

Comments and Responses
Application for the Village of Somers Great Lakes Water Diversion
February 2022

Introduction

The Department of Natural Resources (DNR) held a public comment period from October 10, 2021 to November 30, 2021 on the Village of Somers Diversion Application (application). The Village of Somers is applying to receive a diversion of Great Lakes water for a straddling community under the *Great Lakes – St. Lawrence River Basin Water Resources Compact* (Compact). The DNR received three written comments from individuals and organizations. Additional comments were received at the virtual public hearing on November 10, 2021. Of the twelve people who attended the hearing, two provided oral comments.

- 1) **Comment:** “Since the Village of Somers is requesting a diversion ‘that would average 100,000 gallons or more per day in any 90-day period’, it must meet the straddling community and exception standard requirements contained in the Great Lakes Compact and state implementing statutes.”

Response: The exception standard does not apply to the Village of Somers diversion application. The Great Lakes Compact authorized Great Lakes states and provinces to set baseline withdrawal amounts in permits for existing withdrawals of water from the Great Lakes. These baseline withdrawal amounts were intended to be the basis for determining if a future withdrawal is a new or increased withdrawal. Wisconsin set baselines for public water supply systems such as the Kenosha Water Utility (the source of water for the Village of Somers), as described in Wis. Stat. §§ 281.346 (4e) and (4g). The Kenosha Water Utility has a baseline of 35,680,000 gallons per day and has sufficient approved capacity to serve its public water supply system, including the proposed diversion area. In 2020, Kenosha’s withdrawal from Lake Michigan averaged 14,477,000 gallons of water per day. A withdrawal from the Kenosha Water Utility would only be considered an increased withdrawal if the utility needed to increase its permitted withdrawal amount above 35,680,000 gallons per day, in which case Kenosha would need to apply for an increased water use permit. The applicant is not required to meet the exception standard under either Wisconsin law (Wis. Stat. § 281.346(4)(f)) or the Compact.

- 2) **Comment** “The Wisconsin Department of Natural Resources (“DNR”) needs to promulgate a rule better establishing the procedural and informational requirements for water supply service area plans.”

Response: Comment noted. 2021 Wisconsin Act 126, signed February 4, 2022, modifies the Water Supply Service Area Planning statute. The DNR plans to begin the rulemaking process in 2022 for water supply service area plans.

- 3) **Comment:** “The Village of Somers needs to perform an adequate cost-effective analysis of alternative water supplies.”

Response: The Village of Somers provided the DNR [additional information](#) on August 17, 2021, page 9, that described water supply alternatives to a Great Lakes diversion, and on January 13, 2022, that provided additional cost-estimate information. The Village of Somers provided a cost comparison of a hypothetical groundwater system to a diversion alternative using a similar sized project in the Village of Elkhorn. A groundwater supply to the diversion

area is projected to have capital cost \$27 million compared to the capital costs for the Lake Michigan diversion alternative of \$1.4 million.

- 4) **Comment:** “Diversion applicants must demonstrate that “[t]he need for the proposed interbasin transfer cannot reasonably be avoided through the efficient use and conservation of existing water supplies.”

Response: There are no water conservation and efficiency requirements in the Compact for straddling community diversion applications (that do not need to meet the Exception Standard, see comment 1). However, Wisconsin’s Water Conservation and Efficiency rule (Ch. NR 852, Wis. Admin. Code) requires any diversion applicant to submit a water conservation and efficiency plan that meets the rule’s standards. The DNR has determined that the conservation plan submitted by the Village of Somers meets the conservation requirements under Wis. Admin. Code ch. NR 852.

- 5) **Comment:** “The DNR should condition any approval of the proposed diversion on the Village of Somers demonstrating, on an ongoing basis, that it has adequately implemented and completed necessary water conservation and efficiency measures.”

Response: The DNR approved the Village of Somers’ water conservation and efficiency plan in the Somers diversion approval. The DNR found that the water conservation and efficiency plan met the required elements of Wis. Admin. Code ch. NR 852. The Village is required to report annually on the impact of the implemented Conservation and Efficiency Measures (CEM), quantifiable impacts to water use intensity (see Wis. Admin. Code § NR 852.03(29)), and a description of any additional CEMs implemented. The Village of Somers must also update its water conservation and efficiency plan every ten years. One example of a recent conservation and efficiency measure is replacing leaking water mains. The Village of Somers provided additional information on January 13, 2022 on the status of the Sheridan Road Water Main Replacement project which was completed in November 2021.

- 6) **Comment:** The Village has had an increase in proposed development in Somers, including multifamily development, commercial, and warehouse, with high tax value and low water use. These uses are a win-win for village, utilities, surrounding communities and the environment. The Village application demonstrates that conserving water is important to the village and the diversion area. The village has evidenced this commitment to water conservation through a recent project on the Sheridan Road to replace 12,000 feet of water main and water service replacement. This project will allow redevelopment into more value property without increasing water use and will bring down unaccounted for water numbers.

Response: Comment noted.

- 7) **Comment:** The DNR should not approve the proposed diversion until the Village of Somers obtains all other applicable regulatory approvals.

Response: Comment noted.

- 8) **Comment** “The DNR should condition any approval of the proposed diversion with a continuing obligation that the Village of Somers meets the public water supply purposes requirement.”

Response: The Village of Somers operates a public water supply system of which ninety-two percent of its currently customers are residential. The Village of Somers water demand

forecasts that at full build-out, seventy-eight percent of its customers will be residential. Both the Compact and Wisconsin's implementing statutes define public water supply purposes to mean water distributed to the public through a water supply system that serves "a group of largely residential customers [and] that may also serve industrial, commercial, and other institutional operators." Compact Sec. 1.2; Wis. Stat. § 281.343(1)(pm). The Village of Somers' water supply system complies with the "public water supply purposes" requirements of the Compact and Wisconsin's implementing statutes, and therefore the diversion qualifies for the straddling communities' exception.

- 9) **Comment:** "Allowing Waukesha to divert water from Lake Michigan started this slippery slope. No more water from the Great Lakes should be diverted to inland communities without detailed evidence that they have exhausted all other possibilities to supply water via other means, including groundwater wells and water use austerity measures. Wisconsin is a water-rich state. There should be ample groundwater in the Somers area to provide a water supply there. If there are not adequate groundwater resources, then residents in the area should be required to first practice austerity measures with respect to water use, before applying for a diversion of Lake Michigan water. Private swimming pools, lawn watering, and other wasteful uses should be prohibited, and the cost of the water supply increased as a disincentive to wastewater, prior to any inland community applying for a diversion of Great Lakes water. This should be a state regulatory requirement and a condition that is part of the Great Lakes Compact with other states and Canadian provinces."

Response: Comment noted.

- 10) **Comment:** "I believe the diversion should be rejected, because historically the DNR has at times shown, a willingness to lie, steal, disregard law, public wants, economic reality, ecological health and science (even their own). They have shown a bias towards special interests, shown a willingness to change data and pass on private costs to the public. Documentation supporting many of these beliefs can be found on the Waukesha diversion comments at https://dnr.wi.gov/topic/EIA/documents/Waukesha/WaukeshaFinalEIS_PublicComments.pdf page 31.

"I now also believe diversion of Lake Michigan water represents a possible human risk, a risk I can't find being mentioned in any DNR documents. The risk is, I believe, a chemical in Lake water which seems to shift the sex of fish and possibly humans, to female. My belief is based off DNR management reports such as Lake Michigan Committee, 2002 Lake Michigan Management Reports[1]. On the 2002 report, page 15 is a chart labeled "Figure 1. Sex ratio trends of chubs caught in GMGN from Algoma and Baileys Harbor during 1980-2001 and combined chubs from southern Lake Michigan surveys in 1996-1998, 2001". The chart shows the chub sex ratio going from ~55/45 in 1980 to ~85% female by 2001. Per that same report "The sex ratio of chubs captured in graded-mesh gill nets fished off the three ports above showed that 86% of the catch was females. The chubs sampled from commercial standard-mesh gill nets during these assessments consisted of 93% females. The one advantage of the female-dominated population to the industry is that commercial fishers have profited through the sale of abundant eggs to the caviar market during late fall and winter months".

"What I find disconcerting then and now is how much more concerned the DNR appears to be about the profits of a small, publicly subsidized special interest group of commercial

fishers and so unconcerned by the obvious question as to why the chub fishery had skewed to mostly female and does it represent any future danger such as extinction.

“Also the same effect was/is seen with yellow perch. Per the DNR’s Lake Michigan Yellow Perch Graded Mesh surveys[2], the skewing has occurred twice since 1986. In 1986 46% of surveyed perch were female, by 1996 (when perch netting ended) only 5% were female. Per a 2008 study[3], commercial fishing shifts fish sex ratios to male because females grow faster and are therefore more targeted and removed by nets. Without the influence of nets, perch also showed the obvious skewing to female; from 1996 to 2020 the ratio of females went from 5% to 100%. Since invasives don’t attack based on the victims sex, I believe the culprit is chemical.

“Lastly, my own neighborhood gets its drinking water from Lake Michigan, and over the years I’ve noticed more female children being born than male.

From research it appears there are many chemicals which are not removed by filtration plants due to difficulty and or cost, so I can’t help but to wonder if the same skewing effect seen in Lake Michigan fish from the 1980’s to present is showing up in humans via drinking Lake Michigan water.

“I don’t know if the WI public or even the citizens of the Village of Somers is aware of any of the history I’ve supplied, but I feel it best to error on the side of safety, to make sure the DNR is obeying all laws, to protect the WI taxpayer from being stuck paying future costs the law says they aren’t supposed to pay and they aren’t stuck paying to restore any damage the DNR may be responsible for or contributed to, by diverting public water as they are doing/have done, by diverting public fish and sport license money to special interests.

One thing I do know, if I lived in the Village of Somers, I’d sure would like to know, why WI Lake Michigan perch and chubs are almost extinct today, and exactly why the fish living in my planned future drinking water source have been skewing female for decades and why the DNR hasn’t ever mentioned it as a possible danger or problem.”

Response: Comment noted.