From:	Leah Ruth Holloway
To:	DNR Racine Diversion Comments
Cc:	cglg@cglg.org
Subject:	Opposed to Foxconn diversion
Date:	Wednesday, March 21, 2018 2:35:01 PM

Dear Adam Freihoefer,

I am writing as a citizen (prior to the March 21, 2018 deadline for public comment) to argue against approval of the diversion request being considered by the Wisconsin Department of Natural Resources to supply the proposed Foxconn development with Great Lakes basin water resources.

A review of the Great Lakes-St. Lawrence River Basin Water Resources Compact (hereafter: compact) supports the conclusion that the proposed diversion is not consistent with the intent or the language of the compact with respect to acceptable diversion requests. Therefore it should not be recommended for approval.

The following sections of the compact will be especially relevant for your consideration:
1.2 Cumulative Impacts; 1.2 Public Water Supply Purposes; 1.3.1.c; 1.3.1.e; 1.3.1.f; 1.3.2.a; 1.3.2.b; 1.3.2.d; 1.3.2.f; 1.3.2.h; 2.6.2; 3.1; 4.2.1.b; 4.2.1.d; 4.5.1.d; 4.5.1.f; 4.5.2.c.ii; 4.5.4.c; 4.5.5.c; 4.5.5.g; 4.5.5.i; 4.9.1; 4.9.1.a; 4.9.1.c; 4.9.4.d; 4.10.1; 4.11.1; 4.11.2; 4.11.3; 4.11.5.c; 4.13.2; 7.3.1; 7.3.2.a

The primary argument rests upon the fact that the diversion will not be for Public Water Supply Purposes. Foxconn will not constitute "a group of largely residential customers" (1.2). The definition of Public Water Supply Purposes includes that public supply "may also serve industrial, commercial, and other institutional operators" (1.2). It is quite clear from the language that the primary use of public water supply is not these private uses. The private uses identified are clearly subsets of what "may also" be served among a mix of "largely residential customers" constituting "public water supply purposes." It is also clear that Foxconn would fall within this second category, not the first. A private use is not a public use. The diversion request before you is substantially to supply a private use. I cannot think of a much clearer example of private use than the Foxconn proposal. This is not a private use that happens to be part of a matrix of other uses as defined by the term *public*. Therefore the proposed diversion should not be approved because it does not meet the criterion for consideration enumerated in 4.9.1 that straddling community diversions be "used solely for Public Water Supply Purposes within the Straddling Community." The argument really ought to end here from my perspective. I ask for your considered review of this argument and a clear declaration to support public faith in your office's exercise of its duties to protect and steward our shared water resources.

Further argumentation rooted in the text of the compact follows.

A likely counterargument to my primary argument would argue that section 1.2 allows for industrial or commercial uses to be part of public supply; therefore industrial or

commercial uses are acceptable to be considered; therefore the diversion request is acceptable. Other language in the compact suggests that this counterargument is invalid. Section 1.3.1.c finds that "The Waters of the Basin can concurrently serve multiple uses. Such multiple uses include municipal, *public*, *industrial, commercial* [emphasis: mine], agriculture, mining, navigation, energy development and production, recreation, the subsistence, economic and cultural activities of native peoples, Water quality maintenance, and the maintenance of fish and wildlife habitat and a balanced ecosystem. And, other purposes are encouraged, recognizing that such uses are interdependent and must be balanced." Quite clearly, industrial and commercial uses are considered separately from public uses in 1.3.1.c. Since 1.2 defines Public Water Supply Purposes but does not define industrial or commercial purposes, we may conclude that "Public Water Supply Purposes" in 4.9.1 are not equivalent with industrial or commercial purposes and that these could be considered separately unless considered as some mixed subset as already defined under "Public Water Supply Purposes." To interpret these terms otherwise is to imply that "Public Water Supply Purposes" could mean anything under the sun. Clearly that is not the definition offered in 1.2 as the word "largely" denotes.

This line of argument is further supported by the language used in 4.13.2, which defines exemptions of basin withdrawals. The term "non-commercial" is specified regarding short-term projects that could be exempt from the requirements of compact Article 4 if "for firefighting, humanitarian, or emergency response purposes." The inclusion of the term "non-commercial" here as a modifier implies that commercial projects, even if for the identified purposes, would not be exempt from the terms of Article 4. Therefore it follows that commercial projects would be explicitly identified if they were intended as equivalent with, on par with, or interchangeable for "Public Water Supply Purposes." This is not the case. If commercial or industrial projects were intended to be equivalent with "Public Water Supply Purposes" under 4.9.1, it stands to reason they would have been identified. They were not. This reinforces the already clear definition of "Public Water Supply Purposes" discussed above.

I am cc'ing the Compact Council with this correspondence in the event that, despite what seems to me an abundantly clear argument rooted in both the language and intention of the compact, Wisconsin Department of Natural Resources moves to approve the Foxconn diversion. Multiple provisions in the compact call for Compact Council action in this regard, including movement to trigger Regional Review despite the original jurisdiction within the State of Wisconsin. Due to uncertainties in the quality of return flows, the proposed Foxconn diversion invokes 1.3.1.d ("the potential to significantly impact the environment, economy, and welfare" of the basin region), and 1.3.1.f ("The Parties [Great Lakes States] 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.") As a foreign corporation, Foxconn is not a basin citizen, yet actions today on behalf of a foreign corporation could reasonably impact resource quality for generations yet to come. Section 4.5.1.d identifies that "The Parties agree that the protection of the integrity of the Great Lakes-St. Lawrence River Basin Ecosystem shall be the overarching principle for reviewing Proposals subject to Regional Review..." Section 4.5.1.f indicates that "A majority of the members of the Regional

Body may request Regional Review of a regionally significant or potentially precedent setting Proposal."

Given the potential for the return flow quality to harm the integrity of the basin system, if the State of Wisconsin advances the Foxconn proposal on the argument that a substantially private use is equivalent with a public use, then the Foxconn diversion request would clearly constitute a "precedent setting Proposal" in that it would essentially subvert the language and intent of the compact itself. Therefore, in such an event, there is just cause for a majority of compact parties to call for Regional Review in accordance with the purpose identified in 1.3.2.b ("To remove causes of present and future controversies"). In the English language, "public" does not equal "private." If the State of Wisconsin decides instead that "public" equals "private," then this contradiction would create a controversy that merits consideration under the auspices of Regional Review, including input from all federally recognized Tribes.

The Regional Review process would also provide the opportunity for greater clarity on the water quality impacts from the proposed diversion as 4.5.4.c allows "Any member of the Regional Body may conduct their own Technical Review of any Proposal subject to Regional Review." This would provide greater insights into two points of uncertainty regarding the Foxconn proposal that would need to be addressed were it even a viable request under 4.9.1. One of those questions is the source for the estimate that 2.7 million gallons of water per day would be consumed by Foxconn manufacturing processes--what is this number based on and what range of consumptive use is expected? How would their consumption be metered or measured and would it be metered or measured by an independent party? If this number cannot be independently verified, then how does Wisconsin Department of Natural Resources know that consumptive use would not exceed 5 million gallons per day, the threshold for automatically triggering Regional Review? Supply could be measured by the water utility, but return flows would need to be monitored to ascertain actual consumptive use (supply - return flows). Another question is how the return flows from Foxconn would be guaranteed to "meet applicable water quality discharge standards" (4.9.1.a.ii) and what remedies would be implemented at what cost to whom in the event of violation.

Great uncertainties with grave implications remain that have not been sufficiently addressed in public or committed through binding covenants with the de-facto private use applying to divert and likely pollute the public resource. If this is not "precedent setting" then I don't know what would be. The quantitative impact of the specific diversion in itself is less material to basinwide impact than the doors that unmitigated approval would open to any other private use that wants to set up shop in a straddling community and exploit the shared resource without recourse. Approval would provide a negative precedent contrary to the language and intent of the compact. The compact was historically stirred to political existence by the specter of a corporation shipping Great Lakes water to Asia; here we have a foreign corporation attracted to the doorstep of the Great Lakes basin poised to exploit and quite possibly (how likely in the DNR's assessment?) pollute the resource.

Due to the Regional Review, Waukesha went through years of process that ultimately

improved their diversion plan, regardless of anyone's perspective on its relative merits. Foxconn's request, in contrast, is not undergoing nearly the same level of scrutiny. Yet any other diversion application after Foxconn will look to the interpretation by the State of Wisconsin and apply the standard to measure the merits of their case.

Thank you for your consideration of this comment.

Sincerely,

Leah Holloway
PSM Student
School of Freshwater Sciences
University of Wisconsin - Milwaukee
600 E. Greenfield Ave.
Milwaukee, WI 53204

hollow43@uwm.edu
773.490.8910