

March 21, 2018

Adam Freihoefer
Water Use Section Chief
Wisconsin Department of Natural Resources
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Madison, WI 53703
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Re: The City of Racine’s Great Lakes Water Diversion Application

Dear Mr. Freihoefer:

The Compact Implementation Coalition (“CIC”) submits the following comments on the City of Racine’s application to begin a diversion of Great Lakes water. The CIC collectively represents tens of thousands of Wisconsinites and has a long history of working on the Great Lakes Compact. From ensuring the adoption and implementation of a strong Compact to aiding the Wisconsin Department of Natural Resources (“DNR”) in the promulgation of administrative rules to implement the Compact, the CIC has passionately and consistently advocated for the strongest protections possible for the waters of the Great Lakes, in keeping with the spirit and the letter of the Compact. To that end, the CIC advocates for strict adherence to the Compact’s exacting standards.

The enactment of the Great Lakes Compact was a historic accomplishment at both the regional and national level and celebrated as a means to safeguard the world class freshwater resources of our magnificent Great Lakes. A centerpiece of the Compact, then and now, is its ban on diversions. The ban reflects the region’s determination to prohibit the transfer of Great Lakes water outside the basin unless a proposal can meet the narrowly defined exceptions outlined in the provisions and definitions of the Compact and state law implementing the Compact.

One exception to the ban on diversions is a proposal to transfer water to an area within a “straddling community.”¹ The City of Racine seeks to take advantage of this exception, which means it has to demonstrate that its application satisfies both Compact § 4.9.1 and Wis. Stat. § 281.346(4)(c). Under these provisions, DNR may approve a request for a diversion to an area within a straddling community only if it finds that, among other things, “all the water so transferred shall be used solely for Public Water Supply Purposes.”² The Compact defines Public

¹ See Compact § 4.9.1.

² *Id.*; see also Wis. Stat. § 281.346(4)(c) (“The department may approve a proposal to begin a diversion... to an area within a straddling community but outside the Great Lakes basin...if the water diverted will be used solely for public water supply purposes.”).

Water Supply Purposes as “water distributed to the public...serving a group of largely residential customers that may also serve industrial, commercial and other institutional operators.”³

The City of Racine’s application is clear that the water it is proposing to transfer outside the Great Lakes Basin would supply *exclusively* industrial and commercial customers. In total, the City of Racine is proposing to divert an average of 7.0 million gallons per day (mgd).⁴ A vast majority of the water, 5.8 mgd, would supply the Foxconn facility.⁵ The remaining 1.2 mgd of diverted water would supply industrial and commercial customers within the newly-designated “electronics and information technology manufacturing zone” surrounding to the Foxconn facility.⁶ Importantly, *the City of Racine is not proposing to supply water to a single residential customer within the proposed diversion area.*

In its application, Racine argues that its proposal satisfies the Public Water Supply criterion because the customers of the Racine Water Utility, as a whole, are primarily residential customers.⁷ Perhaps recognizing the shortcomings of this position, the City of Racine sent follow up correspondence to DNR with additional information about its existing in-basin customers within the Village of Mount Pleasant.⁸ Racine appears to be making the case that its proposal meets the Public Water Supply criterion because the water it supplies to the Village of Mount Pleasant, as a whole, serves primarily residential customers.⁹ In either case, the City of Racine’s application falls short.

Under the plain language of the Public Water Supply criterion, DNR must look specifically at the area within a straddling community that is outside the basin, and the use of the water that is being transferred there.¹⁰ If the water transferred outside of the basin is not going to be used for public water supply purposes, which it clearly is not here, then DNR cannot approve the application.

The straddling community exception, by its explicit terms, is intended to provide an avenue for communities that straddle the basin line to access Great Lakes water for public water supply purposes. This is not what the City of Racine is proposing. In fact, the straddling

³ Compact § 1.2, *see also* Wis. Stat. § 281.346(1)(pm) (“Public water supply’ means water distributed to the public through a physically connected system of treatment, storage, and distribution facilities that serve a group of largely residential customers and that may also serve industrial, commercial, and other institutional customers.”).

⁴ Application at 17.

⁵ Application at 17 and 19.

⁶ *Id.*

⁷ Application at 14-16.

⁸ February 15, 2018 Letter from Andrew Behm, Ruekert Mielke, to Adam Freihoefer, Wisconsin Department of Natural Resources, *Re: Racine Water Utility Customers by Class in Mount Pleasant* (available at <https://dnr.wi.gov/topic/WaterUse/documents/Racine/RacineWaterUtilityMemo.pdf>.)

⁹ *Id.*

¹⁰ *See* Compact § 4.9.1.

community—the Village of Mount Pleasant—is all but absent from this application.¹¹ What is really under consideration is an in-basin community’s desire to supply water to primarily one industrial customer whose proposed new facilities lie partly outside the basin.

In effect, the City of Racine is attempting to devise a new exception to the ban on diversions that was neither contemplated, nor provided for, by the drafters of the Great Lakes Compact. Approval of Racine’s application would set a precedent whereby any other in-basin community with excess water capacity could make an end-run around the Compact’s more exacting Exception Standard and divert water to private industrial customers near the basin line with very little scrutiny. This is especially concerning in that the industrial customer at question here is proposing to consume 40% of the water being diverted to it.¹² The cumulative impact of this and future water diversions with high consumptive water loss could have a significant negative impact on the Great Lakes, as only 1% of Great Lakes water is renewed each year.

The CIC has additional concerns about the City of Racine’s application that go beyond its failure to satisfy one of the Compact’s fundamental criteria for straddling community diversions. We also urge DNR to deny the City of Racine’s application because the City has failed to publicly disclose important information about the potential impacts of diversion to the Great Lakes. For example, the City of Racine’s application repeatedly references design plans and other information that Foxconn has provided to the City; and the application relies on this information to justify the proposed consumptive use and other aspects of the proposal.¹³ However, this information from Foxconn has not been made available to the public.

Similarly, the City of Racine has not disclosed any information about Foxconn’s manufacturing processes, the types of contaminants that may be present in its wastewater, or what kinds of treatment processes will be necessary to effectively treat these potentially-toxic contaminants. The City of Racine states that Foxconn will discharge “domestic-strength wastewater” and that the City will treat the wastewater to comply with all applicable water quality standards.¹⁴ But again, the City of Racine has not disclosed any information that would allow either DNR or the public to evaluate the accuracy of these statements. If the City of Racine is indeed in possession of information that would shed light on these assertions, that information should be made public and be evaluated thoroughly by DNR before a diversion is approved.

¹¹ The only involvement from the Village of Mt. Pleasant appears to be an acknowledgement that the Mount Pleasant Sewer Utility would collect wastewater from the diversion area and a “letter of support” from the Village acknowledging that Mount Pleasant may need to make a request to SEWRPC and DNR at some point in the future to amend the current sewer service area.

¹² Application at 20-23.

¹³ See e.g. Application at 21 (stating “Racine has forecasted consumptive use based on design plans provided by Foxconn.”).

¹⁴ Application at 22.

The public has a right to know how Great Lakes water resources will be used, what pollutants will be generated, and how they will be treated. Moving forward with this approval without understanding these issues violates the spirit and the terms of the Great Lakes Compact. The citizens and natural resources of the Great Lakes Region deserve a more thorough and open process and one that is in line with the exacting standards of the Compact.

For the reasons stated above, the CIC respectfully requests that the DNR deny the City of Racine's request to begin a diversion of Great Lakes water.

Sincerely,

Jennifer Bolger, Executive Director
Milwaukee Riverkeeper

Nancy Gloe, President
Waukesha County Environmental Action League

Jodi Habush, Of Counsel
Midwest Environmental Advocates

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