limited to wastewater collection system 1/1, seepage haulers or the few residents that have sanitary sewer-only service.
TR, p. ix.	Similar to the discussion throughout the Executive Summary, the section <i>Wastewater return flow</i> discusses the Proposal in terms of what it must do. Unlike the rest of the Executive Summary, there is no statement of WDNR finding. We recommend for consistency and clarity that the WDNR finding be included in this section.
TR, p. X.	For further clarification, we recommend including in the first sentence under <i>Impact assessment</i> that the proposal will "protect and sustain the physical, biological and chemical integrity of the GLB" because this is also a state Statute requirement.
TR, p. X.	For further clarification, we recommend adding the following sentence at the end of the first paragraph under <i>Additional criteria</i> : "For evaluation of the Proposal with Compact and state Statute requirements, Waukesha is within the Lake Michigan groundwater basin."
TR, p. 7.	Recommend adding a sentence to describe the significance of a Groundwater Management Area designation and its intent in <i>Regional Water Supply</i> section.
TR, p. 8.	<i>Regional Water Quality</i> section provides a good summary of regional groundwater quality. Additional recent groundwater quality issues in southeastern Wisconsin that could be added to this paragraph include the petroleum pipeline rupture near Jackson, WI that contaminated shallow wells and required a public water supply, and the detections of arsenic and molybdenum that has forced abandonment of wells.
TR, starting on p. 10.	The <i>Water Supply Related Criteria</i> section technical and environmental analyses were well done. WDNR used different, independent models to estimate environmental impact on wetlands and stream baseflow than the Application, but arrived at similar results and the same conclusions. This rigorous analysis lends credence to the report.
TR, p. 12	Dismissing high total dissolved solids (TDS) because there is no primary drinking water standard is not practical from a public water provider perspective. Water taste characteristics and customer expectations drive treatment requirements. It's reasonable to plan to treat high TDS water to make it more palatable. Same comment on p. 17.
TR, p. 13	Suggest this clarification: The Applicant's projected average day demand (ADD) ranged from 8.8 to 11.1 million gallons per day (mgd) and the Applicant based Application on middle of the range, 10.1 mgd. 10.1 mgd is the upper bound of projected demand with continued water conservation; the 11.1 mgd upper bound assumes water conservation measures are not implemented.
TR, starting on p. 20.	In the <i>Water Supply Alternatives</i> section, use of the deep confined aquifer requires RO treatment of the groundwater and the cost estimate assumes RO treatment waste can be discharged to the sewer. Many Midwest water utilities have evaluated RO waste disposal and determined it could not be simply discharged to the sanitary sewer due to environmental and permitting issues. If RO

Reference	Comment
TR, p. 24	waste sewer disposal was not possible now or in the future, the waste disposal factor alone could double the cost of the alternative and could make it infeasible. The Waukesha Application discussed this in Volume 2, pp. 11-14.
TR, p. 26	For the Analysis for Cost, Environmental Impacts, and Public Health section, the cost of point of use water treatment systems (home/business water softeners) are significant and should be considered in the evaluation of water supply alternatives. In the <i>Alternative 2 – Shallow aquifer and Fox River Alluvium</i> discussion, it's not clear that the Fox River Alluvium groundwater is under the influence of surface water and requires surface water treatment.
TR, starting on p. 30.	The <u>Environmental Impacts</u> section describes analysis of water supply alternatives focused on wetlands, lakes and streams. Although these are very important to the environment, discharge of salt from home and industrial softening also harms the environment. Groundwater alternatives add significantly more salt to the environment than a Lake Michigan supply. The Southeastern Wisconsin Regional Planning Commission (SEWRPC) Regional Water Supply Plan report No. 52 has extensive information on salt discharge from softening groundwater. Waukesha's Application estimates that a Lake Michigan water supply could eliminate over 7 million pounds of salt waste per year from the water environment. Salt discharge to the environment should be considered when comparing water supply alternatives. The draft Technical Report does include discussion of salt discharge and chlorides on page 83, but in the limited context of wastewater discharge.
TR, p. 32.	The WDNR environmental evaluation used an 8.5 mgd ADD to determine environmental impacts. This is less than the 10.1 mgd ADD that was determined to be a reasonable water usage. Environmental impacts would be much greater at the maximum day water demand of 16.7 mgd, and greater still during a drought. Even at the low water demand of 8.5 mgd, there were significant adverse environmental impacts from pumping groundwater. We recommend also stating that those impacts would be proportionally greater at higher water demands and even higher during droughts.
TR, p. 32	Suggest clarifying 8.8 mgd, not 8.5 mgd, is the low end of the ADD projected range; 8.5 mgd is a value used in WDNR analysis.
TR, starting on p. 39.	With the <u>Deep Unconfined Aquifer – West of City of Waukesha</u> alternative, water would be diverted from the Rock River watershed to the Fox River watershed with no return flow. This could have environmental and legal implications for inter-basin transfers. The Waukesha Application discussed this in Volume 2, pp. 11-43.
TR, p. 65-66.	The <u>Wastewater Return flow to the Great Lakes Basin Related Criteria</u> section provides a good summary of the six return flow alternatives evaluated by the Proposal and how they each maximize GLB water and minimize MRB water in return flow. We agree that each alternative management plan has advantages and disadvantages and that including those in the documentation is important for reviewers. We also agree Alternative 6 is approvable, it provides a water balance with the GLB, and should be used as the alternative for evaluation within the TR and EIS. However return flow management plans 1-5 should not be eliminated.
TR, p. 66.	In the fourth paragraph under <i>Return Flow Volume Alternatives</i> , we recommend adding "to a much lesser degree" after "...system through 1/1 or...". This will clarify that this contribution to return flow, is much less than the volume of infiltration/inflow (1/1). The Facility Plan Amendment (Attachment A-1 in the Return Flow Plan) calculated the wastewater only contribution to be about 1.5 percent.

Reference	Comment
TR, p. 66.	<p>In the seventh paragraph under <i>Return Flow Volume Alternatives</i>, we suggest ending last sentence that references providing flow to and protecting the integrity of the Fox-Illinois River should end with " ..., however this is not an Application requirement of the Compact or state Statute."</p>
TR, p. 67.	<p>The "Alternative 6's % of withdrawn water returned to the GLB" column of Table 19 uses the current year water demand and current year WWTP return. However, Alternative 6 defines the return flow on the previous years' water demand. Calculating the return flow volume following Alternative 6 results in a range of 99.6 to 100% return flow, essentially 100% each year, instead of the Table 19 values between 95 to 109%. We recommend using the 99.6 to 100% return flow calculation throughout.</p>
TR, p. 63	<p>Check reference to "revised Exhibit 3" in the first finding.</p>
TR R2, p. 72.	<p>The final paragraph and Table 20 concludes that Return Flow Management Plan Alternative 6 meets consumptive use requirements because in all years return flow would be greater than the 86% return after consumptive use. We recommend that it be clarified that all Return Flow Management Plan Alternatives would meet the legal requirements of R2.</p>
TR R4, Finding #1, p. 75.	<p>We recommend clarifying that the only significant source of water from the Mississippi River Basin (MRB) that would be part of return flow would be from sanitary collection system i/l. Without additional context, the sentence as written suggests that Waukesha has some other significant MRB water component of return flow, which is not the case.</p>
TR R4, Phosphorus, p. 78.	<p>This paragraph is related to phosphorus and therefore reference to Clean Water Act Section 303(d) Impaired Waters List for other parameters should be removed. Recommend deleting ", among other parameters" in the last sentence of the middle paragraph on this page.</p>
TR R4, Phosphorus, p. 78.	<p>Although Wisconsin "guidance" for implementing phosphorus regulations is one interpretation of implementing state law, the guidance is not law. Therefore a clarification should be provided that guidance is subject to change and provides only the Department staff thoughts on how to meet the Law. Other interpretations may also be valid for determining compliance with the Law. Guidance does not in any way change the requirements of the law.</p>
TR R4, Phosphorus, p. 78.	<p>At the start of the second sentence, we recommend that "Applicant" be replaced with "return flow" because it is only the return flow to the Root River that is considered a "new discharge" for the purposes of phosphorus evaluation.</p>
TR R4, Phosphorus, p. 78.	<p>Return flow to the Root River will improve water quality for phosphorus; it will meet the Wisconsin Administrative Code requirements (NR 217.13(8)(b)); and it is consistent with EPA position that the discharge result in a decrease in phosphorus concentration in the receiving water, which was stated in an enclosure to a July 25, 2012 EPA letter to Cathy Stepp approving NR 217. The return flow water quality will meet all state and federal permit limits and the City is committed to providing return flow that improves the Root River water quality. We agree that providing return flow with phosphorus concentrations that include a margin of safety below the water quality criterion would result in an improvement in water quality but there is no statutory definition of "well below". Consequently, all references to "well below" should be removed and instead the improvement to water quality should be referenced as providing a margin of safety to the phosphorus water quality criterion.</p>

Reference	Comment
TR R4, Phosphorus, p. 79.	<p>There is good discussion on the Waukesha Wastewater Water Treatment Plant (WWTP) ability to meet low phosphorus levels, including the range of 0.039 to 0.06 milligrams per liter (mg/L). We recommend clarifying that based on pilot testing at the WWTP and the planning in the Facilities Plan, the phosphorus treatment at the WWTP will meet requirements for both a Fox River and Root River discharge.</p>
TR R4, Total Suspended Solids, p. 79.	<p>This paragraph provides a good summary of narrative TSS standards. Recommend clarifying that TSS has been very low at the WWTP because of the effluent filters and meeting future limits is not anticipated to be a problem. Most importantly, in order to achieve effluent phosphorus limits, TSS will be much lower than any narrative standard or the calculated permit limits. TSS in return flow will be less than in the Root River so return flow will improve water quality in the Root River.</p>
TR R4, Thermal, p. 80.	<p>We recommend clarifying that the WWTP effluent temperature data is from the current discharge at the Fox River, and it does not account for the temperature drop through the 20 mile pipeline prior to discharge to the Root River.</p>
TR R4, Antidegradation, p. 84	<p>We recommend that the antidegradation evaluation be removed from the TR because it is not required by the Compact, it is a procedural step within detailed permitting, and it is not an assessment of water quality impacts. If this is kept in the final TR we recommend clarifying that "significant lowering of water quality" is based on the strict definition within antidegradation and the use of this terminology is not a review of the return flow plan impact on water quality. To demonstrate this, a glass of tap water poured in the Root River would result in a "significant lowering of water quality" in the Root River based on the strict and irrelevant definition within antidegradation. The return flow will protect the physical, chemical, and biological integrity of the Root River and it will meet all state and federal permit limits.</p>
TR R4, Chapter 30, p. 85.	<p>This section summarizes the requirements the City must complete prior to construction of the return flow outfall. We recommend including a statement noting that there are thousands of similar outfalls permitted throughout the state.</p>
TR R5, p. 89.	<p>We recommend deleting "large" prior to "floods" and adding "greatly" prior to "more significant" because any runoff event would be greatly more significant than the contribution from return flow in terms of phosphorus. This is demonstrated in the TR Appendix D modeling and data analysis.</p>
TR R5, p. 89.	<p>We agree that providing return flow well below the criterion would reduce the concentration of phosphorus in the Root River. We also agree that evaluating the return flow and receiving water quality improvements should be done based on concentration because the receiving water is a river, there is no TMDL, and because the phosphorus regulations and effluent limit calculations are based on concentration. We would like to clarify however that a discharge below the receiving water standard would also improve water quality, where this is not unique to "well below" the criterion.</p>
TR R5	<p>We agree that return flow that meets water quality standards is protective of fish and aquatic life, and it is protective of the physical, biological and chemical integrity of the GLB. This is true for all water quality parameters where the standards are met. We recommend the WDNR include this summary for each water quality parameter because the proposal will meet permit limits and it will therefore protect the integrity of GLB. (see also comment EIS, 4.3.2.3.1.5, temperature)</p>

Reference	Comment
TR Appendix A, Fox River Base Flow Reduction	<p>The MWWAT identifies the allowable flow reduction for streams as 10 to 24 percent for management zones A-D. The Fox River is defined as a stream.</p>
Throughout TR and EIS	<p>The expression "return flow" is used to describe flow from the City of Waukesha WWTP regardless of water supply alternative or WWTP discharge location. For consistency with the Compact, state statutes and the Application, we recommend using "return flow" only in reference to WWTP flow to the Lake Michigan basin when Lake Michigan is the water supply alternative.</p>
TR and EIS - Return Flow water quality	<p>The TR and EIS do not mention the water quality modeling completed at the request of the WDNR for return flow to the Root River. The analysis used a SEWRPC and WDNR approved model that were developed in recent past to support regional planning by SEWRPC and MMSD. The results of that modeling and planning are still being used, most recently in the Root River Restoration Plan which was accepted as an EPA 9-key Element Plan. The return flow modeling used conservative assumptions for flow and concentrations conveyed as return flow and found water quality in the Root River was maintained, or for some parameters such as phosphorus, water quality was improved as a result of return flow. We recommend inclusion of these results as part of the technical review and EIS.</p>
EIS	<p>It would be important and accurate to note in the EIS that the permitting process will require no significant impacts to the physical, chemical, or biological integrity of the Root River. By law the permit must be based upon this standard.</p>
EIS	<p>Draft Technical Report section Water Supply Demand (p. 32) provides a good description of the WDNR groundwater modeling use of a hypothetical 8.5 mgd ADD compared to the requested ADD of 10.1 mgd. Repeating the rationale for this approach in appropriate locations in the EIS would provide additional clarification of the groundwater pumping impacts.</p>
EIS	<p>Draft Technical Report section Wastewater Return Flow to the Great Lakes Basin Related Criteria, R5 (p. 89) provides a good description of nonpoint phosphorus loading relative to the return flow loading. We suggest repeating this discussion in appropriate location in the EIS for consistency and clarification.</p>
EIS, 'i', third paragraph	<p>Radium contamination of deep aquifer groundwater is a critical driver for a new water supply; however, the drawdown of over 400 feet in the deep aquifer – the quantity of sustainable supply – is of greater significance because the GMA designation results from a drawdown greater than 150 feet. We recommend adding discussion of the aquifer drawdown in specific EIS sections to more clearly describe available resources and need for a Lake Michigan water supply.</p>
EIS 1.1, 1.2 and others	<p>We recommend providing figure numbers and titles to all figures for easy reference.</p>
EIS, 1.2	<p>The figure in this section provides a good overview of the water supply and return flow pipeline routes. The figure legend could be clarified to note that the return flow is for "Treated" Wastewater Return Route.</p>
EIS, 2.0	<p>The list of water supply and return flow alternatives reviewed by the WDNR represents a thorough review of alternatives. Additional alternatives were evaluated by the City and SEWRPC which have been publicly discussed and which would provide clarification here. These include City of Oak Creek water supply pipeline alignment 1, Root River return flow pipeline alignment 1, and Underwood Creek return flow, with additional alternatives having been considered and screened out for various technical reasons. Mentioning in the introduction that these were considered by the City in-depth and that even more alternatives were screened shows how thoroughly the water supply and return flow alternatives have been evaluated.</p>

Reference	Comment
EIS, 2.1	The basis that the No Action Alternative is not feasible due to radium contamination in the deep aquifer is well stated. We recommend adding some discussion about the depleted groundwater levels in the deep confined aquifer. Additionally, the City requires additional capacity to meet the ultimate buildout condition of its water supply service area.
EIS, 2.2.2	In describing the return flow, it would be beneficial to note that treated wastewater flow would continue to be discharged to the Fox River as defined by the return flow management plans.
EIS, 2.3.2.1	As noted in the Application, pipe diameter for water supply and return flow would likely be 30" to 36" in diameter depending upon final design considerations.
EIS, 2.3.2.2	Root River return flow alignment 1 is mentioned for the first time here. It would be important in the introduction of alternatives to mention of other alternatives that were considered by the City, including Root River return flow alignment 1.
EIS, 2.3.3	This section describes the variety of alternatives considered by the City. This section would be better placed earlier in the document prior to mentioning Oak Creek alignment 1 and Root River alignment 1. It is also useful information about the breadth of other alternatives considered beyond those evaluated in-depth. This section also contains both water supply and return flow descriptions and would be better presented before the water supply alternatives discussion ends.
EIS, 3.5.4.2	We recommend noting that this data is only available for the portion of the Root River in Milwaukee County, and generally consists of data upstream of the proposed return flow location.
EIS, 3.5.4.4	We recommend clarifying that the poor fisheries upstream of the Horlick Dam are likely due to a combination of the presence of the Horlick Dam as a fish barrier and the low flow and other water quality conditions.
EIS, 3.6.1	The information describing the Deep Sandstone Aquifer does not include that the groundwater level has been drawn down by hundreds of feet and that it is in a Groundwater Management Area. Including this information would more clearly capture the existing stressed condition of Waukesha's current water supply.
EIS, 3.6.1	The reference to "Figure 7" under Groundwater Divides appears to be intended to refer to a different figure.
EIS, 4.3.2.3.1.1	We recommend that the 2% "overall loading" be clarified to say that it is just from Root River watershed. When considering overall loading to Lake Michigan in the Milwaukee/Racine area, return flow contribution is much less. There are two references to this in this section.
EIS, 4.3.2.3.1.1 and 4.3.2.3.1.3	There are several references to the potential for increasing eutrophic conditions and "fueled planktonic algae growth" as a result of return flow. Return flow will meet water quality standards that are protective of the Root River. Detailed water quality modeling was completed for the Application that showed chlorophyll <i>a</i> concentrations and algae growth would decrease with return flow.
EIS, 4.3.2.3.1.4	The proposed discharge location is downstream of the Root River Canal, not upstream. The watershed area at the Franklin gage is about 49.2 square miles, whereas the flows used from Milwaukee Metropolitan Sewerage District (MMSD) were at a watershed location of 59.2 square miles. The watershed area at the discharge location is 126.2 square miles. The watershed area at the

Reference	Comment
	Steelhead Facility is much greater than the discharge location, greater than 190 square miles at the United States Geological Survey (USGS) gage at Horlick Dam.
EIS 4.3.2.3.1.5, phosphorus	The second paragraph summarizes hypothetical results of increasing phosphorus resulting in increased dissolved oxygen (DO) swings, and increased algae and aquatic plant communities. With return flow phosphorus concentrations below the phosphorus Water Quality Criterion, return flow discharge will not create these concerns. Detailed water quality modeling showed that these conditions would not occur as the result of return flow discharge and that there were decreases in chlorophyll a.
EIS 4.3.2.3.1.5, chlorides	Recommend replacing "could be" with "are no" because return flow chlorides will meet the WQC.
EIS, 4.3.2.3.1.5, dissolved oxygen	Oxygen demand in the return flow was modeled as part of the Application (Volume 4, Appendix A) and there is no concern with meeting effluent DO limits. Suggesting that there could be a problem without consideration of the effluent limits, biochemical oxygen demand (BOD) concentrations, and DO sag modeling that was completed incorrectly suggests there could be a problem with meeting DO limits. We recommend that this section be clarified.
EIS, 4.3.2.3.1.5, temperature	We agree that return flow that meets water quality standards is protective of fish and aquatic life, and is therefore protective of the physical, biological and chemical integrity of the GLB. This is true for all water quality parameters where the standards are met. We recommend the WDNR include this summary for each water quality parameter because the proposal will meet permit limits. We also recommend incorporating this change into the TR (Section R5) because the water quality parameters are also discussed there and protection of the integrity of GLB is a Compact requirement.
EIS, Figure 3.19	While the descriptions of the water supply demand numbers are correct in the text, Figure 3.19 is not the latest water demand forecast figure and should be replaced.
EIS, 3.18.1.4	As written, the last sentence in the first paragraph potentially suggests the water supply service area may increase in the future. The water supply area will not be increased in the future and consequently suggest this point be clarified. Some areas within the water supply service area plan are currently served by private wells as noted, but may ultimately be served by Waukesha's public water supply system.
EIS, 4.1	It is unclear why the groundwater modeling at a hypothetical 8.5 mgd is mentioned in the No Action alternative. It is important to clearly state that the application is for 10.1 mgd ADD and that baseflow and groundwater drawdown and wetland impacts will be greater than what was modeled as a result. Further, actual impacts would be even greater because maximum day demand flow rates of 16.7 mgd occur during dry summer conditions when stream base flows and groundwater levels are already lower.
EIS, 4.1	The No Action alternative correctly states the radium water quality problem Waukesha faces, but could clarify that the radium water quality issue is only one of the problems of Waukesha's current water supply. Including the fact that the No Action alternative would continue to rely upon the deep aquifer that has been drawn down over 400 feet and is in one of two Wisconsin Groundwater Management Areas would more clearly illustrate the current situation and need for a sustainable water supply.

Reference	Comment
EIS, 4.2.1.3.1	<p>The analysis of baseflow changes to Fox River tributaries from groundwater pumping relies upon the groundwater modeling at a hypothetical ADD of 8.5 mgd, which is less than the requested 10.1 mgd projected demand found by WDNR to be reasonable. It is important to state that the actual impacts to these resources would be greater at a 10.1 mgd demand and that impacts would be even greater during dry periods when the maximum day demand of 16.7 mgd would occur.</p>
EIS, 4.2.1.2.2	<p>Impacts in this and subsequent sections are correctly divided up into those from the water supply or return flow changes and also from pipeline construction. It would be beneficial to have a short statement defining that impacts occur from various actions and define what impacts are from pipeline, pumping, return flow, etc.</p>
EIS, 4.2.1.5.1	<p>This groundwater alternative does not assume the recent updraw of deep aquifer groundwater level will continue. As written, it can be implied at the depleted aquifer will keep recovering. The deep aquifer will not continue to recover to a level where there are no adverse impacts to continued groundwater pumping. While some recovery may happen, it will still be hundreds of feet of drawdown and remain a groundwater management area. The impacts for this alternative should document that the deep aquifer has 400 feet or more of drawdown and will continue to have a similar level of drawdown and be in one of two Wisconsin groundwater management areas.</p>
EIS, 4.2.1.6	<p>It would be beneficial to clearly state which impacts are from supply (groundwater withdrawal) and which are from pipeline construction.</p>
EIS, 4.2.1.9	<p>The last sentence of this section would benefit from clarification that the permitted emissions capacity is for the local electrical utility and not the Waukesha Water Utility. This comment applies to other discussions of electrical demand as well.</p>
EIS, 4.2.1.16	<p>We recommend including the cost for water softening in the alternatives because water softening costs are real costs for Waukesha Water Utility customers and result in millions of dollars of cost over time. We also recommend including water softener cost credits for alternatives where that is relevant because that is a real cost savings. If the WDNR does not include these costs in their analysis, we recommend that the costs at least be documented in the analysis.</p>
EIS, 4.2.2.3.1	<p>Table 4-5 is a different format from previous baseflow reduction tables and appears to be missing one of the groundwater modeling results (the others have two columns, this table has only one column).</p>
EIS, 4.2.2.3.1	<p>This section on baseflow changes is a good illustration that the EIS reader could benefit from understanding relative levels (minor to significant) of adverse environmental impacts. Baseflow reductions of 39 percent or more for Pebble Brook would surely be significant adverse impacts but there is no comparison of this impact to that of other streams or alternatives. This similarly applies to wetlands, water quality, and other impacts described in the EIS. Such a comparison would make it clearer that the Lake Michigan water supply alternative has the least adverse environmental impacts compared to groundwater supply alternatives.</p>
EIS, 4.2.2.16	<p>Suggest review of this section for typographical errors.</p>
EIS, 4.2.3.2	<p>For this and other water supply alternatives, it would be beneficial to state that return flow impacts are described separately.</p>

Reference	Comment
EIS, 4.3.1.1	<p>We recommend clarifying the definition of "baseflow" because this flow rate different that "low flow" calculations presented in the Application for the USGS gage. We also recommend noting that there are two medium-sized WWTPs upstream of the Waukesha USGS gage contribute to the "baseflow".</p>
EIS, 4.3.2.1.1.4	<p>This text may be intended for the groundwater supply alternative impacts to the Fox River and provided accidentally for a Lake Michigan water supply as noted in a separate comment on EIS 4.3.2.1.1.4. With a Lake Michigan water supply, the Fox River tributary flows do not decrease compared with the groundwater supply alternatives. Consequently, cool/cold water tributaries would remain unchanged with a Lake Michigan supply. Walleye was noted within the summary text but it is not included in the tables in Appendix A. We recommend either deleting Walleye in the text or adding it to Appendix A. Appendix A also notes that there would be no impact to northern pike, however this summary text states that reductions in baseflows could stress these species. We recommend clarifying in the text that a reduction in baseflow would have no impact on northern pike.</p>
EIS, 4.3.2.1.1.4	<p>Lake Michigan return flow would not have any impacts upon Fox River tributaries. It is unclear why cumulative baseflow reduction is described for Fox River tributaries in this section.</p>
EIS, 4.3.2.1.1.4, last paragraph	<p>This section describes an increased depth to groundwater to the Fox River from a Lake Michigan return flow alternative. This does not seem probable and is not a significant impact. The baseflow change to the Fox River is small and technical analysis showed it would likely be less than an inch of water level change under almost every condition over a multi-year modeling period as provided in the Application. With the natural fluctuations in flow and water depth inherent to river systems, hydrology inputs would continue to occur to adjacent wetlands. As a result, wetland type change would be very unlikely and impacts would not be significant.</p>
EIS, 4.3.2.1.4	<p>The last paragraph describes how contaminated groundwater – if encountered along the pipeline alignment – could potentially contaminate the pipeline bedding material or how leaky pipelines could contribute to the migration of adjacent contaminated groundwater. We recommend removing this paragraph because mitigating these potential risks is routinely done through standard permitting practices, design provisions, and construction techniques. Further, existing conditions contributing to these risks along the pipeline corridors have not been identified or documented.</p>
EIS, 4.3.2.3.1.7	<p>In this section, hypothetical results of increasing phosphorus (increased dissolved oxygen (DO) swings, and increased algae and aquatic plant communities) are described. With return flow phosphorus concentrations below the phosphorus Water Quality Criterion, return flow discharge will not create these concerns. Detailed water quality modeling showed that these conditions would not occur as the result of return flow discharge and that there were decreases in chlorophyll <i>a</i> concentration.</p>
EIS, 4.3.2.3.1.7	<p>This section references a Table 6-40. This table is not included.</p>
EIS, Table 4-34	<p>The formatting of this table appears to need correction. Acres and percent may need to be provided in separate columns.</p>
EIS, 5.4	<p>No significant adverse impacts occur for the Lake Michigan water supply and return flow alternatives and this should be stated in this section. Because chlorides discharge will be required to meet water quality standards protective of aquatic life, impacts from chlorides should not be significantly adverse. A Lake Michigan supply will no longer require home water softeners, which are one of the major sources of chlorides. Similarly there is no science on what levels of pharmaceuticals cause adverse impacts so there is no basis for concluding they will have an adverse impact on the Root River or Lake Michigan. If such a standard is ever developed Waukesha would meet the associated requirement. In the meantime, the only conclusion that can be reached is that they will be</p>

Reference	Comment
EIS, Appendix B, Background	<p>present. The same is true for the No Action alternative. It would be informative to identify the pharmaceutical collection program that the City participates in to properly dispose of unwanted pharmaceuticals keep them out of area waterways. The program is consistent with what is being done around the nation to reduce the release of pharmaceuticals to the environment. Waukesha will meet all water quality discharge criteria, whether existing or those that are developed in the future.</p> <p>A statement that the requested 10.1 mgd ADD will have more impacts to groundwater than the hypothetical 8.5 mgd ADD used in the modeling should be made, and that impacts would be proportionally greater with the 10.1 mgd ADD.</p>
EIS Appendix B	<p>Figure number reference near Streamflow Depletion is not included; Table 5 appears incorrectly numbered; Tables 9 and 11 do not have total well demands noted.</p>



August 28, 2015

Ashley Hoekstra
DNR Bureau of Drinking Water and Groundwater
Box 7921
Madison, WI 53707-7921
Ashley.Hoekstra@wisconsin.gov

Dear Ms. Hoekstra:

I am Dr. Jeanne Hewitt. I live in Waukesha County. I also am an environmental epidemiologist and a faculty member at UW-Milwaukee where I direct the Community Outreach and Engagement Core at the Children's Environmental Health Sciences Core Center. Our Center is funded by the National Institute of Environmental Health Sciences. I am addressing the City of Waukesha Diversion Request as a Waukesha County resident and as an environmental epidemiologist. I presented a very abbreviated version of this testimony at the public hearing held at the Zilber School of Public Health on August 18, 2015.

Speaking as a resident, Waukesha County has been overdeveloped in the past several decades and continues at an unsustainable growth rate. County residents and businesses have drawn down the groundwater supply. In economic terms, the demand for groundwater threatens to exceed the supply. Drinking water is a precious resource, but there has been no disincentive for overuse. The major solutions are to stop building homes and businesses—reuse what we have--and conserve water as the precious resource that it is rather than encroach upon the second largest source of freshwater in the world—Lake Michigan. Even Lake Michigan is not an endless supply of freshwater. We need to treat all water as the life-sustaining resource that it is. For Lake Michigan, those who live in the Great Lakes basin need to use this precious resource wisely and keep freshwater in the basin according to Mother Nature's plan. Waukesha County needs to establish responsible land use (i.e., not continue to engage in sprawl) and policy that ensures safe and sufficient groundwater capacity to sustain human health and economic well-being in the county in perpetuity. Existing technologies should be used such as reverse osmosis to treat the groundwater for radium contamination, and water-conserving devices such as showerheads (as noted by County Executive Abele). Businesses should be taxed for their use of municipal well water—they are not entitled to profit from water that is entrusted to the entire population living in the Great Lakes basin. In addition, we should all be conserving water. For example, no one should be watering lawns in the summer; grass was meant to be dormant then.

According to the DNR summary of the City of Waukesha's Diversion Application (<http://dnr.wi.gov/topic/waterUse/documents/waukesha/WaukeshaDiversionOverview.pdf>), "... The city asserts that it needs a new source of water to address water quantity and quality concerns. The city has long relied on a deep aquifer groundwater supply, but depressed water

levels in the deep aquifer have compounded a problem of high radium concentration (a naturally occurring carcinogen) in the groundwater. The public supply is supplemented by water from the shallow aquifer. ...” Radium causes cancer, but note that no data on the effect of radium on the risk of radium-sensitive cancer sites were included.

As an environmental epidemiologist, I wanted to know, “What is the risk of cancers in Waukesha County residents that could be attributed to radium?” So, I examined data from the National Cancer Institute (NCI) based on cancer registry (SEER) data from 2008-2012. I will summarize my findings using their data on cancer incidence rates pertinent to radium exposure in Waukesha County compared to Wisconsin and the U.S., in particular (Table). Cancer incidence rates are expressed as ‘per 100,000 population’ so that rates can be compared across geopolitical boundaries such as counties and states.

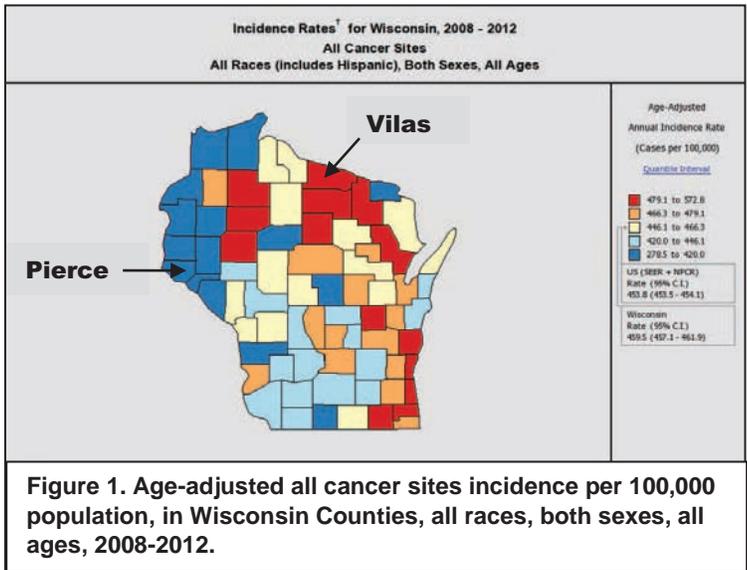
First, age is the single most important predictor of cancer risk. Thus, age-adjusted rates of newly diagnosed cancers (i.e., incidence) statistically control for varying age distributions across counties, states, and the U.S. as a whole.

As context, Wisconsin has a significantly higher age-adjusted incidence rate of all cancers (459.5/100,000 population [95% CI = 457.1 – 461.9] based on an average of approximately

Age-Adjusted Cancer Incidence in U.S., Wisconsin, and Select Wisconsin Counties All Sites, Both Sexes, 2008-2012

Jurisdiction	Annual Incidence Rate	95% Confidence Interval	Average Annual # New Cases
United States	453.8	453.5 – 454.1	1,526,274
Wisconsin	459.5	457.1 – 461.9	29,577
Waukesha County	474.7	465.7 – 483.8	2,221
Milwaukee County	494.3	487.8 – 500.8	4,630
Vilas County	572.8	536.5 – 611.3	218
Pierce County	278.9	254.9 – 303.6	108

30,000 newly diagnosed cases each year) compared to the U.S. (453.8/100,000 population [95% CI = 453.5 = 454.1]) (Table). For this 5-year period, the highest cancer incidence rate was in Vilas County (572.8/100,000) and the lowest was Pierce County (278.9/100,000 population), located in the far north and western counties of Wisconsin, respectively, not the southeast region (see also Figure 1).



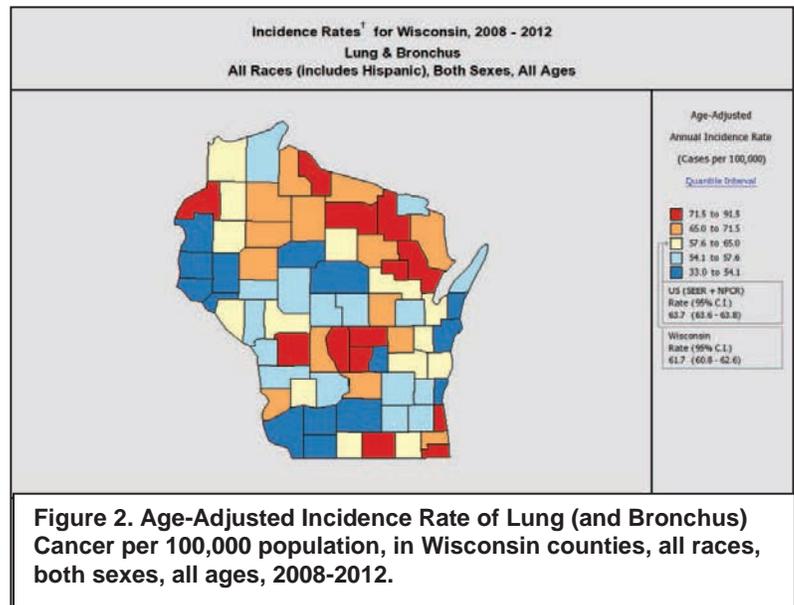
Radium (and its decay product, radon) has been causally linked to lung cancer primarily through the evaluation of causes of deaths of cohorts of uranium miners in the U.S., Canada, and Europe and extrapolating risk to lower doses consistent with environmental exposures, as well as case-control studies of residential exposure to radon and cancer risks associated with this exposure (IARC, 2001). This meta-analysis was conducted by the International Agency for Research on Cancer, an arm of the World Health Organization.

Next, I constructed maps of Wisconsin depicting the incidence rates for many types of cancers. The incidence rates for breast cancer and brain cancer were significantly higher in Waukesha County compared to the state (in the 5th quintile for each; data not shown). The high breast cancer incidence rate in Waukesha women most likely reflects the known increased risk among white women of higher-socioeconomic status (Howell et al., 2014) and is consistent with the highest risk being in Ozaukee County.

Breast and bone cancers are associated with ionizing radiation exposures from medical sources (e.g., fluoroscopy to the chest in women related to breast cancer; CT scans in children) and occupational exposure among women who were radium-dial painters. Their risk of bone cancer occurred at or near the site of radiation exposure (IARC, 2001; Polednak, 1978).

Waukesha County's lung cancer risk was 54.7/100,000 population (95% CI = 51.7 - 57.8) based on an average number of 255 new cases of lung cancer each year. Waukesha County's lung cancer incidence rate is significantly lower than either Wisconsin (61.7/100,000 population; 95% CI = 60.8 - 62.6, based on an annual average of 3,977 cases) or the nation (63.7/100,000, 95% CI = 63.6 - 63.8, based on an annual average of 213,812 cases) (Figure 2).

Radon is the second leading cause of lung cancer, while tobacco



smoking is the leading cause. Data from the Behavioral Risk Factor Surveillance System (BRFSS) conducted by the Center for Disease Control and Prevention was used to ascertain self-reported prevalence of smoking at the county level (Wisconsin Interactive Statistics on Health, nd). Between 2004 and 2006, cigarette smoking prevalence among adults (18 years and older) in Waukesha County was 17.4%, which is lower than the rate in Milwaukee County (23.4%). The smoking prevalence in Pierce County was much lower (11.0%), which would largely account for the much lower risk of all cancers (Figure 1) and lung cancer (Figure 2) in that county. All counties, including Waukesha, should aim for the lowest possible prevalence of tobacco use while implementing sustainable water policies and practices. In counties like Waukesha with high radium levels in groundwater, best practices includes removal of radium.

In summary—the existing data do not show evidence of an increased incidence of lung cancer in Waukesha County. Therefore, my conclusion as an environmental epidemiologist is that there is no valid human health reason for considering a water diversion.

References

International Agency for Research on Cancer (IARC).i. (2001). *Summaries & Evaluations, Some internally deposited radionuclides*. 78, Lyons, France. World Health Organization. Available at: <http://www.inchem.org/documents/iarc/vol78/vol78-radionuclides.html>.

Howell, A., Anderson, A.S., Clarke, R.B., et al. (2014). Risk determination and prevention of breast cancer. *Breast Cancer Research*, 16, 1-19. Available at: <http://breast-cancer-research.com/content/15/5/446>.

National Cancer Institute. (nd). Surveillance, Epidemiology, and End Results. Available at: <http://seer.cancer.gov/faststats/selections.php?series=cancer>

Polednak, A.P. (1978). Bone cancer among female radium dial workers. Latency periods and incidence rates by time after exposure: brief communication. *Journal of the National Cancer Institute*, 60(1), 77-82.

Wisconsin Interactive Statistics on Health. Available at: <https://www.dhs.wisconsin.gov/wish/index.htm>

Hoekstra, Ashley N - DNR

From: M. Ripley <mripley@sault.com>
Sent: Monday, August 24, 2015 3:03 PM
To: DNR Waukesha Diversion App
Cc: Jon Allan; David Naftzger; Frank Ettawageshik; Jennifer McKay; Ann McCammon-Soltis; Jane TenEyck; Tom Gorenflo; Bill Rastetter
Subject: Comments on EIS and Technical Review by CORA
Attachments: CORA WDNR Waukesha Comments.pdf

Dear Wisconsin Department of Natural Resources:

The Chippewa Ottawa Resource Authority (CORA) has provided the attached comments regarding the Environmental Impact Statement and Technical Review for the City of Waukesha, Wisconsin's request to divert Great Lakes Water. A hard copy of this letter will also be sent via U.S. Mail. If you have any questions or comments, please do not hesitate to contact us,

Respectfully,

Mike Ripley
Inter-Tribal Fisheries and Assessment Program
Chippewa Ottawa Resource Authority
179 West Three Mile Road
Sault Ste. Marie, MI 49783
Tel. (906)632-0072



Chippewa Ottawa Resource Authority

179 W. Three Mile Road
Sault Ste. Marie, MI 49783
Ph: 906-632-0043
Fax: 906-632-1141

August 20, 2015

Ashley Hoekstra
Wisconsin Department of Natural Resources
Bureau of Drinking Water and Groundwater
Box 7921
Madison, WI 53707-7921

Re: Comments on Request by the City of Waukesha to Divert Lake Michigan Water.

Dear Ashley Hoekstra:

On behalf of the Chippewa Ottawa Resource Authority (CORA), I am writing to comment on the draft Environmental Impact Statement (EIS) and draft Technical Review for the City of Waukesha, WI request to divert Lake Michigan water for consumptive uses. CORA understands that, although Waukesha is not located in the Great Lakes watershed but is located in a "straddling county" making it eligible under the Great Lakes – St. Lawrence River Basin Water Compact (Compact) to apply for a diversion, the reports indicated above show that the city has other options and does not need to divert water from Lake Michigan therefore we are asking the WDNR to deny this request.

CORA represents five tribes in Michigan with regard to the tribes' commercial and subsistence fisheries in the 1836 treaty-ceded waters of Lakes Huron, Michigan and Superior. The tribes which are party to the 1836 Treaty are the Bay Mills Indian Community, Grand Traverse Band of Ottawa and Chippewa Indians, Little River Band of Ottawa Indians, Little Traverse Bay Bands of Odawa Indians and Sault Ste. Marie Tribe of Chippewa Indians. The Tribes' hunting, fishing, and gathering rights are governed by a federal court-ordered Consent Decree, which was negotiated and signed by the five Tribes, the State of Michigan, and the United States federal government in 2007.

CORA was very involved with negotiations amongst the Great Lakes States regarding water use and diversions that led to the Compact and actively encouraged Congress to ratify the Compact in 2008. CORA opposes any groundwater extraction or water diversions that could impact the abilities of the treaty rights of tribal members to fish in the Great Lakes. As the first of its kind, the decision regarding Waukesha's diversion application will set a major precedent for how

similar projects are treated in the future. Also, the "straddling county" exception may not cover multiple communities represented by a public water supply company, and there are significant questions concerning distinctions between serving communities with need, additional towns without need, and private future development, new land uses, and sprawl.

We believe that the information presented in the WDNR's EIS and Technical Review supports our view that Waukesha has failed to demonstrate that it needs to divert Great Lakes water. In particular, the document presents different scenarios for growth and future water needs of the City of Waukesha along with different scenarios for supplying the water from within the Mississippi River basin (MRB) and the Lake Michigan basin. It is not clear, however, how the WDNR comes to the conclusion that only the proposal for diverting Lake Michigan basin at the greater projected levels of future need is the most feasible scenario especially since the city fails to account for the much higher water needs than is projected based on recent lower demands for water.

It is also not clear why the WDNR concludes that the neighboring communities of Pewaukee, Delafield and Genesee must be added to the Waukesha service area especially since the Compact clearly implies that a diversion of water only be allowed as a last resort after all other available options for supplying water have been exhausted. It is clear however, that by not including the greater service area, the City of Waukesha could supply its own water using its existing deep and shallow water wells to provide ample clean and safe water to its residents now and in the future if it invests in additional water treatment infrastructure to ensure the water supply meets state and federal standards. This treatment alternative costs much less than a diversion, secures water independence for Waukesha residents, protects public health, and minimizes adverse resource impacts. Treating their existing wells for radium in order to provide potable water is an obvious option that the City of Waukesha does not even consider. We believe that failure to evaluate this alternative is not consistent with the Compact.

CORA appreciates your consideration of these comments and requests that this application be rejected on the grounds that it is not consistent with the Compact. If you have any questions or would like further information, please do not hesitate to contact me or Mike Ripley via email jteneyck@chippewaottawa.org or mripley@sault.com or by telephone at (906)632-0043.

Respectfully



Jane A. TenEyck, Executive Director
Chippewa Ottawa Resource Authority

Cc: CORA Board
David Naftzger, Council of Great Lakes Governors
Jon Allan, Michigan Office of the Great Lakes
Frank Ettawageshik, United Tribes of Michigan

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ROBERT L. COWLES

**Wisconsin State Senator
2nd Senate District**

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Information Policy and Technology
Transportation Projects Commission

August 27, 2015

Cathy Stepp

Secretary, Wisconsin Department of Natural Resources

101 S. Webster Street

PO Box 7921

Madison, WI 53707-7921

Via Hand Delivery

Dear Secretary Stepp,

As a Great Lakes legislator who was very involved in the development of Wisconsin's enabling statutes for the Great Lakes Compact, I am writing to express some serious concerns with the department's preliminary conclusion on the City of Waukesha's diversion application.

I believe a critical flaw in the analysis is the acceptance of the expanded service area outlined in the city's request. The water supply service area includes 3.7 percent of the City of Pewaukee, 9 percent of the Town of Delafield, 14.9 percent of the Town of Genesee, and 83.6 percent of the Town of Waukesha which was delineated by the Southeastern Regional Planning Commission (SEWRPC) as a potential City of Waukesha water supply service area. It is not clear from the application that this expanded service area of 17 square miles is in critical need of a Great Lakes water diversion. Further, it is doubtful that any of the areas outlined in the expanded service area would currently meet the "no reasonable alternative" outlined in the Compact authorizing statutes.

The other serious concern I have with the current diversion application relates to the City's water conservation measures. According to the 2012 Waukesha Water Conservation Plan, the top 10 percent of single family, two family and multi-family residences are classified as having high indoor and outdoor water use which correlates to a high potential for water savings from both indoor and outdoor water efficiency measures. In addition, the conservation plan shows the top 10 percent of industrial accounts use 84 percent of industrial water demand. Industrial uses include processing operations for metal and food, manufacturing, and warehouses. The top 50 percent of the industrial accounts represent the City's largest users among all customer categories. Finally, the top 50 percent of public uses accounts for 98 percent of the public water demand. These public uses are classified as having a high outdoor/seasonal use and include schools, courthouses, jails, office buildings, park irrigation, playing fields and pools.

Clearly, the 2012 Waukesha plan outlines a number of areas where water conservation can be increased. Why isn't the department requiring a greater emphasis on water conservation outlining effective regulatory and increased incentive based measures to reduce water use and increase water reuse and efficiency as part of the application? Only minimal steps were taken to

increase the water conservation measures in the City of Waukesha from the 2006 adoption of the original ordinance to the 2012 Water Conservation Plan required as part of the diversion application. Such minimal increases in water conservation do not adequately represent the intent of the water conservation requirements in the Great Lakes Compact.

It is my sincere hope that the department will review the federal requirements of the Great Lakes Compact and the Wisconsin authorizing statutes to be certain that the area served by the applicant and the water conservation measures outlined in the application are consistent with standards for Great Lakes water diversions. What happens here with this decision will set the tone for numerous other decisions that will have an impact in the Great Lakes Basin. I'm sure that you don't want an unwarranted approval as part of your legacy.

Sincerely



Robert L. Cowles
2nd Senate District

cc: Eric Ebersberger – Deputy Division Administrator, Wisconsin DNR
Dave Siebert – Bureau Director, Wisconsin DNR

GREAT LAKES COMMITTEE – IZAAK WALTON LEAGUE OF AMERICA

August 20, 2015

Ashley Hoekstra
DNR Bureau of Drinking Water and Groundwater
Box 7921
Madison, WI 53707-7921
DNRWaukeshaDiversionApp@wisconsin.gov

RE: Waukesha Diversion Application Request

Dear Ms. Hoekstra:

On behalf of the Great Lakes Committee of the Izaak Walton League of America, we submit the following comments on the Waukesha Request for Great Lakes Water. We urge the Department to deny this request.

The Waukesha request for Great Lakes water is the first test of diversion of Great Lake Basin waters under the terms of the Great Lakes-St. Lawrence River Basin Water Resources Compact (Compact) and may set a precedent for future requests. As such, Waukesha's application must be in compliance with the Compact in accordance with diversion and water conservation policy and criteria. Our Great Lakes Committee members are actively engaged with protection and restoration in their respective Basin states from New York to Minnesota, representing members across the basin. The groundwater, surface water and Great Lakes tributaries are part of a single connected system that is only renewed annually by less than one percent through rainfall and snowmelt. Further it is a fragile ecosystem that provides drinking water for 30 million people in the U.S. As such, any diversion requests must be seen within a greater context of good stewardship, cumulative impacts and long term sustainability of the lakes' ecology and the region's economy.

A look at groundwater sources reveals that groundwater levels in Southeast Wisconsin have been stabilizing or are rising. A diversion request must demonstrate, per the Compact, that "There is no reasonable water supply alternative within the basin in which the community is located, including conservation of existing water supplies" (Compact Section 4.9.3.d). An independent engineering firm, in a July 2015 report, concluded that Waukesha does have a feasible water supply alternative. Investing in additional water treatment infrastructure would allow for treatment for radium and ensure sufficient clean and safe water that meets state and federal standards now and in the future from existing deep and shallow water wells. Moreover, the cost of this infrastructure is far less than the cost of the diversion.

In addition, the application includes towns in Waukesha County that do not currently have a need for safe drinking water – indeed, two of those towns, the Town of Waukesha and the Town of Genessee, have publicly stated they have no current need for Great Lakes water. The Compact is clear that a need for water must exist in the community to be eligible for a diversion; including the other towns in the application is not consistent with the Compact.

Additionally, we are concerned that the Waukesha Plan to return water to the Great Lakes Basin via the Root River has the potential to increase the phosphorus pollution to this impaired river, a tributary of Lake Michigan.

Waukesha does not make a make a compelling case for a diversion. Considering that Waukesha's demand for water has been decreasing since the late 1980s, that there are feasible and less costly alternative options available, and that Waukesha is asking for 10.1 million gallons per day(mgd) while current use is 6 mgd, these conditions and findings are evidence that there is no justification for this diversion request.

Therefore, it is only prudent to deny this request. To do otherwise sets a precedent for undermining the value of the Compact to keep the waters within the Basin and threatens the sustainability of its diverse ecosystem and significant economic benefits.

Thank you for the opportunity to comment.

Sincerely,

Jill Crafton
Chair – Great Lakes Committee
Izaak Walton League of American
10351 Decatur Avenue South
Bloomington, MN 55438
jillgreatlakesike@gmail.com

Les Monostory, New York Division - Izaak Walaton League of America
Jim Sweeney, Porter County Chapter, Chesterton,Indiana - Izaak Walton League of America
Barry Drazkowski, Minnesota Division - Izaak Walton League of America
Rich Staffon, W..J. McCabe Chapter, Duluth, Minnesota - Izaak Walton League of America
Robert Stegmier, Dwight Lydell Chapter, Belmont, Michigan - Izaak Walton League of America
Rick Graham, Great Lakes Chair - Ohio Division - Izaak Walton League of America

Hoekstra, Ashley N - DNR

From: Jill Crafton <jillgreatlakesike@gmail.com>
Sent: Tuesday, August 25, 2015 3:11 PM
To: DNR Waukesha Diversion App
Cc: jillgreatlakesike@gmail.com; iwla-great-lakes-committee@googlegroups.com
Subject: Waukesha Diversion Comments
Attachments: WaukeshasDiversionFinalComments.pdf

Dear Ashley Hoekstra,
Attached are our comments on the Waukesha Diversion on behalf of the Great Lakes Committee of the Izaak Walton League.
Thank you for the opportunity to comment.

Sincerely,

Jill Crafton
Chair – Great Lakes Committee
Izaak Walton League of America
10351 Decatur Ave S
Bloomington, MN 55438
952 944-5583



WATERFORD VILLAGE

Village of Waterford
123 North River Street
Waterford WI 53185

Ashley Hoekstra
DNR Bureau of Drinking Water and Groundwater
Box 7921
Madison, WI 53707-7921

August 11, 2015

Dear Ms. Hoekstra

The Village of Waterford is opposed to the City of Waukesha's application for Lake Michigan diversion due to the negative impact on the Fox River which is vital to our community. The Village is located midway on the Wisconsin portion of the Illinois Fox River. We applied for and received a Stewardship grant from the WDNR for the construction of canoe/kayak launches to provide safe portage around the Waterford and Rochester dams. With that project set to be completed in fall of 2015, the Village took the lead on development of a Fox River Water Trail in Wisconsin and has joined with others in Illinois in seeking a national water trail designation from the National Park Service.

Diversion of Lake Michigan waters with a proposal to return treated wastewater to Lake Michigan will lower water levels of the river, adversely impacting recreational boating, both motorized and non-motorized. A loss enjoyment of the river will result in reduced property values for riparian land owners and will negatively impact economic development surrounding the river. During dry periods, the discharge from the City of Waukesha's wastewater treatment plant (10,000,000 gallons per day) represents approximately 90% of the flow in the Fox River, as determined by the Southeastern Wisconsin Regional Planning Commission (SEWRPC).

The Fox River is a high quality fishery, home to resident and migrating waterfowl (including nesting bald eagles in Rochester), and furbearers. Lowering the water level will have a detrimental effect on this fishery and the animals that depend on fish as a food source as well as for the many fishing on the river. Another concern is lower levels that lead to higher water temperature, encouraging algae growth.

An alternative water plan, such as that developed by the COMPACT Implementation Coalition (CIC), addresses the concerns of the Waukesha without diverting Lake Michigan water. The plan includes the following features:

- Costs \$150,000,000 less than the City's diversion plan.
- Meets public health standards for radium and other contaminants
- Does not change the discharge from the wastewater treatment plant into the Fox River
- Adequate water supply for the city until 2050
- Requires no additional wells and therefore no environmental impact
- One of the three deep aquifer wells already has radium filtration
- The two deep aquifer wells that presently are untreated will be filtered
- Neighboring communities such as the Cities of Brookfield and Pewaukee have treatment facilities to remove radium

Waukesha has returned the water used by its residents to the Fox River for decades, providing a healthy and vibrant waterway. In light of the problems the diversion plan will pose on the Fox River and the Village of Waterford, the Village Board stands in opposition and urges that the application be denied.

Village of Waterford Board of Trustees



Tom Christensen, President Pro Tem

RECEIVED-DNR
AUG 17 2015
DRINKING WATER & GW

Hoekstra, Ashley N - DNR

From: Claire Wood <claire@flowforwater.org>
Sent: Friday, August 28, 2015 3:37 PM
To: DNR Waukesha Diversion App; James Olson; Elizabeth Kirkwood (lizkirkwood2002@yahoo.com)
Subject: FLOW comments on Waukesha Diversion Application
Attachments: FLOW Comments on Waukesha Application.pdf

Dear Ms. Hoekstra,

Attached please find the official comments of FLOW (For Love of Water) on the Waukesha diversion application. If you have any questions, please do not hesitate to contact me.

Best regards,
Claire

--

Claire Wood
Communications & Office Manager
FLOW (For Love Of Water)
153 1/2 East Front St., Suite 203C
Traverse City, MI 48684
claire@flowforwater.org
231-944-1568 (o)



Visit us online: <http://flowforwater.org> - Like us on [Facebook](#) and [Twitter](#)



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flowforwater.org

August 28, 2015

Ms. Ashley Hoekstra
Wisconsin Department of Natural Resources
Bureau of Drinking Water and Groundwater
BOX 7921
Madison, Wisconsin 53707-7921

Re: Waukesha Water Diversion Application under Great Lakes Compact, Section 4.9, and Wisconsin Statutes, Wis. Stat. 281.346(4)(e)(1), Wis. Stats. 281.343, 281.346, and Common Law Public Trust Doctrine

Dear Ms. Hoekstra and Wisconsin Department of Natural Resources:

FLOW (For Love of Water), a Great Lakes law and policy center, submits the following comments to assist you and the Department in evaluating and making a decision on the above-referenced matter. FLOW thanks Wisconsin DNR for its comprehensive review of this matter, including its technical reports and studies.

The purpose of these comments is to address the legal and policy principles that apply to the Waukesha application, and to ensure the standards of the Great Lakes Compact, common law, and other laws are stringently applied. Any relaxation of these standards and laws could jeopardize the Compact diversion ban and threaten the waters of the Great Lakes in Wisconsin and Michigan. There is increasing competition for global, national, and regional water sources, exacerbated by drought, climate change effects, and demands for food, energy, shelter, and development by increasing population and consumption. Wisconsin, as other states who are in the Basin and part of the regional body governing diversions under the Compact, must exercise utmost caution in reviewing and applying these legal standards and principles to the Waukesha application. A failure to do so will open the door to improper expectations or claims by interests outside the basin, triggering commerce clause and trade law challenges and claims that could undercut the strength of the diversion ban.

Overview

FLOW submits that:

(1) the evaluation under Wisconsin law and the Compact must be interpreted and applied based on the background principles of the common law of water and the public trust doctrine, because it is undisputed that the source of the water is Lake Michigan (and its tributary water); and

(2) the legal standards and principles of the Compact must be interpreted and applied stringently, because any deviation or even unintentional relaxation of the standards will undermine the diversion ban and other mechanisms of the Compact; this is important because relaxed or variant interpretation will render the diversion ban and Compact less effective and increase the potential for takings, commerce clause, and North American Free Trade Agreement claims for Great Lakes water and/or investment claims for damages.¹

Specific Comments:

FLOW specifically submits the following comments:

1. The Waukesha Application is Subject to and Must Comply with Background Principles of the Public Trust Doctrine and Water Law.

Lake Michigan, like all navigable waters, is owned and held in public trust by the states of Wisconsin and Michigan, as trustees, for the citizens of these respective states, as legal beneficiaries, for the protection of fishing, boating, swimming, bathing, navigation, and other forms of water related recreation.² The Compact also recognizes this public trust, finding that “The waters of the basin are precious public natural resources shared and

¹*NAFTA Chapter 11 Investor-State Disputes (to October 1, 2010)*, Scott Sinclair, Trade and Investment Research Project, Canadian Centre for Policy Alternatives/Centre Canadien de Politiques Alternatives; *Table of Foreign Investor-State Cases and Claims under NAFTA and Other U.S. Trade Laws*, Public Citizen, April 2015; AbitibiBowater Inc., p. 19; The Toronto Star. “Ottawa pays Abitibi \$130M to settle claim.” (August 25, 2010); Kathryn Leger. “AbitibiBowater wins NAFTA case vs. Ottawa.” THE GAZETTE (MONTREAL), (August 27, 2010); M.A. Salman, *International Trade Law Disputes: New Breed of Claims, Claimants, and Settlement Institutions*, International Water Resources Association, 31 Water International pp. 2-11 (March 2006), with David Johnson, *Water and Exports under NAFTA, Law and Government Division*, 8 March 1999, PRB 99-5E <<http://publications.gc.ca/collections/Collection-R/LoPBdP/BP/prb995-e.htm>>, who lays out the government position and arguments about water as a “good” or “product” under international trade laws, including NAFTA.

²Wis. Const., Art IX, Sec. 1; Wis. Stat. Ann. Secs. 30.01.01 et seq.; *Hilton ex rel. Homeowners v Department of Natural Res.*, 717 NW 2d 166, 173; *Muench v. Pub. Service Comm’n*, 261 Wis. 492, 109 NW 2d 271 (1952); *State v Pub. Service Comm’n*, 81 NW 2d 71 (Wis. 1957); *Lake Beulah Mgmt. Dist. V Department of Natural Res.*, 799 NW 2d 73, 76 (Wis. 2011); Mich. Const. Art. 4, Sec. 52, MCL 324.32501 et seq.; MEPA, MCL 324.1703, 1705; *Obrecht v National Gypsum Co.*, 105 NW 2d 143 (Mich 1960).

held in trust by the states.”³ Moreover, the Compact specifically preserves common law principles, like riparian water law and the public trust doctrine,⁴ and must comply with all other federal and state laws and the Compact to the extent the Compact is more stringent.⁵

Under the public trust doctrine, generally no water or bottomlands can be alienated or transferred unless for a public purpose related to the use, enjoyment or improvement of the public trust,⁶ and if there is a valid public purpose, where there is no material or measurable impairment.⁷

The transfer or diversion of public trust Lake Michigan water is prohibited unless authorized by state law.⁸ Moreover, any such authorization must fall within the two narrow exceptions noted above, namely a valid public trust purpose or public purpose related to the use and enjoyment of public trust waters in question, and no material interference or impairment.⁹ Approvals of diversions or transfers of water from a watershed must consider the impacts and legal precedent effect on the integrity of the public trust waters, including improper relaxation of the public trust purpose requirement.¹⁰ Without express authorization and specific factual findings that these narrow exceptions and criteria have been met, an application for authorization to transfer public trust waters, such as the Waukesha application, should not be lawfully approved. Specifically, the applicant must establish that the diversion of water outside the Great Lakes serves a public purpose related to the use and enjoyment of Lake Michigan and the Great Lakes basin.¹¹

There are four basic public trust questions that must be answered before the Waukesha application can be approved. First, has Wisconsin passed a statute that expressly authorizes the diversion of public trust waters containing public trust standards out of the Lake Michigan basin? Second, as noted above, is the diversion’s purpose related to use

³Great Lakes Compact, Sec. 1.3(1(a), P. L. No. 110-342, 122 Stat. 3739 , at 3742. (2008) (herein “Compact”).

⁴Compact, Wis. Stat. 281.343(8)2.

⁵Compact, Wis. Stat. 281.343(8)4, 281.343(9)(c); Melissa K. Scanlan, *Realizing the Promise of the Great Lakes Compact: A Policy Analysis for State Implementation*, 8 Vt. J. Envtl. L. 39 (2006).

⁶*Illinois Steel Co. v Biolot*, 109 Wis. 418, 426, *Muench, supra*, 261 Wis. at 499.

⁷*Illinois Central R Rd v Illinois*, 146 U.S. 387 (1892); *City of Madison v State*, 1 Wisc.2d. 252, 843 NW 2d 674 (1957); *Muench v. Pub. Service Comm’n, supra*, note 2.

⁸*Id.*, Joseph L. Sax, *The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention*, 68 Mich L. Rev 471 (1970).

⁹*Id.*, *Illinois Central Railroad v Illinois*. A transfer or use for a primarily private purpose is not authorized and void. *Priewe v Wisconsin State Land*, 93 Wis. 534, 67 NW 918 (1896); so to is a transfer or use of public trust land or waters for a public purpose that is not related to access to or enjoyment of public trust waters for recognized public trust rights and uses. *Meunch, City of Madison, supra*;

¹⁰*Madison v State, supra*; *Lake Beulah Mgmt. District, supra*; *Obrecht v National Gypsum Co., supra*, note 2; *People v Broedell*, 112 NW 2d 517 (Mich 1961).

¹¹*Madison v State; Muench, supra*.

and enjoyment of Lake Michigan and the Great Lakes? That is, is the diversion of 10.1 to 16 million gallons a day for a public water supply in towns located in the Mississippi River basin within the scope of public purpose under public trust law? Third, is there a public necessity for the diversion of public trust water for a public water supply in another continental river basin? Fourth, are there specific findings based on a factual record that comply with these standards? If any of these are not established, then the application as presented should be denied as contrary to the public trust in the waters of the Great Lakes.

Wisconsin and the other states, and citizens, must exercise utmost “caution” as the Compact demands, to make sure the integrity of the public trust and Great Lakes and tributary waters is not compromised. In this second decade of the 21st century, it is more evident than ever that the Great Lakes face unprecedented geopolitical and systemic threats – climate change, extreme weather, fluctuations in flows and levels, phosphorous-loading and algal blooms, invasive species such as quagga mussels and Asian carp, persistent plastics and toxins. Ultimately the fierce competition for water threatens diversions of water from the Great Lakes basin. In the next 15 years, a U.N. report warns the world could suffer a 40 percent shortfall in water by 2030 unless countries dramatically change their use of the resource.¹² Just this year, 2015 marked the first time water crises claimed the top spot in the World Economic Forum’s 10th global risk report. As the U.S. Department of Energy recently observed: “We cannot assume the future is like the past in terms of climate, technology, and the evolving decision landscape.”

Since the 2004 and 2000 Great Lakes Reports, private investor claims under NAFTA and other trade laws have more than tripled.¹³ While the legal policy and approach behind the diversion ban and consumptive use regulations is generally sound and defensible, the increase and success of a few of these private investor claims for money damages for discrimination or expropriation of water use rights create uncertainty, confusion, an concern.¹⁴

The public trust doctrine and principles in the Great Lakes should not be, indeed cannot be, bent to fit every demand for water, especially for demands outside or beyond the basin or public trust in the Great Lakes.

¹² The United Nations World Water Development Report. *Water For a Sustainable World*. 2015 <http://unesdoc.unesco.org/images/0023/002318/231823E.pdf>

¹³ See *NAFTA Chapter 11 Investor-State Disputes (to October 1, 2010)*, Scott Sinclair, Trade and Investment Research Project, Canadian Centre for Policy Alternatives/Centre Canadien de Politiques Alternatives; *Table of Foreign Investor-State Cases and Claims under NAFTA and Other U.S. ‘Trade Laws,’* Public Citizen, April 2015.

¹⁴ U.S. Department of Energy. *The Water-Energy Nexus: Challenges and Opportunities*. (June 2014) <http://energy.gov/sites/prod/files/2014/07/f17/Water%20Energy%20Nexus%20Full%20Report%20July%202014.pdf>; see also http://waterinthewest.stanford.edu/sites/default/files/Water-Energy_Lit_Review.pdf

2. The Exceptions and Decision Making Standards for Diversions to “Straddling Communities” or “Straddling Counties” Must Be Strictly Interpreted and Applied.

The Compact demands the parties to exercise utmost caution in determining whether or not the proposal meets the criteria and conditions for the so-called “straddling” exceptions. This means that strict attention must be paid to not only the plain meaning of the wording of the exceptions, but to the effects of an interpretation and application given to the exceptions and their standards. This also means that careful analysis and comparison is required between the wording and meaning of the standards in the Compact and the wording of similar laws in Wisconsin. Adherence to the Compact exceptions override state law or regulations that are less stringent.

As noted in the previous section of these comments, the increased demand, water scarcity, extreme weather, and effects of climate change have created a water crisis that will increase pressure for the waters of the Great Lakes Basin. The dormant commerce clause in the federal constitution warrants careful analysis in the application of the diversion ban and its exceptions in the Compact. NAFTA and international trade law claims can leverage water out of a basin or watershed through government challenges or private investor claims – discrimination or damages to reasonable expectations based on land and property law, diversions or consumptive uses allowed without material factual relationship to protection of exhaustible water resources and protection of the environment within the basin.

a. Definitions and Standards for “Straddling Community” and “Straddling County” Exceptions

The Compact provides:

*Straddling Communities.*¹⁵ A proposal to transfer water to an area within a straddling community but outside the basin or outside the source watershed shall be excepted [provided that] all of the water so transferred shall be used solely for public water supply purposes within the straddling community.

1.a. Is part of a water supply or wastewater treatment system that combines water from inside and outside the basin.

Wisconsin law provides:

*Straddling Communities.*¹⁶ The department may approve a proposal under par. (b) [for a diversion] to an area within a straddling community but outside the Great Lakes Basin or outside the source watershed if the water

¹⁵Compact, Wis. Stat. 281.343(4n)(a).

¹⁶Wis. Stat. 281.346(4)(a),©.

diverted will be used solely for public water supply purposes in the straddling community...

* * *

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

The Compact provides:

*Straddling Counties.*¹⁷ 1. A proposal to transfer water to a community within a straddling county that would be considered a diversion under this compact shall be excepted from the prohibition against diversions if it satisfies all of the following conditions:

a. The water will be used solely for the public water supply purposes of the community within the straddling county that is without adequate supplies of potable water.

* * *

d. There is no reasonable water supply alternative within the basin in which the community is located, including conservation...

e. Caution shall be used in determining whether or not the proposal meets the conditions for the exception. The exception shall not be authorized unless it can be shown that it will not endanger the integrity of the basin ecosystem.

Wisconsin law provides:

*Straddling Counties.*¹⁸ The department may approve a proposal under par. (b) for [a diversion] if the water diverted will be used solely for public water supply purposes in a community within a straddling county or, if a community is partly in a straddling county and partly within a county that lies entirely outside the Great Lakes basin, the water diverted will be used solely for public water supply purposes in the portion of the community that is within the straddling county...

a. The community is without adequate supply of potable water.

b. The proposal meets the exception standard under par. f.

* * *

d. There is no reasonable water supply alternative within the watershed in which the community is located.

* * *

(f)1. The need cannot reasonably be avoided through efficient use and conservation of existing water supplies.

¹⁷Compact, Wis. Stat. 281.343(4n)©.

¹⁸Wis. Stat. 281.346(4)(e)(f).

- (f)2. The diversion is limited to the quantities that are reasonable for the purposes for which the diversion is proposed [water supply].

Note also, that for all application for an exception to the diversion ban the department shall use as appropriate the current or planned service area.¹⁹

The exception for “straddling communities” is strictly for public water supply “within” or “in” “the straddling community.” The proposed diversion to Waukesha is not for the city, which is the community within the straddling county, but the entire public water supply service area. The City of Waukesha is not itself a “straddling community.” It is not “the” community, it is not even “a” community, but a large geographical area entirely out of the Great Lakes Basin.²⁰ Moreover, not even the public water supply service area straddles the Great Lakes Basin divide.²¹ Only a relatively small portion of the eastern part of Waukesha County straddles the basin divide.

A look at Figure 15 of the WDNR Draft Technical Report shows that the area includes most all of southeast Waukesha County, one third of the lower northeast, and parts of northwest and southwest areas of the county. Any area within this service area may request water from Waukesha as part of the service area.²² The towns and rural areas are included because of Wisconsin law,²³ and not the language of the exception in the Compact.

To get around the conflict with the definition of the exception, Wisconsin DNR states that “the department considers the delineated water supply service area to be a “community with a straddling county.”²⁴ The Compact defines a “community within a straddling county” as “any incorporated city, town, or the equivalent thereof, that is located outside the basin but wholly within a county that lies partly within the basin that is not as straddling community.”²⁵ Wisconsin defines “community within a straddling county” as “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 basin.”²⁶ The Waukesha application does not fall within the “straddling communities” exception.

The question then is whether the application fits the “straddling counties” exception as a “community within a straddling county.” A “community” is limited by Wisconsin law to a “city, village, or town.” A “community” under the Compact is limited to any “incorporated city, town, or the equivalent thereof.” The “community” in the application for the “straddling counties” exception is the “public water supply service area”

¹⁹*Id.*, 281.346(4)(bg).2.

²⁰Fig. 10, Wis. DNR Draft Technical Report, June 2015, p. 47.

²¹*Id.*

²²*Id.*, p. 45-46.

²³Wis. Stat. 281.348(3).

²⁴Draft Technical Report, p. 44.

²⁵Compact, Wis. Stat. 281.343(1e)(d).

²⁶Wis. Stat. 281.346(1)(d).

consisting of several incorporated units of local government – city and towns– and a wide rural area that is represented as part of the towns. However, the Waukesha water utility public water service area is not an incorporated city, town, or village, or the “equivalent thereof.”

Under the Compact, “caution” is required to protect the integrity of the Great Lakes and its ecosystem. This means when in doubt over meaning, the Compact straddling “exceptions” and definitions related to them, should be strictly or narrowly construed. Moreover, for a “community within a straddling county” to qualify, there must be a showing that the “community” “is without adequate supplies of potable water.” With respect to the city and towns or other areas within the public water service area, alleged to be the “community,” there is no showing that the entire area is without adequate supplies of potable water. Even assuming for sake of argument that the city in this case is without adequate potable water, which is not entirely the case, the “community” in this case as defined by the Wisconsin DNR is not in the same circumstance, and the situation of the city cannot be used to bootstrap the remainder of the areas as a “community within a county.”

Other counties or states outside the Great Lakes basin could point to the broad, sweeping application of the Compact to serve present and future communities in a straddling county, undercutting the finding that the waters of the basin are exhaustible, threatened resources, which they are from all of the myriad threats. In turn, this would send the diversion ban down a slippery slope that could weaken it.

b. Public Need

As a general rule, an applicant can use its “current or planned” water service area “as appropriate.” Waukesha did not consider current demand as compared to a planned water service area. It appears Waukesha’s water and sewer district did this to justify and pay for the cost of the Lake Michigan diversion out of the basin into the county by adding outlying towns and areas to its planned service area. Then the district used a 20-year demand study based on full build out of this service area, even though there is no current demand for such growth, and the planned demand is arrived at through assumptions about maximum growth without regard to whether these towns or areas currently need the service, or will request it in the future.

Accordingly, no current public need for the proposed 10.1 MGD is established. Moreover, the need is admittedly speculative regarding future development and growth. In addition, the Draft Technical Report does not adequately document actual water sources and supplies in these towns or areas, or whether there is a current or even planned need to shut-down current water supply wells or systems. That the towns projected future growth is needed to justify Waukesha’s proposed diversion does not support a finding that the towns have a public need for the diversion. As a result, the applicant has not demonstrated a public need for the 10.1 MGD diversion from Lake Michigan. The City of Waukesha may have a public need, but that does not mean there is a public need for the other towns.

Utmost caution is required, as noted above, to assure integrity of the waters of the basin. This includes confining exceptions to the exact calculated public need, not an assumed “full build out” or future growth.²⁷ If waters of Lake Michigan are diverted out of the basin for use in areas where there is no demonstrated need, only future development and growth assumptions, then other areas outside of the basin can rely on the same approach. If they are denied water from the basin, they could claim precedent or challenge the diversion ban, because the water is being used outside the basin to promote growth and development. It can also be argued that diverting water for growth outside the basin concedes that there is no substantial public need, or that the waters of the basin are not exhaustible. Out of basin interests may be able to demand water from the basin through discrimination, commerce clause, and NAFTA claims. This in turn endangers the integrity of the basin waters and ecosystem.

c. No Reasonable Alternative

There are reasonable alternatives for water supply to Waukesha and even the service area, even with the assumed full build out. They may not be the best alternatives, but generally all of the alternatives would provide treated potable water within an acceptable range of costs, safety and health regulations, and impacts, especially taking into account local adjustments to minimize hydrological effects on wetlands and streams.

The applicant has the burden of demonstrating “no reasonable alternative.” The important question is what does this phrase mean. Under standard alternatives assessment laws in environmental, wetland, or public parkland matters, a project is prohibited unless it is clearly shown that there is no other suitable or practicable alternative.²⁸ This is based on the idea that any diversion or loss of these natural resources constitutes an unacceptable adverse impact or harm. Accordingly, the primary impact issue is whether an alternative will adversely or unreasonably impact the Great Lakes. Necessarily none of the alternatives to the Lake Michigan diversion in this matter will affect the Great Lakes that are protected by the diversion ban of the Compact. By analogy, to protect present and future uses of wetland, the Wisconsin DNR considers, inter alia, practicable alternatives to the proposed property use which will not adversely affect wetlands or create significant adverse environmental consequences.²⁹

Similarly, the Compact standard protects the Great Lakes from diversions, including straddling exceptions, by demanding a showing that “there is no reasonable water supply

²⁷This also ignores other local choices or growth plans within a town or community, which in turn involves land use plans or measures that conserve not increase demand for water.

²⁸Wisc. Adm. Code, Sec. NR 103.08 et seq.; Clean Water Act, Section 33 USC 1344; 40 CFR 404(b)(1). Wetlands cannot be filled unless it is clearly demonstrated there is no practicable alternatives and the other alternatives have not significant or major impacts. In other words, wetlands are not to be filled, because the law has determined that the loss of wetlands is a serious harm. A similar analysis and approach is suggested under the “no reasonable alternative” standard of the Compact.

²⁹See Wis. Adm.Code § NR 103.08(3)(b). If these criteria are not satisfied, the DNR must find that the requirements of Wis. Adm.Code ch. NR 103 have not been satisfied.

alternative” to the diversion from Lake Michigan. However, Wisconsin changed the standard by adding a definition of “reasonable water supply alternative” to mean “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 greater adverse environmental impacts than the proposed new or increased diversion.”³⁰

This does not change the burden under the Compact to demonstrate “no reasonable alternative” to the diversion of 10.1 MGD of Lake Michigan water. A plain reading of the meaning of the alternatives standard in the Compact does not contain this language. Rather it demands a showing that no other reasonable alternative exists. The Wisconsin definition changed and weakened the Compact standard into a comparative factors test to choose a “reasonable water supply alternative” for a water service area.

As noted above, all of the other non- Lake Michigan diversion alternatives would deliver potable water at comparatively similar costs without a loss or diversion of waters out of the Great Lakes Basin. While these other alternatives have varying degrees of risks of adverse environmental impacts, they all avoid any impact or diversion and loss of water to the Great Lakes. Applying the broader Wisconsin balancing test does not comply with the intended meaning of the “no reasonable alternative” standard in the Compact, because it changes the “no alternative” focus from protecting the loss or diversion of the Great Lakes to a comparative analysis of adverse impacts, costs, and benefits between all of the alternatives. Applying this definition turned the customary “no alternatives” analysis in the Compact on end.

An exception to the ban on diversion and loss of water from the basin is authorized only if the applicant demonstrates “no reasonable alternative.” Based on the Draft Technical Report’s several alternatives, coupled with conservation and timed on an as-public-need basis, this has not been established. If anything, all of the other alternatives avoid any adverse impact or loss of Great Lakes waters to another basin and while they have adverse impacts, none are shown to be unreasonable in light of the fact they will not cause diversion of Great Lakes waters into the Mississippi River basin.³¹

Summary

The Applicant Waukesha applies for a straddling county exception to the diversion ban. An exception is allowed only if the standards and conditions in the Compact have been met.

Water of the Great Lakes is public and subject to the public trust doctrine, under common law, Wisconsin Constitution, and the Compact. Public trust standards have not been applied to the proposed project, particularly the questions of whether the purpose,

³⁰Wis. Stat. s.281.346(1)(ps).

³¹This is not to say that the “public need,” “without adequate water,” or “no reasonable alternative” standards could not be met if the application involved only the City of Waukesha’s current and near-term needs.

although public, is based on a true necessity and that is related to enjoyment of the public trust in the Great Lakes Basin.

Strict compliance with the Compact standards is required. It has not been demonstrated on the current application that there is a real public need; future growth and development outside the basin do not constitute true public need to justify diversion out of the basin. It has not been demonstrated on the basis of application that there is no reasonable alternative within the intended meaning of the Compact. Reasonable alternatives that do not involve diversion of 10 MGD of Lake Michigan, the focus of the Compact diversion ban, are reasonable and do not overall have significant adverse impacts that justifies the diversion. It has not been shown that all towns and communities within the county are without adequate potable water.

Finally, the intended meaning of the “straddling counties” exception does not define “community within a county” that partly straddles the basin as a municipal water and sewer district. It is not an incorporated city or town, and the towns that are in the district are separate and distinct incorporated communities.

Because of the world-wide water crisis, regional water droughts and extreme weather, climate change, and demand for Great Lakes water within the basin, the Waukesha application must be reviewed with utmost caution. If done without strict vigilance and construction or interpretation of the intent and application of the “straddling” exceptions to the diversion ban, the diversion ban and integrity of the waters of the basin and its ecosystem will be weakened and endangered.

Thank you for the effort on the part of Wisconsin DNR in reviewing the Waukesha Application and for the opportunity to provide these comments. Please include them in the record of decision in this matter.

Sincerely yours,



James M. Olson
President and Policy Advisor
FLOW (For Love of Water)

Hoekstra, Ashley N - DNR

From: Ann McCammon Soltis <amsoltis@glifwc.org>
Sent: Friday, August 28, 2015 3:13 PM
To: DNR Waukesha Diversion App
Cc: Pfeiffer, Shaili M - DNR
Subject: Comments on draft Waukesha EIS and Technical Review
Attachments: waukesha eis tech rpt com final w att 28aug15.pdf

Dear Ms. Hoekstra,

Attached please find comments from the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) on the draft EIS and Technical Review for the proposed Waukesha diversion application. If you have any questions or any problems with the file, please don't hesitate to contact me.

Thank you,
Ann

Ann McCammon Soltis
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GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION

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• MEMBER TRIBES •

MICHIGAN

Bay Mills Community
Keweenaw Bay Community
Lac Vieux Desert Band

WISCONSIN

Bad River Band
Lac Courte Oreilles Band
Lac du Flambeau Band
Red Cliff Band
St. Croix Chippewa
Sokaogon Chippewa

MINNESOTA

Fond du Lac Band
Mille Lacs Band

August 28, 2015

VIA ELECTRONIC MAIL

Ms. Ashley Hoekstra
WDNR Bureau of Drinking Water and Groundwater
PO Box 7921
Madison, WI 53707-7921

Re: Comments on the draft Technical Report and draft EIS on the City of Waukesha Water Diversion Application

Dear Ms. Hoekstra,

Great Lakes Indian Fish and Wildlife Commission (GLIFWC) staff submits these comments on the draft Technical Review and draft Environmental Impact Statement (EIS) for the City of Waukesha's Water Diversion Application. GLIFWC is an agency exercising delegated authority from 11 federally recognized Indian Tribes in Wisconsin, Minnesota and Michigan. Those Tribes retain hunting, fishing and gathering rights in territories ceded to the U.S., which include portions of Lakes Michigan and Superior and their basins. GLIFWC's Board of Commissioners has authorized GLIFWC staff to participate and develop comments from a ceded territory perspective on any process or decision that involves implementation of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Compact or Agreement (copy attached).

GLIFWC's Board of Commissioners has gone on record a several times with regard to the diversion of Great Lakes water and the governmental processes that will govern decisions about the uses of Great Lakes water. In 1999, GLIFWC's Board passed a resolution opposing the diversion of Great Lakes water. In 2006, it urged the governments to fully integrate affected tribes into all processes and decisions regarding water withdrawals. We appreciate the State's willingness to discuss the Waukesha proposal with GLIFWC and other Wisconsin tribes, but remind the State that tribes with reservations in other states have treaty rights that extend into Wisconsin, especially within Lake Michigan. It will be important for the State reach out to those tribes to ensure their views are fully considered.

More specific comments based on GLIFWC staff's review of the draft Technical Report and draft EIS follow.

The Compact requires that in order for water to be transferred to a community within a

Ashley Hoekstra

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straddling county, certain requirements must be met. One requirement is that the water must be used “for the Public Water Supply Purposes of *the Community* within a Straddling County that is without adequate supplies of potable water;” (emphasis added).

The application, however, proposes to supply a number of other communities that are not currently served by the City of Waukesha. The draft Technical Review justifies the inclusion of these communities by referring to the State’s statutorily delineated water supply service area and asserting that this service area is equivalent to a community with a straddling county.¹ However, the statutory requirement to define a water supply service area cannot be used to circumvent the requirement in the Compact that the water diverted from the Great Lakes basin be used to supply *the Community* that is without adequate supplies of water. No evidence is provided in either the draft Technical Review or the draft EIS that the other Communities included in the application are without adequate supplies of potable water.

If the application is allowed to move forward in this manner, it could create a significant loophole in the Compact, one that certainly was not intended when the Compact was signed. Any county partially within the basin could simply define its water supply service area as the entire county and assert that its defined service area is the “equivalent” of a community. Then, if any one community within that county did not have adequate water supplies, it could simply apply for enough water to supply the rest of the county. The Compact, by its plain language, requires that “*the Community*” that would receive the water demonstrate its need, the application stretches the definition of a community to assert that any defined service area is its equivalent. If water is to be supplied to communities other than the City of Waukesha, those communities must demonstrate their need for Great Lakes water under the terms of the Compact.

Thanks you for the opportunity to submit these comments, we look forward to further discussion of these issues as the process moves forward.

Sincerely,



Ann McCammon Soltis, Director
Division of Intergovernmental Affairs

Attachment

cc: GLIFWC Board of Commissioners

¹ WI Stats. 81.343(1e)(d) states, “Community within a straddling county” means any incorporated city, town, or the equivalent thereof, that is located outside the basin but wholly within a county that lies partly within the basin and that is not a straddling community.”

GREAT LAKES INDIAN FISH & WILDLIFE COMMISSION

P. O. Box 9 • Odanah, WI 54861 • 715/682-6619 • FAX 715/682-9294



• MEMBER TRIBES •

MICHIGAN

Bay Mills Community
Keweenaw Bay Community
Lac Vieux Desert Band

WISCONSIN

Bad River Band
Lac Courte Oreilles Band
Lac du Flambeau Band

Red Cliff Band
St. Croix Chippewa
Sokaogon Chippewa

MINNESOTA

Fond du Lac Band
Mille Lacs Band

RESOLUTION NO. 09-19-06-03

WHEREAS, The Great Lakes Indian Fish and Wildlife Commission (GLIFWC) is an organization of eleven Anishinaabe Nations from Michigan, Minnesota and Wisconsin; and

WHEREAS, these Nations retain hunting, fishing and gathering rights in territories ceded to the United States in 1836, 1837, 1842, and 1854, which include portions of Lake Superior and the Lake Superior basin; and

WHEREAS, the Tribes of the Great Lakes Indian Fish and Wildlife Commission are committed to the protection of the Great Lake ecosystem, and particularly the Lake Superior ecosystem; and

WHEREAS, the Tribes of the Great Lakes Indian Fish and Wildlife Commission are concerned about the adverse consequences that will result from the removal or export of water from the Great Lakes basin; and

WHEREAS, the removal of Great Lakes water from the basin has the potential to impact spawning beds, migratory birds, coastal wetlands and wild rice beds in Lake Superior and elsewhere; and

WHEREAS, the Tribes of the Great Lakes Indian Fish and Wildlife Commission have passed resolutions opposing the removal of both ground and surface water from the Great Lakes basin; and

WHEREAS, the Governors of the eight Great Lakes States and the Canadian premiers of Ottawa and Quebec recently signed the Great Lakes-St. Lawrence River Sustainable Water Resources Agreement and Great Lakes-St. Lawrence River Water Resources Compact that contain substantive standards to govern withdrawals, conservation and use of water from the Great Lakes; and

WHEREAS, the Tribes of the Great Lakes Indian Fish and Wildlife Commission recognize the need for all Indian Nations that may be affected by the removal or export of water from the Great Lakes watershed to actively participate with the non-Native governments in the implementation of such standards.

BE IT THEREFORE RESOLVED, that the Board of Commissioners of the Great Lakes Indian Fish and Wildlife Commission directs Commission staff to participate, provide appropriate policy, biological, scientific, or technical input and develop comments from a ceded territory perspective on all processes and decisions regarding the development and implementation of the standards that will govern Great Lakes water withdrawals or exports.

BE IT FURTHER RESOLVED, that the Board of Commissioners of the Great Lakes Indian Fish and Wildlife Commission directs Commission staff to participate, provide appropriate policy, biological, scientific, or technical input and develop comments from a ceded territory

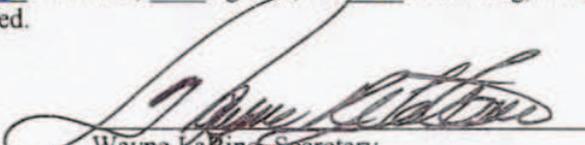
perspective on all processes and decisions involving the implementation of the Great Lakes Charter Annex 2001 and any agreements, compacts or legislation involving the implementation of the terms of the Annex.

BE IT FURTHER RESOLVED, that the Board of Commissioners of the Great Lakes Indian Fish and Wildlife Commission directs Commission staff to participate, provide appropriate policy, biological, scientific, or technical input and develop comments from a ceded territory perspective on relevant committees or working groups that are addressing or discussing issues or matters that relate to or affect ceded territory treaty rights and the natural resources and supporting habitats involved with those rights.

BE IT FURTHER RESOLVED, that the Tribes of the Great Lakes Indian Fish and Wildlife Commission urge federal, state and provincial governments to fully integrate all affected Indian Nations and their properly authorized agencies into all processes and decisions regarding the development and implementation of the standards that will govern Great Lakes water withdrawals or exports.

CERTIFICATION

I, the undersigned, as Secretary of the Great Lakes Indian Fish and Wildlife Commission Board of Commissioners, hereby certify that the Great Lakes Indian Fish and Wildlife Commission Board of Commissioners is composed of 11 members, of whom 8 members, constituting a quorum, were present and voting at a meeting hereof duly called, noticed, convened, and held on the 19th day of Sept, 2006; that an affirmative vote of 8 members; 0 against; and 0 abstaining, and the said resolution has not been rescinded or amended.


Wayne LaBine, Secretary
GLIFWC Board of Commissioners



American Bank

www.ambank.com

RECEIVED-DNR

AUG 24 2015

August 20, 2015

Ashley Hoekstra
DNR Bureau of Drinking Water and Groundwater
Box 7921
Madison, WI 53707-7921

DRINKING WATER & GW

Ms. Hoekstra,

I am writing this letter in support of the City of Waukesha's application for Lake Michigan water. Please understand I have been closely following the City's application process and based the detailed scientific evidence and extensive modeling studies, I believe that Lake Michigan water is the only reasonable water supply alternative for the City, because it the most protective of public health, the least likely to have adverse environmental impacts, the most reliable, and the most sustainable long-term water source.

The Waukesha's proposal makes sense as it will have no impact on Great Lakes levels. Waukesha has proposed returning no less than 100% of the volume of withdrawn water. Additionally, Waukesha's return flow will improve the quality of the Root River. Return flow water quality will meet all state and federal water quality limits. In some cases, return flow to the Root River will actually improve water quality in the river. This process would also improve the level of the Root River, particularly during fall spawning runs of salmon and trout. This would be great for area sportsmen like me.

I believe continuing to pull water from the deep aquifer for Waukesha is environmentally irresponsible. Waukesha's primary water source, the deep aquifer, is already down 400 to 600 feet and as the aquifer continues to decline, the water becomes brackish, like salt water. Contaminants such as radium, a known carcinogen, also increase with declining water levels. Continued pumping until the resource is exhausted is environmentally irresponsible and not sustainable for the long term.

It is important to note Waukesha is not requesting Lake Michigan water to fuel development. In Waukesha's service area approximately 70% of the land is developed; 15% is designated as environmentally protected; and only 15% is available for new development.

505 Main Street
P.O. Box 283
Brownsville, WI 53006-0283
Telephone 920•583•3166
Fax 920•583•4360

676 W. Johnson Street
P.O. Box 1077
Fond du Lac, WI 54936-1077
Telephone 920•922•9292
Fax 920•924•2323

1802 Horicon Street
Mayville, WI 53050
Telephone 920•387•8787
Fax 920•387•1335

W239 N1700 Busse Road
Waukesha, WI 53188
Telephone 262•523•1000
Fax 262•523•4186

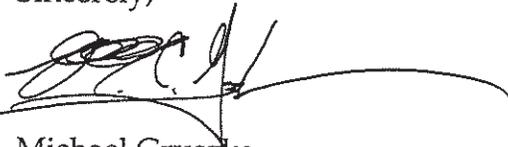
200 W. Main Street
P.O. Box 459
Omro, WI 54963-0459
Telephone 920•685•6401
Fax 920•685•6402

705 W. Water Street
P.O. Box 86
Princeton, WI 54968-0086
Telephone 920•295•3033
Fax 920•295•4341

Waukesha needs a reliable water supply for the long term. Waukesha examined many water supply alternatives. All the others have greater adverse environmental impacts and are less protective of public health. A Lake Michigan supply would sustainably provide a reliable water supply for the long term.

Lastly, the City of Oak Creek, Wisconsin, a community with an established water utility and excess water pumping capacity, has agreed to sell water to Waukesha. By selling water to Waukesha the ratepayers of Oak Creek can realize lower rates and increased inter-governmental cooperation. The Oak Creek/Waukesha agreement is an excellent example of how governments can work together to efficiently utilize taxpayer assets.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Gryczka", with a long horizontal flourish extending to the right.

Michael Gryczka
Vice President
American Bank
W239 N1700 Busse Road
Waukesha, WI 53188

Plumbers & Steamfitters Local 118

3030 39th Avenue
Kenosha, WI 53144

262.654.3815

<http://www.ualocal118.com/>

To: Ashley Hoekstra, DNR Bureau of Drinking Water and Groundwater

Fr: Roger Clark, Business Manager, United Association Plumbers and Steamfitters

Local 118

Da: August 28th, 2015

Re: Support of Waukesha's water application

Thank you for the opportunity to voice our support of this \$200 million project that will bring about 300 full-time jobs to the area during construction. The working men and women of Plumbers and Steamfitters Local 118, as well as the members of our statewide organization, the Wisconsin Pipe Trades Association, stand behind the City of Waukesha in its efforts.

The benefits of this project go beyond the economic boom it will cause, as it will result in a safe and reliable water source for thousands. The local groundwater Waukesha has been providing to its residents has levels of radium which exceed federal drinking water standards and is not a viable solution to the city's water challenge.

At the conclusion of a multi-year study, the Department of Natural Resources established that Waukesha should be allowed access to Lake Michigan water. After years of planning and careful research, Waukesha has reached this crucial point in its quest for clean water. The decision on an issue this important should be grounded in fact and take into consideration the economic impact it will have.

Moving forward with the Lake Michigan water diversion plan will result in full-time work for about 300 Wisconsinites. The benefits of approving Waukesha's plan will be realized by the residents who will receive the high-quality water they deserve and the works, contractors and suppliers who will work hard to develop the infrastructure.

Under the diversion plan Waukesha will return the same amount of water back to the lake, causing no net effect on lake water levels. Considering the facts, supporting a \$200 million project that will result in around 300 full-time jobs over three years of development is just common sense.

Root River - Section 14

Ephemeral Wetlands Present = 10 *confirmed
via DPRC staff and volunteer surveys

Reptiles/Amphibians

Common Name	Scientific Name	Special Designation
Blue-spotted salamander	<i>Ambystoma laterale</i>	LC
American toad	<i>Anaxyrus americanus</i>	
Northern leopard frog	<i>Lithobates pipiens</i>	
Western chorus frog	<i>Pseudacris triseriata</i>	LC

Breeding & Migratory Bird Species Documented = 40 total *data
harvested from eBird

Common Name	Scientific Name	Special Designation
Veery (migratory record)	<i>Catharus fuscenscens</i>	SGCN, PIF
Belted kingfisher (breeding record)	<i>Ceryle alcyon</i>	PIF
Wood thrush (breeding record)	<i>Hylocichla mustelina</i>	SGCN, PIF
Rose-breasted grosbeak (breeding record)	<i>Pheucticus ludovicianus</i>	PIF
Louisiana waterthrush (migratory record)	<i>Seiurus motacilla</i>	SGCN
Field sparrow (breeding record)	<i>Spizella pusilla</i>	SGCN, PIF

Invertebrates

Common Name	Scientific Name	Special Designation
Fairy shrimp spp.	<i>Anostraca spp.</i>	LC
Calico crayfish	<i>Orconectes immunis</i>	

Plants

*species observed during SEWRPC plant inventories

Common Name	Scientific Name	Special Designation
Wild sarsaparilla	<i>Aralia nudicaulis</i>	U
Green dragon	<i>Arisaema dracontium</i>	U
Heart-leaved aster	<i>Aster cordifolius</i>	U
Bur sedge	<i>Carex grayi</i>	U
Wood reed grass	<i>Cinna arundinacea</i>	U
False mermaid	<i>Floerkea proserpinacoides</i>	U
American gromwell	<i>Lithospermum latifolium</i>	R
Bugleweed	<i>Lycopus virginicus</i>	U
Indian pipe	<i>Monotropa uniflora</i>	U
Jacob's-ladder	<i>Polemonium reptans</i>	U
Leafcup	<i>Polymnia canadensis</i>	U
False melic	<i>Schizachne purpurascens</i>	U
Heart-leaved skullcap	<i>Scutellaria ovata</i>	U
Bladdernut	<i>Staphylea trifolia</i>	U
Red trillium	<i>Trillium recurvatum</i>	R
Black haw	<i>Viburnum prunifolium</i>	R

*LC=Wildlife listed by Parks as Local Concern

*U = Unusual SE WI

*R = Special Concern

*T = State-Threatened

*E = State Endangered

DPRC

SEWRPC

WI DNR

WI DNR

WI DNR

Hoekstra, Ashley N - DNR

From: Zarate, Sarah <Sarah.Zarate@Milwaukee.gov>
Sent: Friday, August 28, 2015 4:59 PM
To: DNR Waukesha Diversion App
Subject: wakesha water application
Attachments: Waukesha Water Letter - Common Council - 08_27_2015_ltrhd.pdf

To Whom It May Concern,

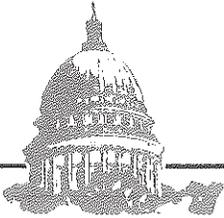
Attached are written comments in response to the draft EIS and draft Technical Review.

Best,
Sarah

Sarah Rola Zàrate | Office of Common Council President
Staff Assistant to President Michael J. Murphy
10th District
200 East Wells Street – 2nd Floor | Milwaukee, WI 53202
414.286.3272 | 414.708.1034 (cell) | 414.286.3456 (fax)
stasstp@milwaukee.gov



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MARK MILLER
WISCONSIN STATE SENATOR

P.O. Box 7882 Madison, WI 53707-7882

August 27, 2015

Cathy Stepp, Secretary
Wisconsin Department of Natural Resources
PO Box 7921
Madison, WI 53707

Dear Secretary Stepp,

As one of the primary authors of 2007 Wisconsin Act 227, which adopted the Great Lakes Compact in Wisconsin, I would like to offer my comments on the application for a diversion of Lake Michigan water by the City of Waukesha.

The Great Lakes-St. Lawrence River Water Resources Compact is an agreement negotiated and ratified by all eight Great Lakes States, both Canadian provinces bordering the Great Lakes, and approved by Congress. The Compact prohibits diversion of any waters of the Great Lakes basin out of the basin except as provided for in the Compact. One of those exceptions provides an opportunity for straddling communities and communities in straddling counties to apply for permission to divert water out of the basin. Such an application must meet the standards specified in the Compact and must be approved by the governors of all eight states. Approval of Waukesha's application is unlikely unless it meets all the requirements, including showing no reasonable alternative, a state-of-the art conservation program, and a viable plan for return flow.

Legislative findings in Act 227 state that "waters of the basin are precious public natural water resources shared and held in trust by the states;" and that the "waters of the basin can concurrently serve multiple uses.... recognizing that such uses are interdependent and must be balanced;" and "future diversions and consumptive uses of basin water resources have the potential to significantly impact the environment, economy, and welfare of the Great Lakes—St. Lawrence River region;" and "parties have a shared duty to protect, conserve, restore, improve, and manage the renewable but finite waters of the basin for the use, benefit, and enjoyment of all their citizens, including generations yet to come."

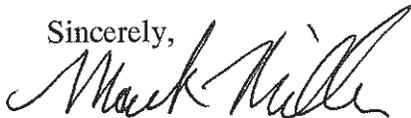
Any community in a straddling county, like the City of Waukesha, seeking a diversion must meet the standards set forth in the Compact, not only in the opinion of their state, but the other states as well. In Wisconsin, the Department of Natural Resources makes the initial determination whether the application meets the exception criteria. This determination is necessary but not sufficient since the application must also meet the criteria in the view of the other parties to the Compact.

With respect to this application, it is my understanding that the applicant believes it has met the standard. Many organizations and individuals still have questions and concerns. It is essential the Department consider very carefully the issues raised about the City of Waukesha's application. Approving an application without thoroughly examining and answering questions or considering modifications will not benefit the City of Waukesha or its residents who seek a safe and sustainable drinking water supply.

As you know, any Great Lakes Governor can reject an application for any reason. This application, if it moves forward, would be the first attempt by a community to seek a diversion approval. It must be the gold standard.

I implore you to thoroughly consider all issues and explanations raised by all parties. The citizens of Wisconsin and the Great Lakes Basin deserve a thoughtful, well-reasoned, science-based decision, whether that is an approval, rejection or modification.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Miller". The signature is written in a cursive style with a large, sweeping initial "M".

Mark Miller
State Senator
16th Senate District

W233 N2080 Ridgeview Parkway • Waukesha, WI 53188-1020 • Tel. (262) 542-5733

August 12, 2015

Ms. Ashley Hoekstra
DNR Bureau of Drinking Water and Groundwater
P.O. Box 7921
Madison, WI 53707-7921

RECEIVED-DNR
AUG 14 2015
DRINKING WATER & GW

RE: Waukesha Water Application

Dear Ms. Hoekstra:

My name is William J. Mielke, P.E., P.L.S., and I am the CEO of Ruekert & Mielke, Inc. and am submitting these comments in support of the City of Waukesha's application for extension of Lake Michigan water to the City. I served on the Wisconsin Legislative Council Special Committee on Great Lakes Water Resources Compact and am very familiar with the requirements for obtaining water from Lake Michigan. In addition, our firm has been involved in developing the water systems for the majority of municipalities in Waukesha County for the past 69 years.

Over that time period, we have witnessed a large growth in residential and industrial development which has led to a significant decline in the water levels of the deep aquifer. This decline in the aquifer has resulted in increased radium and decreasing water quality and if a change in water source for a large community like Waukesha is not undertaken, the water source will not be sustainable.

We were retained by the Southeastern Wisconsin Regional Planning Commission to provide the technical support and modeling for what became SEWRPC Planning Report No. 52, A Regional Water Supply Plan for Southeastern Wisconsin, dated, December 2010. This several year effort involved many experts in the water supply field and evaluated many various alternatives for achieving a sustainable water supply for the 7 county region. After considerable study and a great deal of public comments, the recommendation for the future water supply for the Waukesha area was that they should be provided an extension of Lake Michigan water supply.

While the report envisioned a supply from the City of Milwaukee, the fact that the source of water is proposed to be from the City of Oak Creek does not change any of the environmental benefits of the overall recommendation for receipt of Lake Michigan water. The provision of Lake Michigan water to Waukesha will allow the City to discontinue use of their deep well system which will allow the aquifer to recover and be able to be utilized by surrounding communities.

Letter to Ms. Ashley Hoekstra
August 12, 2015
Page 2

The requirement for return flow will also provide that this alternative will not have any impact on the Lake Michigan water levels. The return flow will be piped to the Root River where it will help to create a year round base flow to enhance the water quality and help create a better fishery. Any fear of this additional flow as to possible flooding will be mitigated by the Waukesha Wastewater Utility being able to divert their effluent to the Fox River during high flows on the Root River.

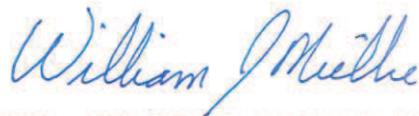
Another benefit of providing Lake Michigan water to Waukesha is the fact that the water does not contain the mineral hardness found in well water which will allow customers to eliminate their water softeners. This will significantly reduce the amount of chlorides discharged to the Fox River. It should be noted that the adopted Regional Water Supply Plan supports the adopted 2035 regional land use plan and will promote compact development versus sprawl.

Waukesha has prepared significant detailed planning to further refine the findings of the regional plan and to date have found nothing which would contradict the original plan's findings. We support Waukesha's application and believe it is the best alternative to providing a sustainable water source that is environmentally sound and cost effective when considering the long-term capital and operation and maintenance costs.

Thank you for the opportunity to comment on this very important plan to solve a long standing problem.

Very truly yours,

RUEKERT & MIELKE, INC.



William J. Mielke, P.E., P.L.S. (WI), (IL)
Chief Executive Officer
wmielke@ruekert-mielke.com

WJM:lfc

cc: File

Hoekstra, Ashley N - DNR

From: Kristy Meyer <KMeyer@theoec.org>
Sent: Thursday, August 20, 2015 10:04 AM
To: DNR Waukesha Diversion App
Subject: Ohio Environmental Council's testimony
Attachments: 08 18 2015 OEC Testimony_Milwaukee.pdf

To Whom It May Concern,

Please find my comments attached to this email. Thank you for the opportunity to provide testimony in Milwaukee on Tuesday, August 18th, and to submit these more in-depth comments.

There is still time to get this right.

Kind regards,
Kristy



Kristy Meyer | Managing Director, Agricultural, Health &
Clean Water Programs
Ohio Environmental Council
1145 Chesapeake Avenue, Suite I, Columbus, 43212
(614) 487-7506 OEC
(614) 487-5842 direct



We're excited to welcome Heather Taylor-Miesle as the OEC's new executive director! Learn more about Heather [here](#).



The City of Waukesha Water Diversion Application
Wisconsin Department of Natural Resources
Kristy Meyer, Managing Director, Agriculture, Health & Clean Water Programs, Ohio Environmental
Council
August 18, 2015

On behalf of the Ohio Environmental Council (OEC) and our more than 3,000 individual members and 100 group members, I would like to thank you for the opportunity to provide public comments on the City of Waukesha's Water Diversion Application.

My name is Kristy Meyer and I am the managing director of agricultural, health & clean water programs at the OEC. The OEC is a 46 year-old statewide not-for-profit advocacy organization whose mission is to secure healthy air, land, and water for all who call Ohio home. We use scientific research, statewide partnerships, legislative initiatives, and legal action to secure a healthier environment for Ohio's families and communities.

I have been working on the development and implementation of the Great Lakes- St. Lawrence River Basin Water Resources Compact for more than a decade. I have been involved in the development of the Compact, was present at the Governors' and Premiers' signing ceremony, successfully worked with Ohio's General Assembly to pass the Compact in our state, worked with Ohio's Congressional members to see it ratified in Congress, served on Ohio's implementation Advisory Committee, and continue to be involved in the implementation of the Compact. Before me, the OEC had been working on the development of the Compact for more than two decades as the Compact offers important water supply protections for millions of Ohioans and the wildlife and natural systems that depend on the Ohio Lake Erie basin. The OEC recognized the importance of the Compact because for the first time the Great Lakes were treated as one ecosystem - what happens in one part of the Great Lakes has implications for all of the Great Lakes.

The OEC, therefore, is very concerned about the city of Waukesha's Water Diversion application. This application has the potential to unravel the commitment that we have made to the lakes and the wildlife and people that depend on the lakes.

The city of Waukesha, as you know, is requesting to divert on average 10.1 million gallons of water per a day (mgd) and 16.7 mgd at its peak from Lake Michigan to the city of Waukesha. While the Compact does ban any Great Lakes water leaving the basin, there are some exceptions. Under the Compact's exception standard, a community within a county straddling the Great Lakes watershed can apply for a water diversion after the community has exhausted all other options. The city, however, must also demonstrate that the diversion amount being requested is considered reasonable for the water uses' intended purposes. The city of Waukesha's application does neither. Therefore, we believe the application does not comply with the Great Lakes Compact.

According to an independent study by Jim Nicolas, former director of the U.S. Geological Survey in Michigan and now an independent consultant, Waukesha's water demand has been falling since the late 1980's. Yet the city of Waukesha projects a much higher demand for water use in the future. This is inconsistent with historical trends. Even with Waukesha's 2050 Water Service Supply Area (WSSA) projected industrial and residential growth of 76,330 people, the expected total average day demand will be

6.7 mgd and at the maximum 11.1 mgd. These numbers are well below the 16.7 mgd that Waukesha currently is demanding. As such, the requested amount cannot be considered reasonable.

Furthermore, Waukesha provides no justification of why it needs so much water. One can only presume that the City of Waukesha includes the city of Pewaukee and the towns of Delafield, Genesee, and Waukesha in its WSSA to highlight the Waukesha's need for additional water. These towns, however, have not expressed a need for a new source of, or a need for, additional water. Furthermore, some of the public officials from these areas have indicated that they do not need water now or into the foreseeable future. So this begs the question, Why is the city of Waukesha requesting such an unjustifiable amount of water?

Lastly, over the last couple of years groundwater levels in Southeast Wisconsin have been rising, or at the very least stabilizing, according to the "An Analysis of the City of Waukesha Diversion Application" report authored by Jim Nicolas. Recently two independent engineering firms looked at Waukesha's proposal, including the alternatives, which include utilizing existing water supply wells and just treating the wells with high levels of radium to meet water quality requirements for safe drinking. The engineering firms concluded that Waukesha can use its existing deep and shallow water wells to provide ample clean water and meet current and future demands, as long as the city invests in three new reverse osmosis plants. Utilizing Waukesha's existing wells and treating the wells with high levels of radium with reverse osmosis would cost half the cost of Waukesha's water diversion request, saving residents and local businesses money while meeting future demands and protecting the health of Waukesha's residents, according to the independent analysis.

The Great Lakes are a shared resource. No single state owns the Great Lakes. Rather each state and province is a steward of the Lakes. While on its face, Wisconsin may not see approving this diversion application as impacting the whole Great Lakes region, each state will be impacted and the Great Lakes eventually will pay the ultimate price.

For those of you that might not know, Lake Erie is the most biologically productive. It produces more fish for human consumption than all of the other Lakes combined. This coupled with boating, wildlife watching, and other recreational activities, Lake Erie generates more than \$12.9 billion in revenue for the state of Ohio each year. Tourism is the 3rd largest industry in Ohio and more than a quarter of the revenue generated comes from the eight Ohio counties that border the Lake. More than 119,000 people's jobs directly depend on Lake Erie. It is clear that Lake Erie is vital to the health and economic vitality of Ohio. Ohio's Governor, John Kasich, also understands the importance of Lake Erie to Ohio. As such, and since the decision on Waukesha's water diversion application has such big implications for the region, my Governor has a stake in this decision. He has stood strong, protecting Lake Erie from harmful water diversion proposals in the past.

Your decision on this application has the ability to unravel the benefits Ohio is awarded because of Lake Erie. You might be wondering how. A favorable decision could ensure the Great Lakes' death by a thousand straws, as there are many communities outside of the watershed around the Great Lakes that might be more willing to consider withdrawing Great Lakes water in the future. With a favorable approval of this diversion application, it almost ensures that those future communities would also get favorable approvals.

For all these reasons, we respectfully urge the Wisconsin DNR to deny this diversion application. We further ask the city of Waukesha to withdrawal its application. Instead, we respectfully suggest Waukesha utilize its existing wells and build the three reverse osmosis plants to protect its residents, as well as save their residents unnecessary high rate increases.

Thank you again for this opportunity.

Department of Public Health

Dottie-Kay Bowersox, MSA
Public Health Administrator

730 Washington Avenue
Racine, Wisconsin 53403
262-636-9201
262-636-9564 FAX



City of Racine, Wisconsin

Website: www.cityofracine.org/Health
Email: publichealth@cityofracine.org

Environmental Health Division
262-636-9203

Community Health Division
262-636-9431

Laboratory Division
262-636-9571

August 28, 2015

Mr. Eric Ebersberger, Water Use Section Chief
WI DNR, GEF2 DNR Central Office
101 S. Webster Street
P.O. Box 7921
Madison, WI 53703-7921

Mr. Ebersberger,

Thank you for giving me the public opportunity to present in-person on August 18th in Racine, WI and to submit written comments on this important proposal. My name is Julie Kinzelman, and I am the Laboratory Director for the City of Racine Health Department.

The Racine Health Department provides a variety of Level III clinical, laboratory, environmental health and public health education services. As part of the Racine Health Department, the Laboratory has primary responsibility for environmental monitoring and the assessment of a variety of aqueous environments within the City of Racine and SE WI including coastal recreational water, tributaries, and storm water. Recent initiatives by the RHD Laboratory include developing monitoring programs, identifying pollution sources, and recommending remediation or best management practices at coastal recreational areas and beaches within the City of Racine and across multiple jurisdictions throughout the States of WI and IL via contractual agreements and grant funded activities. We also conduct physical, chemical and microbial assessments on storm water, inland lakes and watersheds in an effort to protect human health through the development of site appropriate restoration activities, including support of watershed restoration planning initiatives. Completed watershed monitoring projects include the Root, Pike and Wind Point Watersheds. We are currently compiling data on the Oak Creek Watershed for the purpose of watershed restoration planning. We work closely with area partners, sharing our monitoring results and encouraging a community approach to preserving and enhancing the quality of the Great Lakes and its associated tributaries. In addition to engaging local partners, the laboratory also participates in issues surrounding water quality monitoring on a regional and national scale; working with the US EPA to develop the Beach Sanitary Survey Tool for the Great Lakes (which has led to the release of over \$20 million dollars for pollution source identification and remediation through the GLRI RFP process), guidance documents (predictive models and rapid analytical methods) and recommendations regarding ecosystem services indicators for rivers.

As one of the primary agencies with primary responsibility for accumulating historical and generating new data as part of the Root River watershed planning process, we are well aware of the paucity of data for several river

segments. In the presentation made by WDNR staff it was said that the initial technical review indicated that there would not be adverse impacts if Waukesha was allowed to return flow down the Root River. This a rather sweeping statement and one that should be supported by sound science and sufficient data. In light of the fact that a limited amount of data exists for locations upstream of the Johnson Park sampling site in the City of Racine, I have several concerns:

- It was projected that 80 – 90% of summer baseflow would be comprised of treated effluent. As such there will be no appreciable dilutional effects. The entire main stem of the Root River, along with its associated canals and tributaries, are listed on the state’s impaired waters [303(d)] list for excess phosphorus concentrations. Elevated levels of phosphorus are already seen in dry weather, under base flow conditions, and frequently downstream from existing WWTP effluent discharge locations. A TMDL does not exist for the Root River. What is its assimilative capacity to absorb additional quantities of nutrients, TSS and/or pollutants?
- If 80 – 90% of baseflow is comprised of treated effluent, how will the composition of aquatic life be impacted; there will likely be alterations in composition due to temperature and other changes in water quality parameters.
- Although it was stated that the Waukesha utility would need to upgrade their plant to meet more stringent discharge requirements it is not something that will be easily accomplished. What happens if they cannot meet these standards; from the public comments it appears that they are already having compliance issues with other constituents. In a previous assessment of the Root River, canal sites on the west and main branch locations often had elevated conductivity levels, for example, possibly due to discharges into the canal system via WWTP effluent; this was demonstrated to influence downstream locations. Current treatment techniques also do not remove other contaminants of concern, e.g. pharmaceuticals.
- While the increase in baseflow may be beneficial for fish passage, it may also increase the release of sediment bound pollutants such as nutrients and bacteria, allowing them to be transported to downstream locations on a continual, rather than event based, basis. In our study of the Root River, turbidity levels were positively associated with stream flow and precipitation suggesting the mobilization of non-point sources. It was indicated that no sediment transport modelling has occurred and an impairment for TSS already exists.
- There were many comments from the public regarding increased flow and flooding. The information presented did not appear sufficient to allay their concerns. Have flood risk analyses been performed?
- The US EPA has recently approved the Root River Watershed Plan as meeting its 9-elements. A major feature of the watershed restoration plan is a future decision regarding the alteration or removal of the Horlick Dam. There has been no assessment of the potential impacts the removal of the Horlick Dam would have on the water quality should a Waukesha diversion with return flow down the Root River be approved. Changes in flow regimen and addition and/or transport of upstream pollutants could also change the composition of the recommendation set forth in the plan, which have now been adopted by several municipalities.

In summary, no downstream monitoring plan has been vetted or is in place. At a previous public meeting Waukesha said they would contribute to, or consider, a water quality monitoring program if/when they were approved for the diversion. There was no mention of how they would ensure “no adverse impacts” at this most

Department of Public Health

Dottie-Kay Bowersox, MSA
Public Health Administrator

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City of Racine, Wisconsin

Website: www.cityofracine.org/Health
Email: publichealth@cityofracine.org

Environmental Health Division
262-636-9203

Community Health Division
262-636-9431

Laboratory Division
262-636-9571

recent public meeting. There is no way to ensure that no adverse impacts are occurring to the downstream reaches of the Root River and nearshore waters of Lake Michigan without a comprehensive monitoring plan in place and there seems to be no commitment to do so. Comprehensive monitoring of base (pre-diversion) conditions, coupled with modelling, could provide the information needed to begin to address the bulleted points above. If a diversion is granted, comprehensive monitoring must occur and the cost should be borne by Waukesha as they are deriving the benefit.

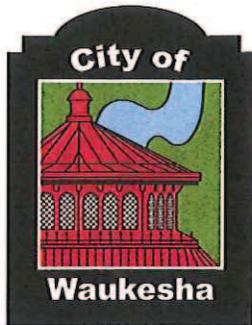
Finally, the proposed service area is much larger than the current service area. As the built environment increases there are likely to be additional adverse impacts on water resources. This should be taken into account in addition to the diversion issue. Conservation and protective measures (inclusive of control of both point and non-point pollution sources) should be considered as equally important.

Thank you for allowing public comments on such an important proposal and the due diligence of the WDNR staff in assembling and analyzing available data as part of their technical review process. At the current time I believe there may be insufficient data to allay some of the concerns presented at the public meetings and ensure that there will be no adverse impacts to the Root River downstream of the proposed discharge point and adjacent waters of Lake Michigan. I encourage the WDNR to develop and vet a comprehensive monitoring program before proceeding any further and that monitoring downstream reaches of the Root River and the nearshore waters of Lake Michigan be made mandatory should the diversion be approved as a condition of, and at the expense of, Waukesha.

Regards,

A handwritten signature in black ink that reads "Julie Kinzelman". The signature is written in a cursive, flowing style.

Julie L. Kinzelman, PhD, MS, MT (ASCP)
Laboratory Director/Research Scientist
City of Racine



OFFICE OF THE MAYOR

201 DELAFIELD STREET
WAUKESHA, WISCONSIN 53188-3633
TELEPHONE 262/524-3701 FAX 262/524-3899

Shawn N. Reilly
sreilly@ci.waukesha.wi.us

August 25, 2015

Ashley Hoekstra
DNR Bureau of Drinking Water and Groundwater
Box 7921
Madison, WI 53707-7921

Thank you for the opportunity to provide my written comments on Waukesha's application to obtain and return Great Lakes Water. I testified at both the Waukesha and the Milwaukee public hearings. Since my oral testimony was time limited, I decided to submit this written testimony to supplement my oral testimony.

As Mayor of Waukesha, my job is to see that the needs of the families and businesses in Waukesha have the resources and services they need. No service to a community is more important than a healthy and dependable water supply. My campaign for Mayor emphasized my commitment to winning approval of a Great Lakes water supply. I defeated the incumbent Mayor with 62% of the votes cast. The citizens of Waukesha have made it clear that they support Waukesha's application for water from Lake Michigan.

There are many that portray the review of our application as a choice between providing safe drinking water for Waukesha or protecting the Great Lakes. The truth is, our application does both! Our use will not harm the Great Lakes or set a precedent for harm to the Great Lakes by others. Since our application meets the terms of the Compact, its approval will provide a strong and essential legal defense against any attempted water withdrawals and diversions that do not meet the terms of the Compact.

It has been disheartening to read and hear what some have been saying about our application. Our application is not a precedent for water being sent to California or elsewhere. The enactment of the Great Lakes Compact, settled that issue. Water cannot be pumped beyond those counties that straddle the Great Lakes basin divide.

The Compact specifically allows communities in straddling counties, like Waukesha, to request Great Lakes water if they have no REASONABLE water supply alternative and if the water is recycled back to the Lake after treatment. Waukesha's application meets those standards.

Approval of our application will not lead to 100's of requests by other communities in straddling counties. The Alliance for the Great Lakes estimated that four communities similar to Waukesha might consider applying for water from the Great Lakes under the terms of the Compact in the future. In the event another four communities within straddling counties apply for water from the Great Lakes, and if these communities also have no reasonable alternative, the approval of four more communities will also have no impact on the level or quality of the Great Lakes.

The Compact requires that water be returned to the Lake after use and treatment. We will do so. We will withdraw one one-millionth of 1% of Great Lakes water. And then put it back. That's like removing one



teaspoon of water out of an Olympic swimming pool, then pouring it back. It has no impact. Waukesha's proposal is labeled as a diversion, which is technically correct but misleading. Treated water will be deposited back into the basin at the same time water is being withdrawn. Water will leave the Great Lakes Basin, but a similar amount of water will be recycled back into the Lake.

Our return flow will improve a tributary to Lake Michigan, the Root River. By adding our return flow water to the Root, we will increase the flow during drier periods, helping fish passage and the Root River fish egg collection facility. We have levels of wastewater treatment that surpass most communities in the state. Our treated water will be cleaner than the Root River for important parameters like phosphorus. Although others will try to confuse the issue, adding flow and cleaner water to the Root River will provide an environmental benefit. It is as simple as that.

Waukesha thoroughly examined water supply alternatives for more than a decade and determined that Lake Michigan is the only reasonable alternative. A 32-member panel of experts studied the issue for the regional planners at the Southeastern Wisconsin Regional Planning Authority and came to the same conclusion. The DNR examined our application for the past five years, with an extraordinary degree of scrutiny and detail that was frankly frustrating at times, but necessary. The DNR's exhaustive review reached the same conclusion as the city and regional planners. Lake Michigan is Waukesha's only reasonable alternative.

The Compact requires that there must be "no reasonable alternative." The exhaustive DNR analysis shows we meet that standard. Opponents to our application attempt to confuse the public by using the term "last resort" as opposed to the correct term, "no reasonable alternative." Lake Michigan water is not Waukesha's "last resort" but it is the only "reasonable alternative." Thankfully, neither the deep or shallow aquifer has been totally depleted. Thankfully the Compact does not require total depletion of the local aquifer in order for a community to be eligible for water from the Great Lakes.

Opponents also say we should ignore the state's water supply service area laws. As a Mayor and as a recovering attorney, I know this is not an option. I firmly believe that ignoring science based planning laws would be an enormous mistake and a dangerous precedent. Our utility, like all water utilities, must plan for the future and meet the needs of its service area. Under both the Compact and the state service area laws, our water supply service areas must be consistent with the sewer service areas. These sewer service areas have existed for decades. Pursuant to law and as required by environmentally sound planning, Waukesha is required to include lands outside the present City of Waukesha within its water service area.

It is frustrating that opponents claim the state's service area law is inconsistent with the Compact. This position conveniently ignores that it was the administration of Governor Doyle that participated in the writing and approval of the Compact and it was the same administration that wrote the service area law. When the Compact was adopted, it was expected that Waukesha's application would include the proposed service area. It is bad faith for those who supported the Compact and Wisconsin's implementation law to now argue that the intent of the Compact is not being met.

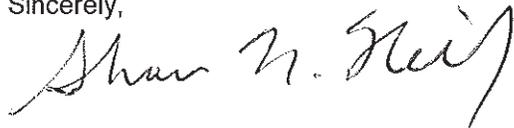
The claim by our opponents that is most troubling is that continued use of groundwater by Waukesha "means there is no environmental impact to surrounding wetlands, surface waters or the deep groundwater aquifer." This blatantly false claim shows that the Compact Implementation Coalition is willing to say anything to prevent Waukesha from using and returning Lake Michigan water. It denies a basic environmental fact that they themselves have stated numerous times in numerous forums – groundwater use affects surface waters.

Our opponents argue that Waukesha should use less water. The DNR modeled what the environmental impacts would be if Waukesha used far less than the amounts it said are a reasonable forecast and found damage to 700 to 2,300 acres of wetlands, along with negative impacts to streams, lakes and aquifers. This is not how I define "no environmental impact."

It is important to remember the history and goals of the Great Lakes Compact. Prior to the Compact, decisions on the Great Lakes were often arbitrary or political. The Great Lakes states and provinces were rightly concerned that the laws protecting the lakes would be successfully challenged on that basis. The false allegations that Waukesha will harm the Great Lakes along with absurd assertions that depleted groundwater can be used with no environmental impacts, has generated many comments against Waukesha's application. But the Compact is about science and the law, not public opinion influenced by a well-organized disinformation campaign.

In summary, the DNR's extensive analysis got it right. Lake Michigan is the only reasonable water supply for Waukesha. Let's move the process forward so Waukesha can have a sustainable and healthy water supply and at the same time prove that the Compact does and will protect the Great Lakes.

Sincerely,

A handwritten signature in black ink that reads "Shawn N. Reilly". The signature is written in a cursive style with a large, sweeping flourish at the end.

Shawn N. Reilly
City of Waukesha
City Hall
201 Delafield Street
Waukesha, WI 53188
sreilly@ci.waukesha.wi.us



Wisconsin Pipe Trades Association

11175 W Parkland Avenue
Milwaukee, WI 53224
414.359.1310
<http://www.wipipetrades.org>

To: Ashley Hoekstra, DNR Bureau of Drinking Water and Groundwater
Fr: Terry Hayden, President, Wisconsin Pipe Trades Association
Da: August 28th, 2015
Re: Support of Waukesha's water application

Thank you for the opportunity to voice our support of this \$200 million project that will bring about 300 full-time jobs to the area during construction. The working men and women of the Wisconsin Pipe Trades Association, stand behind the City of Waukesha in its efforts.

The benefits of this project go beyond the economic boom it will cause, as it will result in a safe and reliable water source for thousands. The local groundwater Waukesha has been providing to its residents has levels of radium which exceed federal drinking water standards and is not a viable solution to the city's water challenge.

At the conclusion of a multi-year study, the Department of Natural Resources established that Waukesha should be allowed access to Lake Michigan water. After years of planning and careful research, Waukesha has reached this crucial point in its quest for clean water. The decision on an issue this important should be grounded in fact and take into consideration the economic impact it will have.

Moving forward with the Lake Michigan water diversion plan will result in full-time work for about 300 Wisconsinites. The benefits of approving Waukesha's plan will be realized by the residents who will receive the high-quality water they deserve.

Under the diversion plan Waukesha will return the same amount of water back to the lake, causing no net effect on lake water levels. Considering the facts, supporting a \$200 million project that will result in around 300 full-time jobs over three years of development is just common sense.



Catholic Memorial HIGH SCHOOL

August 20, 2015

Ashley Hoekstra
DNR Bureau of Drinking Water and Groundwater
P. O. Box 7921
Madison, WI 53707-7921

RECEIVED-DNR
AUG 24 2015
DRINKING WATER & GW

Dear Ms. Hoekstra:

I write today with great interest in the deliberations being undertaken as to the application by the City of Waukesha for access to safe, fresh, and affordable water from Lake Michigan.

I have been connected to civic life and activities in the City of Waukesha for more than thirty years – since my family first became involved at Catholic Memorial High School (CMH). For the last seven years I have had the honor and joy of returning as President of this, my alma mater.

I am proud of this city and feel it important to add my thoughts to the deliberations now taking place. As a Catholic priest and head of a not insignificant religious non-profit, I believe that I can bring forward some unique insights. I hope that they will be shared, and will be impactful upon the decision makers in this matter.

In my work at CMH, and at the local Catholic parishes, I am aware of the social and economic diversity of this community. Greater diversity than I think most outsiders expect. All citizens of Waukesha want a stable source of safe and affordable drinking water. But, those in lower economic ranges (sadly more numerous than many see) are especially sensitive to the increasing costs of water in their homes and at the business where they are employed.

Additionally, as there is a known correlation between poverty and health, it is not a false presumption to be concerned that the poor in Waukesha are being disproportionately impacted by continued, cumulative exposure to the questionable qualities of this area's somewhat tainted well water sources. It is important to note that in the same way that poverty in the City and County of Waukesha often goes unseen, so too do the voices of these families risk going unheard in a government deliberative process such as this.

CMH is, essentially, a \$10M a year business. Like other charitable non-profits, we depend on a strong community of other businesses large and small. These are the venues of our working families; these are the resources of local philanthropy; these are the lifeblood of a community.

Whether for stability, and hopefully growth, in employment and charity in Waukesha there needs to be a stable source of affordable water. Even I understand economics enough to know that to the same extent that "as go the major cities so go their regions", it is also the case that as go the medium cities so go the suburbs, exurbs, and rural areas.

My science teachers (and others I trust) tell me that the water science and technical aspects of the application make sense. I personally understand that for the people of Waukesha and the business community, the application makes sense. And, blessed with roles in the wider Church that take me regularly throughout the region and the nation, I believe that for wider and greater goods, the application makes sense.

Please know of my appreciation for you, the DNR, and the work of so many who must stand in judgment in this process. I trust that your mandate to do what is best will embrace what just seems to make so much sense.

Thank you for your considerations.

Sincerely yours,



Very Reverend Paul B. R. Hartmann
President

C: Mayer Shawn Reilly

Hoekstra, Ashley N - DNR

From: Marc Smith <msmith@nwf.org>
Sent: Friday, August 28, 2015 2:15 PM
To: DNR Waukesha Diversion App
Cc: Ebersberger, Eric K - DNR; shalili.pfeiffer@wisconsin.gov; Marc Smith
Subject: Great Lakes Coalition Commens on Waukesha Diversion Application
Attachments: GL Coalition Waukesha Comments 8 2015.pdf

On behalf of a large coalition of binational Great Lakes conservation organizations, please find attached comments on the Waukesha Lake Michigan diversion application.

We appreciate the opportunity to comment and look forward to working with you throughout this process. If you have any specific questions about our comments, please contact me, msmith@nwf.org.

Thank you,

Marc Smith
Policy Director
National Wildlife Federation
734-255-5413
msmith@nwf.org

August 28, 2015

Ashley Hoekstra
Wisconsin Department of Natural Resources
Bureau of Drinking Water and Groundwater
BOX 7921
Madison, Wisconsin 53707-7921

Dear Ms. Hoekstra,

On behalf of the undersigned conservation organizations representing hundreds of thousands of people from across the Great Lakes Basin, we are writing to respond to the Wisconsin Department of Natural Resources (WI DNR) June 25, 2015 request for public comments concerning the City of Waukesha's proposed Water Diversion Application under the Great Lakes – St. Lawrence River Basin Water Resources Compact (Compact).

As you know, the Compact bans water diversions outside of the Great Lakes basin with limited exceptions. Only under the Compact's exception standard can a community apply for a diversion. Any community applying for a diversion must demonstrate that it has exhausted all available options to obtain water. In essence, a diversion must be a last resort. The Waukesha diversion application is the first since the Compact was adopted in 2008. This application is a critical proving ground for the Compact, establishing its effectiveness and serving as a precedent for subsequent diversion proposals.

We are concerned that the City of Waukesha: 1) does not justify why it needs so much more water than it is currently using; 2) does not consider all alternatives to provide potable water for its residents; and 3) proposes to divert Great Lakes water to communities who do not need it. These actions are required by the Compact before an entity can request an exception from the ban on diversions.

Our coalition is not opposed to Waukesha getting Great Lakes water, provided they comply with the provisions in the Compact. However, the current application falls well short of the Compact's requirements. Therefore, we respectfully request that this application be rejected on the grounds that it does not meet the exception standard requirements of the Compact.

Specifically, we have the following concerns regarding the application:

Waukesha Fails to Demonstrate its Need for Water

A National Wildlife Federation [report](#) authored in February of 2013 by Jim Nicholas, a scientist and retired director of the U.S. Geological Survey's Michigan Water Science Center, shows that regional groundwater levels in Southeast Wisconsin are stabilizing or rising. Meanwhile, Waukesha's water use has been decreasing since the late 1980's. However, in its application,

Waukesha projects a much higher demand that is inconsistent with its own historical trends. The application fails to demonstrate why the city needs so much more water than it is currently using.

Waukesha has a Feasible, Much Less Expensive, Alternative to Meet its Water Needs

Under Section 4.9.3.d of the Compact, an applicant for a diversion must demonstrate that “There is no reasonable water supply alternative within the basin in which the community is located, including conservation of existing water supplies.” A July 2015 [report](#) by two independent engineering firms found that Waukesha has a feasible water supply alternative. The report concluded that Waukesha can use its existing deep and shallow water wells to provide ample clean and safe water to its residents now and in the future if it invests in additional water treatment infrastructure to ensure the water supply meets state and federal standards. This treatment alternative costs much less than a diversion, secures water independence for Waukesha residents, protects public health, and minimizes adverse resource impacts. Treating their existing wells for radium in order to provide potable water is an obvious option that the City of Waukesha does not even consider. Over three dozen other communities in Wisconsin alone, not to mention scores of other communities around the country, have chosen this route and already provide potable drinking water to their residents. Failure to evaluate this alternative is not consistent with the Compact.

Diverting Great Lakes Water for Towns that Don’t Need It and Have Not Requested Water

The city’s application includes towns in Waukesha County (Pewaukee and the Towns of Delafield and Waukesha, among others) that may not need water. To date, none of the communities in this “extended service area” has demonstrated that it is without adequate supplies of safe drinking water. In fact, some officials in these areas have stated that they do not need water now or in the foreseeable future. Including these towns in the application conflicts with Section 4.9.3.d of the Compact. While Wisconsin statutes may dictate that Waukesha include these areas as part of its application, the Compact is clear that a need for water must exist in the community to be eligible for a diversion. If these areas are included as part of Waukesha’s diversion application, they must demonstrate that they meet all requirements of the Compact, including water conservation, before the application is finalized.

In closing, we respectfully request that this application be rejected on the grounds that it is not consistent with the Compact. We appreciate your consideration of our comments. We value the WI DNR’s efforts in leading this application public review process. If you have specific questions about our comments, please contact Marc Smith with National Wildlife Federation at msmith@nwf.org. We look forward to working with you throughout this process.

Sincerely,

Marc Smith
Policy Director
National Wildlife Federation

George Meyer
Executive Director
Wisconsin Wildlife Federation

Molly Flanagan
Vice President, Policy
Alliance for the Great Lakes

Sandy Bihn
Executive Director
Lake Erie Waterkeeper Inc.

Jennifer Bolger Breceda
Executive Director
Milwaukee Riverkeeper

Gary Botzek
Executive Director
Minnesota Conservation Federation

Erin Baird
Executive Director
Indiana Wildlife Federation

Michael J. Ryan
President
Northwest Indiana Steelheaders

Nick Schroeck
Executive Director
Great Lakes Environmental Law Center

Matt Meersman
President
Friends of the St. Joe River Association

Lori Andresen
President
Save Our Sky Blue Water (Minnesota)

Duane De Vries
President, Dwight Lydell Chapter
Izaak Walton League of America

Jill Crafton
Chair, Great Lakes Committee
Izaak Walton League of America

Kristy Meyer
Managing Director
Ohio Environmental Council

Jennifer McKay
Policy Specialist
Tip of the Mitt Watershed Council

Liz Kirkwood
Executive Director
For Love of Water (FLOW)

Carol Hays
Executive Director
Prairie Rivers Network

Lee Willbanks
Executive Director
UpperSt.LawrenceRiverkeeper,Savethe River

Ivan J. Hack Jr
Headwaters Chapter President
Izaak Walton League of America

Scott Strand
Executive Director
MinnesotaCenterforEnvironmental Advocacy

Sarah Miller
Great Lakes Water Sustainability Activist
Toronto, Ontario Canada

Robert Stegmier
National Director
IzaakWaltonLeagueofAmerica (MI)

Kerry Schumann
Executive Director
WI League of Conservation Voters

LeRoger Lind
President
Save Lake Superior Association

Peter Iwanowicz
Executive Director
Environmental Advocate of New York

Captain Paul Pacholski
President
Lake Erie Charter Boat Association

Thom Gulash
President
WI Federation Great Lakes Sport Fishing Clubs

Nicole Barker
Executive Director
Save the Dunes (Indiana)

Marc Hudon
Chair, Water Commission
Nature Quebec

Dan Eichinger
Executive Director
Michigan United Conservation Clubs

Linda Peck
Conservation Chair
Central Minnesota Audubon Society

Lucy Saunders
Organizer
conserve-greatlakes.com

Mark Redsten
President and CEO
Clean Wisconsin

Jill Ryan
Executive Director
Freshwater Future

Larry Mitchell
President
League of Ohio Sportsmen

Brian Smith
Associate Executive Director
Citizens Campaign for the Environment

Debra Cronmiller
President
League of Women Voters of Wisconsin

John Jackson
Advocate
Binational Great Lakes Citizen

Neil F. Woodworth
Executive Director and Counsel
Adirondack Mountain Club (NY)

Peter Bauer
Executive Director
Protect the Adirondacks (NY)

Chris Kolb
President and CEO
Michigan Environmental Council

Karen Hobbs
Senior Policy Analyst
Natural Resources Defense Council

Kevin Chlad
Legislative Director
The Adirondack Council

Lino Grima, Wayne Howard
Co-Chairs
Sierra Club Binational Great Lakes Committee

Darwin Adams
Chairman
Illinois Council of Trout Unlimited

Deanne White
State Director
Clean Water Action of Minnesota

Paul Gallay
President and Hudson Riverkeeper
Riverkeeper

Cindy Skrudrud
Clean Water Advocate
Sierra Club, Illinois Chapter

Steven Schmuki
President
Waukesha County Environmental Action League

Jesse Kharbanda
Executive Director
Hoosier Environmental Council

Browyn Clement
Coordinator
Great Lakes Commons

Lisa Wozniak
Executive Director
MI League of Conservation Voters

Jeff Forester
Executive Director
Minnesota Lakes and Rivers Advocates

Matt Misicka
Vice President
Ohio Conservation Federation

Bob Gunther
State Representative

District 23A
Blue Earth, Faribault, Jackson, Martin and
Watonwan Counties

Minnesota House of Representatives

COMMITTEES: GREATER MINNESOTA ECONOMIC & WORKFORCE DEVELOPMENT POLICY
JOB GROWTH & ENERGY AFFORDABILITY POLICY & FINANCE
AGING AND LONG TERM CARE
RULES
WAYS AND MEANS

August 28, 2015

*Tim Gary
Mike Bruhn*

Cathy Stepp
Secretary, Wisconsin Department of Natural Resources
101 S. Webster Street
PO Box 7921
Madison, WI 53707-7921

Dear Secretary Stepp,

As legislators from the State of Minnesota, and the first state to approve the Great Lakes Compact, we are writing to express concerns about the proposed Waukesha diversion. Our concerns with the proposed Waukesha diversion stem from our desire to see the integrity of the Great Lakes Compact (Compact) standards for diversions be met. Additionally, Waukesha will be the first community to apply for an exemption from the ban on diversions under the Compact. Waukesha's proposal could set a precedent for how future applications are viewed; it is important that we get this right if we are to maintain the strength of the Compact.

We understand that the Wisconsin Department of Natural Resources (DNR) is currently accepting public comment on an Environmental Impact Statement and technical review regarding its recommendation that Waukesha's application for Great Lakes water be approved under the Compact. The Compact allows for a community within a straddling county to receive an exemption from the ban on diversions outside the basin if certain strict criteria are met.

To be clear, if the applying community meets the standards for an exemption, we are not opposed to communities within straddling counties of the basin receiving one. We acknowledge that Waukesha is within its rights to apply for an exemption for the ban on diversions as a community within a straddling county and that it has a radium issue in its drinking water it needs to address.

We have concerns about the Waukesha diversion as it is currently proposed. Our hope is that you will take these concerns into consideration and make adjustments to improve the application before it is sent out for consideration by the Governors and Premiers.

Specifically we have the following concerns we would like the DNR to address regarding the Waukesha proposal and the standards set forth in the Compact.

No reasonable alternative. The Compact calls for an applicant to have no reasonable alternative for drinking water to receive an exemption from the ban on diversions. Why is it not reasonable for Waukesha to address its radium water problems through other treatment methods as dozens of other communities have?

Expanded service area. The Compact allows for communities within straddling counties to apply for an exemption. The Waukesha application currently calls for water not only for its community but for surrounding communities as well. The current service area is approximately 20 square miles and uses 6.5 million gallons a day. The expanded service area Waukesha seeks serves Waukesha and surrounding communities of approximately 37 square miles and an average 10.1 million gallons a day with a peak of 16.7 million gallons a day. It may be allowable under Wisconsin State Law to have expanded service areas, but we share the concern raised by many that this approach could violate that standards of the Compact and its definition of what types of communities are eligible to apply. The expanded service area gives the appearance to some that the Waukesha application is primarily designed to address the water utility's desire for growth and less about addressing a drinking water problem. How do you view the expanded service area complying with the Compact standards?

Degradation of the Root River. The Waukesha application calls for its treated sewage or return flow to be returned to the Great Lakes through one of its tributaries, the Root River. Concerns have been raised that the data needed to determine if degradation will occur have not been collected and would not be available for years. The proposal calls for 80%-90% of the Root River's flow to be made up of treated sewage or return flow in dry months. The Compact calls for receiving waters to not be degraded from return flow. The Root River is classified as an impaired river. Can the DNR give better assurances that the Root River will not be degraded? If the proposal called for building a pipeline to receive Great Lakes water, then why did the proposal not call for a pipeline to return the water instead of potentially further jeopardizing an already impaired river?

Conservation of water. The Compact calls for communities that apply for the exemption from the ban on diversions to show conservation methods in order to reduce the amount of Great Lakes water needed or eliminate the need altogether. Why are there no conservation standards set in place for the areas in the expanded service areas outside the City of Waukesha? Why are the conservation measures called for not stronger?

It is our sincere hope that the DNR will substantially address the issues we raise here before forwarding it to the region for review. These are not standards that are optional, but rather required under the Compact. It would be unfortunate if the first application for an exemption from the ban on diversions raised so many questions that seem to raise doubts about compliance with the Compact.

Sincerely,



State Representative Bob Gunther
House District 23A

Hoekstra, Ashley N - DNR

From: Toomsen, Sarah <Sarah.Toomsen@milwaukeecountywi.gov>
Sent: Friday, August 28, 2015 8:09 PM
To: DNR Waukesha Diversion App
Subject: Water Diversion Plan - Comments from DPRC
Attachments: Root River Natural Areas Data.xlsx

Please find the following remarks from the Milwaukee County Department of Parks, Recreation and Culture on the proposed Waukesha Water Diversion Plan.

Central elements of the Milwaukee County Parks Department's (DPRC) core mission are the effective stewardship of the natural and recreational resources in Milwaukee County. The City of Waukesha's Lake Michigan water diversion proposal poses significant risks to both of those areas. The following are DPRC questions and concerns regarding the proposal based on the analysis provided by the Wisconsin Department of Natural Resources in its Draft Environmental Impact Statement (EIS).

The EIS states that construction of the supply and return pipes would require a 75' right-of-way (ROW). The DPRC is concerned about potential construction impacts to approximately 6,000' of Root River Parkway environmental corridor lands adjacent to the Puetz Road ROW between 51st Street and 68th Street. The Puetz Road ROW in that section is 80' in width. Approximately 9,000' of Root River environmental corridor could be impacted for the return route along 68th Street, Ryan Road, and 60th Street. Environmental corridors, or linear areas in the landscape that provide high concentrations of significant natural resources and resource-related features, are mapped and protected through guidelines and recommendations provided by both local and regional planning authorities.

The supply and return route stream crossings (2) would be where Puetz Road and Ryan Road cross the Root River. Both would likely require an easement from the DPRC and a right-of-entry permit for construction. In addition, the Oak Leaf Trail is routed underneath Puetz Road at the intersection with the Root River, so a temporary detour during construction would be necessary.

The application focuses largely on a short list of main pollutants in the discharge (eg, Total Suspended Solids, bacteria, phosphorous). The DPRC is concerned about the effect of pharmaceuticals in the discharge water, particularly on amphibians breeding within the river corridor. The EIS acknowledges that some pharmaceuticals are known to pass through water treatment plants, but then goes on to say that there is only a **slight risk** to resident fish and aquatic macroinvertebrates in the estuary. Similarly, the DPRC has concerns about the discharge of viruses to the watershed and their effect on river corridor wildlife populations and on human health. DPRC staff has documented a large number of ephemeral wetlands within the river corridor that could be potentially impacted during flooding events. Any contaminants in the water during these events could potentially impact amphibian breeding populations, eggs, or larvae.

On Page 20 of the EIS states that the Underwood Creek return flow option was not viable due to the difficulty of obtaining required permits. Why would permits be too difficult to obtain for the Underwood Creek, but not for the Root River?

The DPRC does not remove downed trees from environmental corridors including stream channels. This management policy includes ash trees that have succumbed to the emerald ash borer (EAB). The Root River

Parkway corridor downstream of the proposed discharge site is currently experiencing significant die-back of native ash populations due to the impacts of EAB. This is greatly reducing tree canopy which will potentially lead to less shading of the Root River and increases in water temperatures. It could also lead to a significant increase of woody debris clogging the Root River due to dead ash trees falling and lodging in the river channel. The DPRC is concerned that the higher average stream flows occurring as a result of the proposed discharge of treated water to the Root River in combination with an increase in tree falls in the stream channel will cause an increase in stream bank erosion. Further, the DPRC would argue that these problems would be magnified during flood events.

Regarding the proposal impact on the size of the floodplain, if it were to increase, feasible areas identified for future extensions of the Oak Leaf Trail could be eliminated from consideration as efforts are made to avoid construction in floodplains. In addition, increased flooding could lead to the spread of reed canary grass (an aggressive invasive species) within the corridor.

There is also concern that the stone that will likely be installed around the pipes will change the PH of the soils and, thereby, have a negative impact on wetlands. If the pipes are open trenched, the groundwater could flow in the stone adjacent to the pipes which could change the direction of travel and impact existing groundwater discharge areas in wetlands and streams.

According to the application, "the return flow temperature would be warmer than the ambient Root River temperature in late fall and winter". Although the applicant indicates this issue can be adequately addressed later on in that "a successful Application would trigger more detailed data gathering and analysis for thermal and water quality requirements for the Root River discharge permit", the DPRC is concerned about the thermal impacts on fish and other aquatic creatures in terms of the potential disruption of biological processes that have evolved over thousands of years based on cyclical water conditions.

There are a number of other critical stream parameters discussed in the EIS such as dissolved oxygen, nutrients, and chlorides. Unfortunately, the anticipated impacts on these parameters are described as either unknown or in a manner that is more hopeful than definite that they will be minimal or non-existent. There should be more certainty to the anticipated impacts of a proposal that is of the size and scope of the water diversion/discharge request.

The EIS fails to address the effect of the proposal on the public health of Milwaukee County residents. One potential impact is that people will be exposed to higher levels of certain toxic chemicals and pathogens contained in the discharge water. A second possible negative consequence on public health is reduced recreational opportunities associated with a decline in the quality of natural resource features in the river corridor. Such opportunities provide therapeutic benefits and, hence, it is critical that they be preserved, particularly in urban settings where they are often not widely available. Although the Root River is currently listed as an "impaired water", there are pockets of native plant and animal communities (see attached table) that require protection. These communities will form the basis for the future restoration of the river. Consequently, decision-makers must be extremely wary of undertaking actions that could further degrade the resource or compromise its ability to be restored.

At this time the DPRC believes that more investigation regarding the impacts to river ecology and the related natural systems should be studied and critically reviewed as a part of continued due diligence for the proposed Waukesha Water Diversion.

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RECEIVED-DNR
AUG 28 2015
DRINKING WATER & GW

August 25, 2015

Ms. Ashley Hoekstra
DNR Bureau of Drinking Water and Groundwater
Box 7921
Madison, WI 53707-7921
DNRWaukeshaDiversionApp@wisconsin.gov

RE: Letter of Support for the City of Waukesha's Water Diversion

Ms. Hoekstra,

On behalf of the Independent Business Association of Wisconsin (IBAW) I would like to submit the following letter of support for the City of Waukesha's application to divert Lake Michigan water to service the City of Waukesha.

The IBAW is one of the State of Wisconsin's premier business organizations. Our mission is to represent the interests of small, privately held businesses in Wisconsin and we have member companies that view the diversion as a top regional priority.

The diligent process that has been navigated over the past several years has proven that Lake Michigan water is the only reasonable water supply alternative for the City as it is the most protective of public health, the least likely to have adverse environmental impacts and the most sustainable long-term water source.

Continuing to pull water from the deep aquifer for Waukesha is environmentally irresponsible. Waukesha's primary water source, the deep aquifer, is already down 400 to 600 feet and as the aquifer continues to decline, the water becomes brackish, like salt water. Contaminants such as radium, a known carcinogen, also increase with declining water levels. Continued pumping until the resource is exhausted is environmentally irresponsible and not sustainable for the long term.

Waukesha needs a reliable water supply for the long term. Waukesha examined many water supply alternatives. All the others have greater adverse environmental impacts and are less protective of public health. A Lake Michigan supply would sustainably provide a reliable water supply for the long term.

Waukesha is not requesting Lake Michigan water to fuel development. In Waukesha's service area approximately 70% of the land is developed; 15% is designated as environmentally protected; and only 15% is available for new development.

The City of Oak Creek, Wisconsin, a community with an established water utility and excess water pumping capacity, has agreed to sell water to Waukesha. By selling water to Waukesha the ratepayers of Oak Creek can realize lower rates and increased inter-governmental cooperation. The Oak Creek/Waukesha agreement is an excellent example of how governments can work together to efficiently utilize taxpayer assets.

As I am sure you are aware, Milwaukee County in general, and the City of Milwaukee in particular, often use the phrase "regional cooperation" when dealing with issues critical to them. These issues have included education (Milwaukee Public Schools), clean water (Milwaukee Metropolitan Sewage District), quality of life (the Brewers and Miller Park) and most recently, downtown economic viability (the Bucks Arena.)

The phrase "regional cooperation" implies all communities should participate for the greater good. In short, what is good for Milwaukee is also good for the region and impacts surrounding communities. However, regional cooperation must also be practiced by Milwaukee. They, too, have a responsibility to take part in regional cooperation. After all, as Milwaukee Mayor Barrett often points out, Milwaukee is not an island.

For the long term viability of both Waukesha and Milwaukee communities, we urge the diversion be approved.

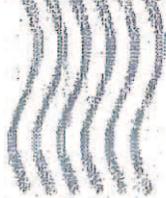
Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Kohlmann". The signature is fluid and cursive, with a long horizontal stroke at the end.

Steve Kohlmann
Executive Director
Independent Business Association of Wisconsin (IBAW)

Independent
Business
Association
of Wisconsin
SIN
BROOKFIELD, WI 53045



53707792121

Ms. Ashley Hoekstra
DNR Bureau of Drinking Water and Groundwater
Box 7921
Madison, WI 53707-7921



53707792121

Hoekstra, Ashley N - DNR

From: WWMD <pkling@waterfordwwmd.com>
Sent: Thursday, August 27, 2015 10:37 AM
To: DNR Waukesha Diversion App
Cc: Gary Hansen
Subject: Waukesha Water Diversion
Attachments: Waukesha Water Diversion Issues - WWMD.docx

Ashley,

Attached are our comments concerning the proposed water diversion by the City of Waukesha.

Please feel free to contact either the Waterford Waterway management District or myself with questions or for additional information.

Paul Kling
WWMD Secretary
414-232-0693
pkling@waterfordwwmd.com



"Changing our World One Drop at a Time"
Waterford Waterway Management District
WWW.waterfordwwmd.com

August 26, 2015

To whom it may concern,

The Waterford Waterway Management District (WWMD) was formed in 2003 under Wisconsin Statute Chapter 33.21 as a Public Inland Lake Protection and Rehabilitation District, for the Fox River from Marsh Road in the town of Waterford to the impoundments dam in the Village of Waterford. The resulting 1,100 acre body of water is comprised of the Fox River, Tichigan Lake and Buena Lake. Our purpose, as set by state statutes, is for the "undertaking a program of lake protection and rehabilitation of a lake or parts thereof within the district".

Water flow

Currently, the source of the water in the impoundment is water collected in the Fox River's watershed and the discharge of the water treatment plant in Waukesha.

The Waterford Dam Operation Order, as implemented by the Wisconsin Department of Natural Resources (WDNR), dated October 15, 1982, requires a minimum flow of 37 cubic feet per second. This equates to 23,976,000 gallons per day. The proposed diversion of up to 10,500,000 gallons per day amounts to a 44% reduction in flow through the waterway.

The order also sets a minimum water level of 772.63 feet above sea level. Racine County, who is in charge of operating the dam, has been able to generally maintain an operating level of 773.74 feet, or 1.11 feet above the minimum. Our calculations show that the reduced flow at the current discharge rate would lower the water level by an inch a month. Within a year, the water level would be down to the minimum. What then?

There are already areas in the waterway that are too shallow to get a boat over. Some riparian owners have less than 18 inches of water off their piers. A reduction to the minimum level would leave boats sitting on the bottom, and making much of the waterway unusable.

Restoration

The WWMD is working on a multimillion dollar project to remove years of built up sediment that is currently impeding the navigation and general recreation of the waterway. The completed WDNR permit application should be completed and filed by October 1st. Our concern is that the water level reduction would double the cost of our project. That's a burden that can't be imposed upon the residents of the waterway, by an arbitrary decision upstream. Is Waukesha willing to chip in the difference?

Economic Concerns

There is an unreported economic impact to this diversion to those downstream. Researching property values in Racine County, and more specifically those around our waterway, riparian properties are assessed about 28% higher than comparable non-riparian properties. It's a fact of life that one has higher taxes for a recreational waterfront.

Should parts or the entire waterway become unusable, revenues stand to fall by 25% or more because of lower property values. This means that the money lost from the lower valued riparian owner properties will be made up by the non-riparian property owners. As my tax bill goes down, everyone else's goes up.

We're not talking about paltry sums of money. The economic loss to the riparian property owners will likely be on the order of \$75 million. This loss will trigger even more losses in the form of business losses, job losses, tourist revenue losses, and so on. If the waterway rehabilitation isn't done, the economic loss to the area could exceed \$100 million.

Should this project ultimately proceed as proposed, we ask that provision be included that make the City of Waukesha responsible for the hardship and costs that will be incurred by those downstream.

Finally, state statute 30.275 designates our Fox River, as one of the "scenic urban waterways and shall receive special management".

The WWMD is asking that the WDNR comply with the intent of the law and do a thorough evaluation of what this diversion will mean environmentally, recreationally and financially to the thousands of people downstream who have invested time and money into their properties and their way of life.

Sincerely,

Paul Kling
Secretary
Waterford Waterway Management District

Hoekstra, Ashley N - DNR

From: Jim Pindel <jpindel@wi.rr.com>
Sent: Tuesday, August 18, 2015 8:22 AM
To: DNR Waukesha Diversion App
Cc: abarrows@waukeshacounty.gov; Al Sikora; Barbara Holtz; Bob Bartholomew; Dean Falkner; Doug Koehler; Francis Stadler; Jim Pindel; Ritchie, Jim M - DNR; mary; Randal Craig; Randy Meier; Sampson, Chad; Shelley Tessmer; thekendalgroup@sbcglobal.net; Tom Slawski
Subject: SEWFRC comment concerning "Waukesha Diversion Application"

August 18, 2015

To whom it may concern,

The Southeastern Wisconsin Fox River Commission (SEWFRC) is charged by state law with the responsibility of caring for the Fox River, presently from the northern boundary of the City of Waukesha on the north downstream to the Waterford dam on the south. Specifically our charge is to:

- (a) **Protect and rehabilitate the water quality** of the surface waters and the groundwater of the Illinois Fox River basin that are located in a river municipality.
- (b) **Protect and enhance the recreational use of the navigable waters** of the Illinois Fox River basin that are located in a river municipality.
- (c) **Increase water and boating safety on the navigable waters** of the Illinois Fox River basin that are located in a river municipality.

Because of these directives we are very concerned with the possibility of any change in the discharge of water from the City of Waukesha's wastewater treatment plant into the Fox River. Presently this discharge of very clean treated effluent is a significant portion of the flow of the Fox River, especially during the summer and fall seasons when the river's flow is usually reduced by dry weather. This source of flow is essential to the navigability of the river for recreational boating and the preservation of the high quality fishery, including a number of endangered, threatened, and special concerned species.

For these reasons the SEWFRC has gone on record with the City of Waukesha stating that we are opposed to any change from the present discharge schedule of treated effluent into the Fox River especially during low-flow periods.

The Wisconsin Department of Natural Resources (WDNR) released its draft environmental impact study (EIS) and tentative approval to Waukesha's application for Great Lakes water on June 25, 2015. The fact that the Great Lakes Compact does not consider consequential damages to the environment of other watersheds or waterways should be addressed and provisions to the Compact should be added to protect US citizens and other ecosystems that could be affected by decisions made by the Compact. Similarly if the EIS by the WDNR does not require or at least consider the consequences of the actions in one specific environmental study on all adjacent or affected ecosystems, it is lacking in support and service to all the citizens of Wisconsin.

We have been made aware of a new and independent analysis by the Compact Implementation Coalition (CIC) that offers a non-diversion solution for the City of Waukesha. This alternate plan leaves the discharge of the City of Waukesha's water treatment plant going into the Fox River. CIC's plan costs over \$150,000,000 less than the proposed use of Great Lakes water plan and meets the health standards for radium and other contaminants. The CIC's non-diversion plan provides for an adequate supply of water for the City of Waukesha until at least 2050. Interestingly the non-diversion plan uses all of the same data and assumptions made by the

City of Waukesha in its application but comes to the exactly opposite conclusion that diversion of Great Lakes water is not necessary and certainly is not a last resort.

It does not seem reasonable that the unwarranted request for Great Lakes water from one Wisconsin municipality should be allowed to negatively affect thirteen other Wisconsin communities including the Town of Waukesha, the Town of Mukwonago, the Town of Vernon, the Town of Waterford, the Town of Burlington, the Town of Wheatland, the Town of Salem, the Village of Big Bend, the Village of Mukwonago, the Village of Waterford, the Village of Rochester, the Village of Silver Lake, and the City of Burlington. Isn't the responsibility of the Wisconsin DNR to protect all of the waterways and ecosystems in Wisconsin for the common good of its citizens?

We the SEWFRC subscribe to the common sense solution proposed by the group of environmental organizations comprising the CIC calling on the WDNR to deny the City of Waukesha's request for Great Lakes water.

Thank you for considering the serious impact that this diversion of water away from the Fox River could have on the recreational use and aquatic habitat that the Fox River provides.

Sincerely,

James J Pindel (Secretary/Treasurer SEWFRC)

Hoekstra, Ashley N - DNR

From: Mike Ruzicka <mike@gmar.ws>
Sent: Friday, August 28, 2015 3:36 PM
To: DNR Waukesha Diversion App
Subject: Letter Regarding the City of Waukesha's Water Diversion Petition
Attachments: GMAR Ltr of Support.pdf

Ashley,

Attached, please find our letter in support of the City of Waukesha's application for a water diversion.

Thank you,
Mike Ruzicka

Mike Ruzicka, CAE, RCE
President
[Greater Milwaukee Association of REALTORS®](#)
12300 W. Center Street
Milwaukee, WI 53222
414.778.4929
mike@gmar.ws

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GMAR
Greater Milwaukee Association of
REALTORS®
Est. 1892

Ashley Hoekstra
DNR Bureau of Drinking Water and Groundwater
Box 7921
Madison, WI 53707-7921

September 28, 2015

Dear Ms. Hoekstra,

On behalf of the Greater Milwaukee Association of REALTORS®, I am writing in support of the City of Waukesha's petition for a diversion from Lake Michigan.

REALTORS® sell more than just bricks and mortar, they sell the quality of life associated with property as well. The quality of utilities and public services that serve a property are an integral part of the quality of life that comes with a property.

We know that Waukesha's primary water source is depleted and has radium levels in excess of federal drinking standards. Recharging of the aquifer currently serving Waukesha from rain and snowmelt is limited because of a layer of shale. Continuing to use groundwater in Waukesha is not sustainable. It makes no sense to exhaust current groundwater resources before switching to a sustainable alternative.

Based on the results of extensive studies completed the DNR, we believe there will be no detrimental effect on Lake Michigan lake levels, nor will any water be exported beyond the Waukesha service area.

Just as spotty electrical service, bad roads, or underperforming schools negatively impact a property's value, so too will a poor water supply to the homes and businesses in Waukesha. The limited alternatives to diverting Lake Michigan water to Waukesha would be cost prohibitive and cause further economic hardship to property owners in Waukesha.

The Compact was designed to ensure that decisions would be based on science, not politics. Waukesha's application lives up to the Great Lakes Compact – Waukesha has shown it does not have an alternative and will return the water to the lake.

The DNR has a legacy of basing its decisions on sound environmental science, not on emotion, anecdotal evidence or "NIMBY"ism." We would like the department to continue that legacy.

Thank you for your time and attention to this matter.

Sincerely,

Mike Ruzicka
President





FIRST FEDERAL Bank of Wisconsin
PO Box 1198
Waukesha, WI 53187

(262) 542-4448
FAX (262) 548-8871
www.firstfederalwisconsin.com

RECEIVED-DNR

AUG 17 2015

DRINKING WATER & GW

August 12, 2015

Ms. Ashley Hoekstra
DNR Bureau of Drinking Water and Groundwater
Box 7921
Madison, WI 53707-7921

Dear Ms. Hoekstra:

I am writing about the Waukesha water application for Great Lakes water. I understand that the DNR is now accepting public comments.

I am the Chairman and CEO of a \$240MM Bank in Waukesha with 34 employees. I am concerned about the continued viability of our community without a reliable water supply to depend on. In our community we are all concerned about protecting our local and regional economy and the health of our families.

Waukesha did not pollute the water, but rather our water supply is contaminated by radium and strontium, substances that occur naturally. Our primary water supply is depleted and the Lake Michigan alternative provides a safe resolution with 100% of the volume of water withdrawn going back to Lake Michigan.

As business people, we do not make decisions based only on conditions today, but rather we also analyze the future to meet supply and demand criteria. Uncertainty is an obstacle in making business decisions and investing in the future, so we need a permanent solution.

The DNR committed to a thorough review that will hopefully withstand the scrutiny of other states in the compact. Thank you for protecting our families, our businesses and our environment.

Very truly yours

A handwritten signature in blue ink, appearing to read "Gary Riley".

Gary Riley
Chairman & CEO



August 28, 2015

Cathy Stepp
Secretary, Wisconsin Department of Natural Resources
101 S. Webster Street
PO Box 7921
Madison, WI 53707-7921

Via Hand Delivery

Dear Secretary Stepp,

As legislators from the eight states that are home to the Great Lakes, we are writing to express concerns about the proposed Waukesha diversion. Our concerns with the proposed Waukesha diversion stem from our desire to see the integrity of the Great Lakes Compact (Compact) standards for diversions be met. Additionally, Waukesha will be the first community to apply for an exemption from the ban on diversions under the Compact. Waukesha's proposal could set a precedent for how future applications are viewed; it is important that we get this right if we are to maintain the strength of the Compact.

We understand that the Wisconsin Department of Natural Resources (DNR) is currently accepting public comment on an Environmental Impact Statement and technical review regarding its recommendation that Waukesha's application for Great Lakes water be approved under the Compact. The Compact allows for a community within a straddling county to receive an exemption from the ban on diversions outside the basin if certain strict criteria are met.

To be clear, if the applying community meets the standards for an exemption, we are not opposed to communities within straddling counties of the basin receiving one. We acknowledge that Waukesha is within its rights to apply for an exemption for the ban on diversions as a community within a straddling county and that it has a radium issue in its drinking water it needs to address.

We have concerns about the Waukesha diversion as it is currently proposed. Our hope is that you will take these concerns into consideration and make adjustments to improve the application before it is sent out for consideration by the Governors and Premiers.

Specifically we have the following concerns we would like the DNR to address regarding the Waukesha proposal and the standards set forth in the Compact.

No reasonable alternative. The Compact calls for an applicant to have no reasonable alternative for drinking water to receive an exemption from the ban on diversions. Why is it not reasonable for Waukesha to address its radium water problems through other treatment methods as dozens of other communities have?

Expanded service area. The Compact allows for communities within straddling counties to apply for an exemption. The Waukesha application currently calls for water not only for its community but for surrounding communities as well. The current service area is approximately 20 square miles and uses 6.5 million gallons a day. The expanded service area Waukesha seeks serves Waukesha and surrounding communities of approximately 37 square miles and an average 10.1 million gallons a day with a peak of 16.7 million gallons a day. It may be allowable under Wisconsin State Law to have expanded service areas, but we share the concern raised by many that this approach could violate that standards of the Compact and its definition of what types of communities are eligible to apply. The expanded service area gives the appearance to some that the Waukesha application is primarily designed to address the water utility's desire for growth and less about addressing a drinking water problem. How do you view the expanded service area complying with the Compact standards?

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Conservation of water. The Compact calls for communities that apply for the exemption from the ban on diversions to show conservation methods in order to reduce the amount of Great Lakes water needed or to eliminate the need altogether. Why are there no conservation standards set in place for the areas in the expanded service areas outside the City of Waukesha? Why are the conservation measures called for not stronger?

It is our sincere hope that the DNR will substantially address the issues we raise here before forwarding it to the region for review. These are not standards that are optional, but rather required under the Compact. It would be unfortunate if the first application for an exemption from the ban on diversions raised so many questions that seem to raise doubts about compliance with the Compact.

Sincerely,



Cory Mason
Representative
Wisconsin



Scott Pelath
Representative
Indiana



Rebekah Warren
Senator
Michigan



Edna Brown
Senator
Ohio



Joe Mullery
Representative
Minnesota



Ann Rest
Senator
Minnesota



Curt Sonney
Representative
Pennsylvania



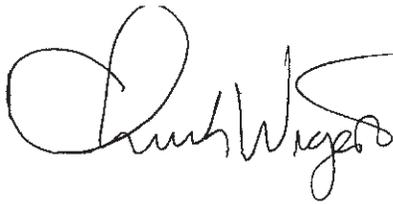
Joe Zakas
Senator
Indiana



Pamela Althoff
Senator
Illinois



Katrina Shankland
Representative
Wisconsin



Chuck Wiger
Senator
Minnesota



Gary Hebl
Representative
Wisconsin



Ann Williams
Representative
Illinois



Tim Mahoney
Representative
Minnesota



Nick Milroy
Representative
Wisconsin



Steve Bieda
Senator
Michigan



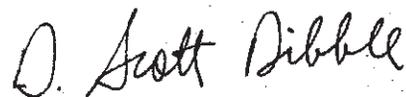
Kelly Cassidy
Representative
Illinois



Kathy Sheran
Senator
Minnesota



Mandela Barnes
Representative
Wisconsin



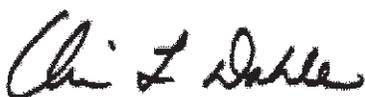
Scott Dibble
Senator
Minnesota



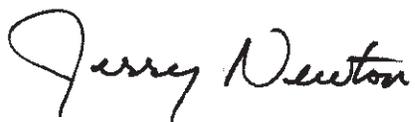
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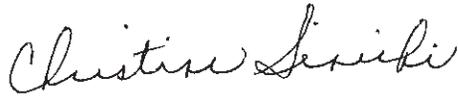
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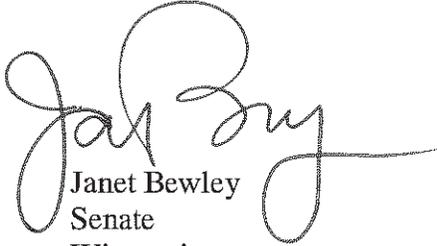
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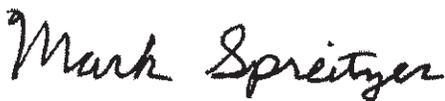
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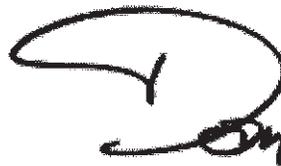
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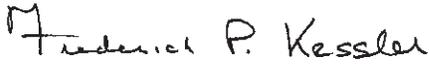
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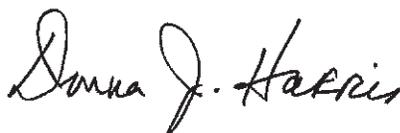
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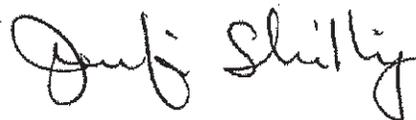
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Senator
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Jennifer Shilling
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Wisconsin



Barbara Flynn Curie
Representative
Illinois



Derek Miller
Representative
Michigan

Hoekstra, Ashley N - DNR

From: Reiland, Andy <Andy.Reiland@safway.com>
Sent: Friday, August 21, 2015 4:21 PM
To: DNR Waukesha Diversion App
Subject: Submitted Comments
Attachments: DNR Comments - Waukesha Water Appl.docx

Thank you again for the time you all took to put on 3 well run meetings and allowing all of those who wished to speak to do so.

Attached is a copy of my complete comments.

Andy Reiland
Waukesha Alderman Dist. 13
And Common Council President

Thank you for the opportunity to provide comments on your draft technical review and environmental impact statement. My name is Andy Reiland and I represent the residents of District 13 as a member of the Waukesha Common Council and Common Council President.

My District includes south western part of the city and is mainly made of residential homes.

As a resident and someone that listens to many other residents, we all share a strong desire to get safe drinking water and to make sure the solution is one that will be reliable and long-lasting. I am confident from the briefings, and from examining the extensive and detailed engineering behind this proposal, that it is the correct solution.

It is disappointing to see outside special interests proposing an alternative that has obvious legal, engineering and planning flaws and that would only be, at best, a short-term approach. They promote the application of treatment technology that has only been used in one much smaller community.

The residents in Waukesha do not believe we should spend significant money on that type of questionable approach. Let's be absolutely sure this solution will last and not have to be redone at enormous additional cost in the near future.

There also seems to be a perception that Waukesha's project would harm the Great Lakes. I have not heard anything tangible that supports that argument. As you have identified in your review, this project will not have any adverse impact on Lake Michigan. (It also prevents further damage to local groundwater, wetlands and streams).

If there are future proposals by other communities in straddling counties, they need to be evaluated on a case-by-case basis and rejected if they cannot provide the same level of Great Lakes protection that is provided by the Waukesha proposal. On the other hand, if others do similar projects with no adverse impact on the Great Lakes, they should be approved. The Compact protects the Great Lakes against the type of large diversions without return flow that could pose a real threat to the Great Lakes. Waukesha's proposal is only a precedent for possible proposals by communities in need in straddling counties that return water to the Great Lakes and that do not cause environmental harm.

Also, keep in mind that the residents in Waukesha care about the protection of the Great Lakes as much as the residents in the Great Lakes Basin. The close proximity of Lake Michigan amplifies the respect, appreciation, and use of this world-class resource. That is why the City of Waukesha provided needed support for passage of the Great Lakes Compact.

Our desire and support to protect the Great Lakes does not stop at the drainage basin boundary. If Waukesha residents believed this project would harm the Great Lakes you would hear our voices and concerns. We realize this project will actually benefit a tributary, not adversely impact Lake Michigan.

In preparing this analysis, the City looked at all of the viable options and made changes to the initial proposal in response to comments by the public and DNR. The City's technical team reduced the volume of water to reflect the latest data and the successful results of our outstanding water conservation program. Our residents understand and take water conservation seriously. We utilized nationally recognized experts in developing our program and will continue improving it.

The DNR and others also urged us to move the return flow away from Underwood Creek to the Root River. Despite substantial additional costs, the City made that change to our proposal in order to benefit the Root River and to enhance the DNR egg collection station on the Root.

For the well-being of our families, our water supply solution must include adequate flow to reliably serve residents and private users. Our residents, like everyone, need jobs from successful commercial and industrial facilities, which also rely on a reliable source of clean water.

Our residents are very concerned to learn that the proposal by outsiders that which should rely on depleted groundwater resources will cause adverse impacts to our valued local wetlands. The outsiders may deny those impacts, and ignore the connections between groundwater and surface water, but the DNR's analysis shows they are real. Groundwater is not a reasonable solution for Waukesha.

In closing, I want to emphasize the need for a well-engineered and reliable long term solution for the health of our current and future residents. We appreciate the hard work that the DNR has put into its review of our proposal over the past five years and agree with your conclusion that we meet the requirements of the Great Lakes Compact to use and return Lake Michigan water.

Again thank you for listening to my comments.



PLUMBERS LOCAL 75

11175 West Parkland Avenue
Milwaukee, Wisconsin 53224-3135
(414) 359-1310 FAX: 359-1323
(888) 248-3392

To: Ashley Hoekstra, DNR Bureau of Drinking Water and Groundwater
Fr: Spencer Statz, Plumbers Local 75
Da: August 18th, 2015
Re: Support of Waukesha's water application

Thank you for the opportunity to testify in support of a \$200 million project that will bring about 300 full-time jobs to the area during construction. This project will not only bring an economic boom to the area, but a safe and reliable water source.

The working men and women of Plumbers Local 75, as well as the members of our statewide organization, the Wisconsin Pipe Trades Association, stand behind the City of Waukesha in its efforts.

Although Waukesha is currently providing local groundwater to its residents, the water's level of radium exceeds federal drinking water standards and is not a sustainable solution to the city's water needs.

The Department of Natural Resources concluded after years of study that Waukesha should have access to Lake Michigan water and we agree. Years of research and good planning has brought Waukesha to this crucial point. We believe the decision on an issue as important as this should be supported by facts and take into consideration what kind of economic impact it will have on the region.

In addition to providing Waukesha residents with the high-quality water they certainly deserve, moving forward with the Lake Michigan water diversion plan will provide full-time work for about 300 hard-working Wisconsinites. The benefits of approving Waukesha's plan will be realized not only by its residents, but also by those workers, contractors and suppliers who will contribute to the infrastructure's development.

If it is granted access, Waukesha will be returning the same amount of water back to the lake, causing no net effect on lake water levels. With that in mind, supporting a \$200 million project that will create about 300 full-time jobs during the three years of construction is just common sense.

Business Manager
Steve Breitlow



Hoekstra, Ashley N - DNR

From: Hahn, Michael G. <MHAHN@SEWRPC.org>
Sent: Friday, August 28, 2015 2:57 PM
To: DNR Waukesha Diversion App
Subject: SEWRPC comments on WDNR Technical Review and EIS for Waukesha Lake Michigan Diversion Application
Attachments: Comments on WDNR City of Waukesha Water Proposals (00227664xC212E).pdf

Dear Ms. Hoekstra,

The Commission staff comment letter on the subject issue is attached.

Thank you.

Michael G. Hahn, P.E., P.H.
Deputy Director
Southeastern Wisconsin Regional Planning Commission
P.O. Box 1607
W239 N1812 Rockwood Drive
Waukesha, WI 53187-1607
Phone: (262) 953-3243
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August 28, 2015

Ms. Ashley Hoekstra
DNR Bureau of Drinking Water and Groundwater
P.O. Box 7921
Madison, WI 53707-7921

Dear Ms. Hoekstra:

This letter provides the comments of the Southeastern Wisconsin Regional Planning Commission (SEWRPC) staff on the following documents:

- Wisconsin Department of Natural Resources, *Draft Technical Review for the City of Waukesha's Proposed Diversion of Great Lakes Water for Public Water Supply with Return Flow to Lake Michigan*, June 2015.
- Wisconsin Department of Natural Resources, *Draft Environmental Impact Statement (EIS)–City of Waukesha Proposed Great Lakes Diversion*, June 2015.

The more substantive comments set forth below were also made by the Commission staff during oral testimony at the Wisconsin Department of Natural Resources public hearings on the draft Technical Review and the draft EIS that were held on August 17, 2015, in the City of Waukesha and on August 18, 2015 in the Cities of Milwaukee and Racine.

Background on Aspects of the SEWRPC Regional Water Supply Plan Related to the Waukesha Application

In December 2010, SEWRPC published Planning Report No. 52, *A Regional Water Supply Plan for the Southeastern Wisconsin Region*. The preparation of that plan was guided by an Advisory Committee that included representatives from municipal water utilities, county government, the Wisconsin Department of Natural Resources (WDNR), the Wisconsin Geological and Natural History Survey, the U.S. Geological Survey (USGS), a conservation organization, academia, and private industry. The plan objective was to make recommendations for providing a sustainable water supply for the Southeastern Wisconsin Region through the year 2035. The plan evaluated surface water and groundwater supply sources and the effects of expanded shallow groundwater sources on surface water resources such as streams, lakes, and wetlands. The plan, along with associated technical reports, (all accessible at <http://www.sewrpc.org/SEWRPC/Environment/RegionalWaterSupplyPlan.htm>) represents the third, and final, element of the SEWRPC regional water supply management program. The first two elements are the development of basic groundwater inventories (SEWRPC Technical Report No. 37, *Groundwater Resources of Southeastern Wisconsin*, June 2002) and the development of a groundwater simulation model (SEWRPC Technical Report No. 41, *A Regional Aquifer Simulation Model for Southeastern Wisconsin*, June 2005.)

The regional groundwater simulation model is a three-dimensional groundwater flow model, constructed from the USGS groundwater flow model, MODFLOW, that was developed by the Wisconsin Geological and Natural History Survey (WGNHS) and the U.S. Geological Survey (USGS) in collaboration with the Commission. That model was updated and refined under the regional water supply planning program, and was applied to estimate the effects of alternative water supply plans on the shallow and deep aquifers and on surface water resources of the Region.

The following four regional alternative plans were developed as documented in SEWRPC PR No. 52. The alternatives were developed to be consistent with the requirements of the Great Lakes-St. Lawrence River Basin Water Resources Compact and State Statutes.

- Alternative Plan 1: Design Year 2035 Forecast Conditions under Existing Trends and Committed Actions. This alternative generally assumed that existing water supply sources would be expanded with similar sources (e.g., shallow aquifers sources would be expanded with additional shallow aquifer sources, existing Lake Michigan supplies would be expanded with additional water drawn from the Lake) to meet the demand under planned conditions, water conservation programs would be implemented, and current regulatory programs related to stormwater infiltration would be continued.
- Alternative Plan 2: Design Year 2035 Forecast Conditions with Limited Expansion of Lake Michigan and Shallow Groundwater Aquifer Supplies. This alternative called for 1) conversion to a Lake Michigan supply for selected municipalities located within the Great Lakes Basin, or for portions of municipalities located within the Great Lakes Basin, and for two municipalities straddling the subcontinental divide, each of which are located in the Milwaukee Metropolitan Sewerage District sanitary sewer service area; 2) conversion of some supplies to the shallow aquifer in situations where there are groundwater quality problems; and 3) implementation of water conservation programs.
- Alternative Plan 3: Design Year 2035 Forecast Conditions with Groundwater Recharge Enhancement. This alternative was similar to Alternative 2, but it included shallow groundwater aquifer recharge measures using local rainfall and wastewater treatment plant effluent and deep groundwater aquifer recharge using treated Lake Michigan water.
- Alternative Plan 4: Further Expansion of the Lake Michigan Supply. This alternative was similar to Alternative 2, but it included an expanded use of Lake Michigan as a source of supply for selected additional municipalities that either 1) are located in the Great Lakes Basin, 2) straddle the subcontinental divide, or 3) are municipalities located in a straddling county (including the City of Waukesha Water Utility and four others located in the Fox River watershed).

The alternative plans were rigorously evaluated through comparison of the anticipated performance of the alternative plans with respect to water supply development and management objectives and the standards supporting each objective. Based on this evaluation of the alternative plans, it was determined that two composite plans would be developed that would incorporate sound components of each alternative and would be capable of meeting the plan objectives more fully than would any of the four alternatives.

Two composite water supply plans were developed for the Region based on combinations of components of the alternative plans which best met the established planning objectives. Components common to each of the composite plans include new shallow and deep aquifer municipal wells and storage facilities, conversion of selected areas in the Great Lakes Basin to a surface water supply, and conversion of two communities which straddle the subcontinental divide between the Great Lakes Basin and the Mississippi River Basin (the Cities of Muskego and New Berlin) to a Lake Michigan supply, subject to the terms of the Great Lakes Compact. Both alternatives also call for the implementation of comprehensive water conservation programs; protection and preservation of areas of high or very high groundwater recharge potential; stormwater management components to promote infiltration; recommendations for well siting analyses and monitoring; and enhanced groundwater recharge. The only difference between the two composite plans was: one considered an expanded shallow aquifer supply for Waukesha and the other considered a Lake Michigan supply for Waukesha meeting the requirements of the Great Lakes Compact (community in a straddling county).

The recommended plan calls for Waukesha to seek a Lake Michigan supply consistent with the requirements of the Great Lakes Compact and State law. Options for return of treated wastewater to Lake Michigan which were identified under the plan included 1) returning the flow to Underwood Creek in the Menomonee River watershed, 2) returning the flow to the Root River, 3) splitting the return flow between Underwood Creek and the Root River, or 4) returning the flow to directly to Lake Michigan. The plan specifically recognized that more-detailed engineering, legal, and environmental analysis of the overall proposal to divert Lake Michigan water, and of various aspects of the return flow in particular, would be required.

The recommended plan was selected because it best met the established plan objectives, and, specifically, because it would best provide:

- Long-term sustainability of the deep aquifer,
- Reductions in chloride discharges to surface waters
- Favorable environmental impacts on groundwater-derived baseflow to surface waters such as streams, rivers, lakes, and wetlands, and
- Preservation of the groundwater aquifer for other uses, such as agriculture.

The recommended plan for the Southeastern Wisconsin Region calls for new shallow and deep aquifer municipal wells and storage facilities; conversion of selected areas in the Great Lakes Basin to a surface water supply; conversion of two communities which straddle the subcontinental divide between the Great Lakes Basin and the Mississippi River Basin (the Cities of Muskego and New Berlin) to a Lake Michigan supply and conversion of the City of Waukesha to a Lake Michigan supply, all subject to the terms of the Great Lakes-St. Lawrence River Basin Water Resources Compact; implementation of comprehensive water conservation programs; protection and preservation of high or very high groundwater recharge areas as identified under the plan; stormwater management components to promote infiltration; enhanced groundwater recharge; and the conduct of studies for each proposed high capacity well to assess potential impacts on the shallow aquifer, existing wells, and surface waters and to identify any necessary mitigating actions.

The recommended plan was approved by the Advisory Committee and was adopted by the Commission in December 2010.

Specific Comments on the Draft Technical Review and EIS

The proposal by the City of Waukesha to obtain a Lake Michigan water supply subject to the requirements of the Great Lakes Compact and State law, along with the more-detailed legal and environmental analyses conducted by the WDNR to date under the process of developing the draft technical review and the draft EIS would be consistent with, and would serve to implement, the Regional water supply plan. The Commission staff would further recommend that the WDNR consider the conduct of the additional environmental analyses described below.

Fox River Flow Augmentation and Quality of Return Flow to the Root River

1. The SEWRPC regional water supply plan recognized potential water quantity impacts on the Fox River, and called for active management of the return flow to augment Fox River flow during low flow periods (typically summer and fall). The EIS also identified possible significant adverse impacts on the Fox River resulting from flow reductions due to decreases in the rates and volumes of flow discharged to the River from the Waukesha wastewater treatment plant. The return flow management approach proposed by WDNR and the City of Waukesha would provide for some treated wastewater discharge return flow to the Fox River, although at a reduced rate from the current one. The Commission staff would encourage the WDNR to consider additional analysis in the EIS of the effects of anticipated reductions in the flow of treated wastewater from Waukesha to the Fox River, quantifying the spatial extent along the River downstream of the wastewater treatment plant discharge for which significant water quantity and quality and associated aquatic life effects might be expected to extend. That analysis should also account for potential increases in groundwater-derived baseflow owing to cessation of pumping from the Waukesha Water Utility's shallow aquifer wells under the City of Waukesha's proposed use of a Lake Michigan water supply. Additional Fox River tributary flow data that may be useful for this analysis is available from the University of Wisconsin-Extension/WDNR Water Action Volunteers stream data collection program. It may also be appropriate to compare the effects on the riverine environment under the City's proposed water supply plan to the effects under alternative plans that include significant groundwater pumping from the shallow aquifer, coupled with returning all wastewater treated at the City wastewater treatment plant to the Fox River.
2. The WDNR draft Technical Review of the City application describes stringent effluent limits that would need to be placed on discharges from the Waukesha wastewater treatment plant to the Root River. The Wisconsin Pollutant Discharge Elimination System (WPDES) permit for the plant should reflect such stringent limits to protect the designated uses and water quality of the Root River and Lake Michigan.

Requests for Additional Information and Clarification

The following comments relate to aspects of the draft Technical Review and draft EIS where we ask that WDNR staff provide additional explanation, information, or clarification:

3. An evaluation of the public health aspects of each water supply alternative considered is set forth on pages 25 through 29 in subsection B. Public Health of the draft Technical Review. In the second paragraph of that subsection on page 25 there is a reference to the criterion that alternatives to the proposed diversion be "as ... protective of public health as the proposed ...

new diversion.” That criterion is set forth in the definition of a “reasonable water supply alternative” under Section 281.346(1)(ps) of the *Wisconsin Statutes* (see footnote 45 on page 18 of the draft Technical Review). Finding No. 5 on page 18 of the draft Technical Review states that “[t]he department ... determined that none of the MRB alternatives is as protective of public health as the proposed Lake Michigan waters source.” The last sentence in subsection B. Public Health, on page 29, states that “none of the other alternatives is more protective of public health than the Lake Michigan water supply alternative.” It is suggested that Finding No. 5 and the statement on page 29 be reconciled.

4. It is suggested that additional explanation be provided relative to the relationship between the statement on page 84 of the draft Technical Review evaluating criterion R4 that “both the department and EPA agree that the new discharge could result in a ‘significant lowering of water quality’ Wis. Admin. Code [Chapter] NR 207 for some of the discharged pollutants” and the statement on page 86 in the “Findings” subsection of the Technical Review evaluating criterion R5 that “[t]he department finds that if the applicant can meet all future permit requirements under Wis. Stat. [Sections] 30.12, 281.15, and 283.31 (outlined in R4), the physical, chemical and biological integrity of the receiving water would be protected and sustained.”
5. Increased concentrations of chlorides within the Root River are mentioned in EIS subsections 4.3.2.3.1.3 (third paragraph), 4.3.2.3.1.5 (second paragraph of “Chlorides” subsection), and 4.3.2.3.1.7 (first and sixth paragraphs of “Fish” subsection). The draft Technical Review describes a stringent water quality based effluent limit (WQBEL) for chloride that would need to be included in a WPDES permit for a possible return flow to the Root River. The draft Technical Review notes that “[a] change from a groundwater water supply to a Lake Michigan surface water supply would significantly reduce the need for home water softening. Currently, salt residue from residential home softening is the largest source of chlorides to the Applicant’s WWTP (estimated at ~22,000 lbs/day).” The Commission staff would suggest that consideration be given to revising the draft EIS subsections listed above to recognize the reduction in chloride concentrations expected from discontinuance of water softening over time and other measures that will need to be implemented to meet the WQBEL.
6. It is suggested that Table A-1 in Appendix A of the draft EIS be revised to add a column for consumptive use and to note the magnitude of the Fox River baseflow that was used to compute the percent change from the current flow.
7. Tables 24 and 25 in SEWRPC Community Assistance Planning Report No. 284 (CAPR No. 284), *Pebble Creek Watershed Protection Plan*, June 2008, list fish species found in Pebble Creek and/or the Fox River, and Map 36 in CAPR No. 284 indicates fisheries sample locations. Many of the species listed in those tables are not included in Tables A-2 and A-3 of Appendix A of the EIS. It is suggested that all of those species from the 2004 and 2005 surveys be considered for inclusion in Tables A-2 or A-3 as appropriate.

Editorial Comments

The following comments are of an editorial nature:

8. In the “SEWRPC’s demand projections” subsection on page 49 of the draft Technical Review, there is a statement referring to the average daily water use projections developed for the City of Waukesha Water Utility under the 2010 SEWRPC regional water supply plan that “[a]ll scenarios assumed different degrees of water conservation.” To be correct, it is suggested that that sentence

be replaced with the following sentences: "Demand forecasts for the City of Waukesha Water Utility were made for low, intermediate, and high growth projections, assuming a high degree of water conservation with the average day demand being reduced by 14 percent. For the intermediate growth projection, an additional demand projection was made assuming no additional water conservation measures beyond the then-current water conservation program."

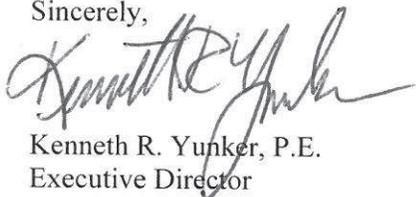
9. On the bottom of page 97 of the draft Technical Review, please change the technical report references to SEWRPC Technical Report No. 37 and SEWRPC Technical Report No. 41.
10. On page 116 in Appendix A of the draft Technical Review under the second bulleted item in the "Model Setup" section, it appears that the reference in the first sentence to "stress period 2" should be changed to "stress period 1."
11. Subsection 3.13.1 of the draft EIS also refers to SEWRPC population projections for the City of Milwaukee. While SEWRPC does make population forecasts for the counties within the Region and for planned sewer service areas, such projections are typically not made for individual municipalities.
12. In the "Mill Creek" subsection of Subsection 3.4, "Fox River tributaries," of the draft EIS, the reference to the "town of New Berlin" should be changed to the "City of New Berlin."
13. In subsection 3.5.2, "Flow and flooding in the Root River," of the draft EIS, the flows listed in the second sentence are the minimum and maximum daily mean flows, not the minimum and maximum average annual flows. The average annual minimum flow is 12.7 cfs and the average annual maximum flow is 93.9 cfs.
14. In the first line of text in the "Groundwater Divides" subsection of Subsection 3.6.1, "Aquifers," of the draft EIS, the reference to "Waukesha" should be changed to "Waukesha County."
15. In the third sentence in subsection 3.18.1.1.2.3, "Variation of water use in Waukesha with precipitation," of the draft EIS, the figure reference should be changed to "Figure 3.17." Also, it appears that the year 2000 and the period 2008 through 2010 might be better examples of reduced demand during a time of high precipitation than the period cited.
16. In the first line of the fourth bulleted item in subsection 3.18.1.3, "Water demand forecast for the City of Waukesha," of the draft EIS, the figure reference should be changed to "Figure 3.19."
17. In the first sentence of subsection 4.2.3.1.4, "Fox River, Pebble Brook, Pebble Creek and Mill Brook, and Vernon Marsh flora and fauna effects from the Lake Michigan supply alternatives," of the draft EIS, Appendix A should be referenced, rather than Appendix B.
18. In subsection 4.2.3.2.5, "Economic effects from the Milwaukee supply alternative," and in subsection 4.2.3.4.5, "Economic effects of the Racine supply alternative," of the draft EIS, it appears that the references to "wastewater volume" should read "water volume."
19. In subsection 4.3.2.1.1.4, "Flora and fauna effects on the Fox River from the Lake Michigan return flow alternatives," of the draft EIS, the reference to "baseflow reductions in Pebble Brook, Pebble Creek, Mill Creek, Mill Brook, and Genesee Creek" should be revised to refer to "baseflow increases," rather than "baseflow reductions."
20. In the second paragraph of subsection 4.4.6, "Jack and bore crossing method," it appears that the reference to "gas pipe" should be changed to "water pipe."

Ms. Ashley Hoekstra
August 28, 2015
Page 7

21. In the first paragraph of subsection 4.3.2.3.2.9, "Costs and energy (construction and operation) effects of the Root River return flow alternative," of the draft EIS, the word "annual" should be added before "operation and maintenance."
22. Tables 4-8, 4-12, 4-16, 4-20, 4-26, 4-30 in the draft EIS each indicate land use impacts under a given water supply alternative and list SEWRPC as the only source. While SEWRPC was the source of the base land use data as compiled under the Regional land use inventory, the analysis of how much of each land use type is affected was performed by others.

The Commission staff appreciates the opportunity to comment on the draft WDNR Technical Review and Environmental Impact Statement. If you have any questions, please contact Michael G. Hahn, P.E., P.H., SEWRPC Deputy Director, at (262) 953-3243, or mhahn@sewrpc.org.

Sincerely,



Kenneth R. Yunker, P.E.
Executive Director

KRY/MGH/kmd
#227331 – City of Waukesha Proposed Great Lakes

cc: Members of the SEWRPC Regional Water Supply Planning Advisory Committee
Members of the Root River Watershed Restoration Plan Advisory Group
John Budzinski, WDNR-Milwaukee
Sharon Gayan, WDNR-Milwaukee
Dan Duchniak, Waukesha Water Utility
Dale Shaver, Waukesha County
James Pindel, Southeastern Wisconsin Fox River Commission