



Before the
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS

Department of Natural Resources, Environmental
Management Division, Findings of Fact,
Conclusions of Law, and Diversion Approval

Case No. DNR-18-0006

PREHEARING CONFERENCE REPORT AND SCHEDULING ORDER

On September 12, 2018, a prehearing conference was held in person at 4822 Madison Yards Way, Room S148, Madison, Wisconsin, Brian Hayes, Administrative Law Judge presiding. Both the Wisconsin Department of Natural Resources and the Petitioners appeared by counsel. Racine Water Utility and Wisconsin Manufacturing Commerce appeared by their respective counsel, and it is yet to be determined if they are to become parties to this case.

This report is filed pursuant to Wis. Stat. § 227.44(4)(b), Wis. Admin. Code § NR 2.08(5), and Wis. Admin. Code § NR 2.12.

The PARTIES to this proceeding are certified as follows:

River Alliance of Wisconsin, Minnesota Center for Environmental Advocacy, Milwaukee Riverkeeper, League of Women Voters of Wisconsin, League of Women Voters Lake Michigan Region, and Natural Resources Defense Council (collectively "Petitioners"), by

Attorney James E. Parra
Attorney Tressie Kamp
Midwest Environmental Advocates, Inc.
612 West Main Street, Suite 302
Madison, WI 53703-4714

Attorney Jodi Habush Sinykin
Of Counsel, Midwest Environmental Advocates, Inc.
1970 West Green Brook Road
Milwaukee, WI 53217

Wisconsin Department of Natural Resources (“Department”), by

Chief Legal Counsel Jacob Curtis
Attorney Cheryl Heilman
Attorney Judith Mills
101 South Webster Street
Madison WI 53701

Stipulations

1. At the prehearing conference, the parties confirmed that the issue for hearing is whether the Department’s Diversion Approval violates Wis. Stat. §§ 281.343(4n)(a) and 281.346(4)(c) and Sections 4.3.3, 4.8, and 4.9.1 of the Compact with respect to the Department’s interpretation of “public water supply purposes.”
2. The parties agreed upon a proposed briefing schedule.

Other Actions Taken

1. The burden of proof for a hearing decision, pursuant to Wis. Admin. Code § NR 2.13(2)(b) and Wis. Admin. Code § HA 1.17(2), is a preponderance of the evidence.
2. Pursuant to Wis. Admin. Code § NR 2.12, the parties that appeared on September 12, 2018 will be the only parties in the case moving forward.
3. Racine Water Utility, by its attorney, Lawrie J. Kobza and its general manager, Mr. Keith Haas; and Wisconsin Manufacturing Commerce, by its attorney, Cory Fish, expressed interest in becoming parties to this case. These interests were given until November 1, 2018 to affirmatively declare, in writing, they were parties to this action.

Scheduling Order

Based upon the representations of the parties, the following schedule is hereby ordered:

1. In this order, whenever the term “filed” is used, it shall be understood that this means received by mail by the Division of Hearings and Appeals and all other parties listed above.
2. Briefing on Motion for a Stay of the Approval
 - a. Petitioners shall file their Motion and Brief by September 26, 2018.
 - b. The Department shall file a Response Brief by October 10, 2018.
 - c. Petitioners shall file a Reply Brief by October 17, 2018.

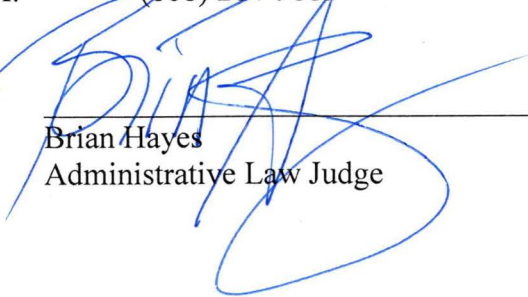
3. Joint Exhibits for Summary Judgment Motion Briefing
 - a. The Department shall prepare a list of Joint Exhibits and submit them to the Petitioners.
 - b. The parties shall discuss and reach agreements regarding the Joint Exhibits.
 - c. The parties shall file the Joint Exhibits to the Administrative Law Judge by November 1, 2018.
 - d. The parties shall file any remaining separate exhibits with their respective briefs.
 - e. The parties shall reach agreement and prepare a list of Findings of Fact and submit them by November 1, 2018. Any Findings of Fact not agreed to can be filed with their respective briefs.

4. Any party wishing to participate as an amicus shall file a motion to the Administrative Law Judge by November 15, 2018, requesting leave to file an amicus brief.
 - a. Petitioners shall file their Summary Judgment Motion Brief by December 17, 2018.
 - b. The Department shall file their Response Brief by January 31, 2019.
 - c. Petitioners shall file their Reply Brief by February 20, 2019.
 - d. Any Amici allowed to file a brief shall file their brief by February 20, 2019.
 - e. The parties reserve the right to request permission from the Administrative Law Judge to file a sur-reply to any Amicus brief that raises an issue not previously addressed in a brief submitted by the Department or Petitioners. Any request will be filed, with a copy of the sur-reply, by March 12, 2019.

Dated at Madison, Wisconsin on September 25, 2018.

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By: _____


Brian Hayes
Administrative Law Judge