



May 1, 2018

VIA U.S. MAIL AND E-MAIL

Mr. Adam Freihoefer
Water Use Section Chief
Wisconsin Department of Natural Resources
Drinking Water and Groundwater Program
101 South Webster Street
Madison, WI 53703

Re: City of Racine Water Diversion Application

Dear Mr. Freihoefer:

The Pennsylvania Department of Environmental Protection (DEP) is the Executive agency of the Commonwealth of Pennsylvania designated by the Governor of Pennsylvania to manage our obligations and represent the Commonwealth of Pennsylvania in the Great Lakes-St. Lawrence River Basin Water Resources Compact and Agreement (Compact). DEP offers the following comments and observations regarding the application and approval of the City of Racine, Wisconsin to divert 7 million gallons of water per day outside the Great Lakes-St. Lawrence River Basin to the Straddling Community of the Village of Mount Pleasant (Racine Application).

The Racine Application was received by the Wisconsin Department of Natural Resources (DNR) on January 26, 2018, and members of the Compact's Regional Body were notified on January 29, 2018 through an email communication by the Secretariat. In this notification, DNR stated the Compact's Exception Standard did not apply to the Racine Application because the Diversion would not result in a New or Increased Withdrawal of Great Lakes water due to the City of Racine's existing Withdrawal, nor would the Diversion result in a Consumptive Use of greater than 5 million gallons per day. Therefore, DNR concluded that (1) the Diversion would meet the criteria of the Straddling Communities Exception to the Prohibition of Diversions in Section 4.9.1 of the Compact; (2) the Exception Standard in Section 4.9.4 would not apply; and (3) Regional Review in Section 5.1 would not be required. DNR approved the application on April 25, 2018 and notified the Regional Body Members of the approval on the same day. DEP appreciates DNR's prompt communication regarding the approval.

DEP examined the Racine Application and has the following concerns:

1. Section 1.2 of the Compact defines a Straddling Community as "any incorporated city, town, or the equivalent thereof, wholly within any County that lies partly or completely within the Basin, whose corporate boundary existing as of the effective date of this Compact, is partly within the Basin or partly within two Great Lakes watersheds." The City of Racine lies wholly within the Lake Michigan watershed; therefore, it is not a Straddling Community under the Compact's definition. DEP is unclear as to how the City

of Racine is eligible to be an applicant for a Straddling Communities Diversion Exception because the Compact does not provide for a community to apply for an Exception on behalf of another community.

2. Section 4.9 of the Compact states that in the case of a Straddling Communities Exception, "all water so transferred shall be used solely for Public Water Supply Purposes." The Application uses the number of water user accounts for the entire Racine customer base, including those areas solely within the City of Racine in addition to areas within the Village of Mount Pleasant. While the 7 million gallons per day Diversion would enter a mixed-use Public Water Supply System, the entire Diversion amount requested in the Racine Application would be used solely for industrial use within the Village of Mount Pleasant. DEP believes this presents a novel issue regarding the interpretation of the Compact, and the Regional Body has a strong interest in ensuring the Compact is implemented appropriately and consistently by all Members

Pennsylvania believes the Racine Application and subsequent Diversion approval present issues that may be both regionally significant and potentially precedent-setting. It is our hope that these concerns can be addressed in a productive and collaborative manner, and that the issues presented by Pennsylvania and similar issues presented by other states regarding this Diversion are resolved in a way that reflects the spirit of all the Parties that created and entered into the Compact and Agreement. DEP looks forward to discussing these issues with you and the rest of the Regional Body Members on May 3rd.

Should you have any questions regarding the issues presented, please feel free to contact me at 814.835.1477 or tibruno@pa.gov or DEP Acting Deputy Secretary for Water Programs Timothy Schaeffer at 717.783.4693 or tischaeffe@pa.gov.

Sincerely,



Timothy J. Bruno
Chief, Office of the Great Lakes
Alternate and Designee of Governor Tom Wolf