

Comments and Responses
Draft Technical Review
Waukesha Great Lakes Water Diversion
January 2016

Introduction

The Department of Natural Resources (department) received public comment on the Draft Technical Review from June 25 to August 28, 2015. This document addresses topics relevant to the department's Technical Review raised by multiple individuals and groups. The department issued a comprehensive summary of comments and responses with the preliminary final Environmental Impact Statement for this project.

Diversion as 'precedent' setting

- **The Department of Natural Resources (department) has not considered the precedent-setting nature of the proposed diversion and should look at a strict interpretation of Section 4.9 of the Compact.**

Response: The department determined that the proposed diversion is approvable under the Great Lakes—St. Lawrence River Basin Sustainable Water Resources Agreement and the Great Lakes—St. Lawrence River Basin Water Resources Compact (Agreement/Compact). The Agreement/Compact bans diversions, but provides limited exceptions that allow a public water system in a “straddling community” or a “community within a straddling county” to apply, subject to strict requirements. No Compact provision allows for an area outside of a straddling county to apply for a diversion. Before the approval of any future diversion application, that applicant would be required to independently meet strict statutory criteria applicable to the diversion request.

Demand & Water Supply Service Area

- **Other communities included in the delineated service area do not need a new source of water and have stated that they do not want Lake Michigan water.**

Response: The Application addresses the Agreement/Compact criteria pertaining to the adequacy of potable water supplies and reasonable water supply alternatives for the entire water supply service area. Wisconsin law prohibits delineating a water supply service area along jurisdictional boundaries. In addition, the application includes documentation that the governing body of each of the affected communities (Town Boards or City Councils) held public meetings and supported its jurisdiction's inclusion in the Applicant's water supply service area plan. The delineated water supply service area provides the outer bounds of the area that may be served water in the future, to allow for the orderly addition of parcels as part of planned growth.

- **How does the delineated service area comply with the Agreement/Compact standards?**

Response: The Agreement/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. . .”¹ The Applicant, the City of Waukesha, is a “community within a straddling county.” In addition, for purposes of water supply service area planning the department considers the delineated water supply service area to be a “community within a straddling county.” The department views the delineated service area as “the equivalent thereof” and therefore a “community within a straddling county” under the Agreement/Compact. Secondly, the Agreement/Compact “exception standard” for proposed diversions requires that “the exception . . . be implemented so as to ensure that it is in compliance with all applicable municipal, state, and federal laws²” Wisconsin law, to promote sound environmental planning and protection, requires that the Applicant’s water supply service area be consistent with its areawide water quality management plan, specifically the communities approved sewer service area. As is the case with many water supply service areas, the Applicant’s existing water supply service area does not conform to the community’s jurisdictional boundaries and includes the majority of the City of Waukesha, portions of the City of Pewaukee, and portions of the Town of Waukesha.

- **The Applicant does not justify why it needs more water than what it is currently using.**

Response: The Applicant indicated that its future demand exceeds its current demand for a number of reasons. First, water demand is expected to increase as population and population density within the service area increase over time. Second, water demand is expected to increase as water service is extended to adjacent areas that are not currently served by municipal water. Finally, the Applicant maintains that industrial production has been below anticipated levels in recent years and has resulted in artificially low industrial water use. The Applicant included increased industrial water demand in its projections to accommodate a possible expansion of the local industrial sector. The department finds that it is reasonable for the applicant to proactively plan its system for such contingencies.

Conservation and Efficiency Measures

- **Conservation measures should be implemented by the Applicant prior to a diversion approval.**

Response: The Applicant implemented a water conservation program starting in 2006, updated its Water Conservation Plan in 2012, and continues to implement its conservation program. In addition, the applicant meets or exceeds all Wisconsin requirements regarding utility metering, water auditing and conservation planning, which are more extensive than requirements in most other states. The water conservation and water use efficiency component of Wisconsin’s Great Lakes Compact implementing statute ([Wis. Stat. § 281.346](#))

¹ [Compact](#) s. 1.2.; [Agreement](#) art. 103 and [Wis. Stat. § 281.343 \(1e\)\(d\)](#),

² [Compact](#) s. 4.10 ; [Agreement](#) art. 201

was promulgated by rule, with the adoption of [Wis. Admin. Code ch. NR 852](#). According to NR 852, the applicant is required to implement all mandatory Conservation and Efficiency Measures (CEMs), compile a conservation plan, and undertake a CEM analysis prior to applying for a diversion. The department determined that the Applicant met all NR 852 requirements prior to submitting its application. The department notes that NR 852 does not require that all components of the conservation plan be implemented prior to application. The department will require that the applicant adapt its plan based on evaluation of its efficacy and on changing customer demand and available technology.

- **The Applicant has no conservation plan for the expanded areas of service.**

Response: The Applicant has implemented a requirement that properties outside of the City of Waukesha that connect to the Waukesha Water Utility, enter into a contract to comply with the Applicant's water conservation plan. This was noted in a memorandum submitted by the applicant to the department on October 29, 2015. Properties located outside the City boundaries will be required by the department to implement the same CEMs as the City, before being served by municipal water.

Need

- **The Applicant could meet its need with existing sources and improved conservation measures**

Response: During the public comment period, the department received a detailed report outlining how the Applicant could meet its water needs for its existing service area by adding additional radium treatment to its existing well system. This alternative presented does not comply with state law requiring that a public water system consider water demand for the delineated water supply service area. Nevertheless, the department did review this alternative and the proposed system capacity in consultation with the Applicant. The department found that the proposed alternative system has a firm capacity (Wisconsin's legal standard for water system capacity, under s. [NR 811.26](#), Wis. Adm. Code) of 9.3 MGD, below the projected 11.1 maximum day demand identified in the proposed alternative. This reduced capacity related to the current system operation is a result of the removal of one of the current wells due to operational problems, reduced capacities in several other wells, and the reduced capacity from several wells that would add radium treatment. To meet increased need, the applicant would need to construct additional shallow wells which would pose additional impacts to wetlands. This alternative and the department's analysis are further described in sections 2 and 4 of the preliminary final EIS.

- **Can the Applicant address its radium water problem through treatment methods?**

Response: The Applicant evaluated an alternative that would include adding radium treatment and blending to meet state and federal drinking water requirements. While this alternative would address the radium problem it would also require the addition of new shallow wells that would adversely impact nearby wetlands. As a result, the department determined this alternative had greater adverse environmental impacts than the proposed Lake Michigan supply alternative. Additional shallow wells would be required to meet the

demand projected for the delineated service area, as well as the demand projected for the Applicant's existing service area.

Return Flow

- **The department has not supported its statement in the draft technical review or environmental impact statement that return flow will not have significant impacts to the water quality of the Root River.**

Response: Section 4 of the preliminary final EIS and Technical Review criteria R4 & R5, describe potential adverse impacts as a result of cumulative loading to the Root River and Lake Michigan. The impact of any additional loading is expected to be minimal, as draft water quality limits show concentrations are expected to be at or below water quality standards and in some cases, the discharge effluent will have lower contaminant concentrations than the Root River background levels. Any new discharge will be required to meet all water quality standards, which are designed to prevent degradation of the receiving water.

- **Wisconsin State Statute does not allow a demonstration of compliance with water quality standards to be deferred. The issuance of a WPDES permit should occur as a prerequisite to the approval of a diversion.**

Response: The department will not issue a final diversion approval until all applicable permits (including the WPDES permit for a new discharge) are issued.