

The Great Lakes Compact and Waukesha Diversion Application

Background

In recognition of growing pressures on the Great Lakes from the threat of large scale diversions to on-going and increasing impacts from invasive species and climate change, the Great Lakes U.S. states and Canadian provinces came together to ensure the long-term protection and sustainable management of this fragile, world class resource which provides fresh drinking water for over 40 million people in the Basin and generates economic activity that exceeds \$200 billion a year.

In 2008, the Great Lakes Compact was adopted by each of the Great Lakes states and ratified by Congress and signed into law by President George W. Bush. A parallel agreement between the U.S. states and Canadian Provinces (Ontario and Quebec) was adopted at the same time. These historic agreements call for the Great Lakes states and Canadian provinces to work together to protect and manage this magnificent resource in a unified manner, adopt and implement strong water conservation measures and prohibit diversions from the Great Lakes overall, with exceptions to the prohibition only under very limited circumstances and if a community meets stringent requirements.

In addition to allowing diversions to communities that lie partially within and partially outside the Great Lakes Basin under certain limited conditions, the Compact also makes provisions for communities lying wholly outside the Basin but that are located within *counties* that straddle the Basin divide to apply for water diversions in extreme circumstances.

The City of Waukesha is a community within Waukesha County, which is a straddling County and it is seeking approval from the State of Wisconsin for a diversion from Lake Michigan. It is the first such community to do so. It may apply for an exception to the Compact's ban on diversions outside of the Great Lakes Basin but it must meet all of the exception standards that include demonstrating that it is without adequate supplies of potable water, has no reasonable water supply alternatives other than a diversion, achieves savings through water conservation and efficiency, returns the water to the Basin and **it must gain the approval of all eight Great Lakes States.**

Waukesha has developed various diversion applications over the past several years. Its most recent revised application was submitted to Wisconsin's Department of Natural Resources on October 14th of this year. Previous iterations of Waukesha's application have had major deficiencies with respect to the Compact and Wisconsin law. With an initial review of the latest application, it would appear several of these deficiencies or legal issues remain. Given the precedent-setting nature of this application, moving it forward with these deficiencies for approval by the Great Lakes states could undermine the Compact itself.

Some of the major deficiencies or issues in this application that deserve close scrutiny are:

I. Need for a diversion of water outside of the Great Lakes Basin

The Great Lakes Compact requires: “...the Community within a Straddling County [is] without adequate supplies of potable water.” (3.a.).....“There is no reasonable water supply alternative within the basin in which the community is located, including conservation of existing water supplies.” (3.d.)**

It is questionable whether the City of Waukesha has demonstrated that it is without adequate potable water supplies. Moreover the City (relying on a Wisconsin statutory provision and one that is not provided for in the Compact) has expanded its proposed water supply service area by 17 square miles to include several other communities who are not within the City’s current water supply area. None of these communities in the expanded area has demonstrated that it is without adequate supplies of safe drinking water; in fact, they have indicated in the record that they do not need any water either now or in the foreseeable future.

The City has not thoroughly reviewed all reasonable water supply alternatives, including whether water supply alternatives in combination and with improved treatment may provide a sufficient source of water. It also has not shown that it lacks reasonable water supply alternatives, including consideration of the impacts water conservation and efficiency measures might have on future water supply needs.

II. Amount of water needed from a diversion

Great Lakes Compact requirement: “The Exception will be limited to quantities that are considered reasonable for the purposes for which it is proposed.” (4.b.)

Overall water usage by the City of Waukesha has been going down for at least the past two decades. The City is proposing in its application a significant increase in water usage (demand forecasts) not only for the City of Waukesha, but also for additional communities added in as part of its expanded service area. Even with the revisions to the latest application, it appears that the record does not adequately support the increase that is proposed as part of the application for the City of Waukesha, and certainly not for the communities in the expanded service area. In addition, the application does not take into account the potential reductions in needed water into the future that could result from full adoption of all available water conservation and efficiency measures. (See water conservation measures below).

III. Water conservation measures

Great Lakes Compact requirement: “The need for all or part of the proposed Exception cannot be reasonably avoided through the efficient use and conservation of existing water supplies.” (4.a.)

** For statutory references, please see attached Wisconsin Department of Natural Resources Great Lakes Compact Review Criteria for a Community within a Straddling County.

The Waukesha Water Utility's updated water conservation plan does not commit to implementation of all available cost-effective water conservation and efficiency measures, and the applicant has not put all of those measures in place prior to submitting its application (as required by Wisconsin law). The communities outside the City of Waukesha who are included in the proposed expanded service area have not implemented any required water conservation measures nor does Waukesha propose that they be required to do so until they hook up to the diverted water supply.

IV. Return flow

Great Lakes Compact requirement: *"The Proposal meets the Exception Standard, maximizing the portion of water returned to the Source Watershed as Basin Water and minimizing the surface water or groundwater from outside the Basin." (3.b.) "All Water Withdrawn shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use." (4.c.)*

The City of Waukesha proposes to return diverted water through a tributary river to Lake Michigan, but it has not made a compelling case that this is the best option of many potential return flow options and it has not fully considered impacts to communities affected by the proposed return flow route.

In addition, the City's application would increase the co-mingling of Mississippi Basin water with diverted water from Lake Michigan in the return flow.

The Exception will be implemented so as to ensure that it will result in no significant individual or cumulative adverse impacts to the quantity or quality of the Waters and Water Dependent Natural Resources of the Basin with consideration given to the potential Cumulative Impacts of any precedent-setting consequences associated with the Proposal (4.d.)

It appears that compliance with federal and state water quality provisions and the environmental impacts to the Great Lakes Basin's tributary river that will receive the proposed return flow discharge, are not fully and adequately evaluated as part of the application.

Anticipated timeline for review and decision making for application:

- The Wisconsin Department of Natural Resources (DNR) has begun its internal technical review of the application and development of its draft Environmental Impact Statement.
- The DNR indicates that its public hearings and review process will be held in mid January 2014 at the earliest.
- During the DNR's internal review the City of Waukesha will be holding four public "informational meetings" in November 2013.
- The DNR and Governor of Wisconsin may advance the application for formal Great Lakes regional review by other states and provinces in early June 2014.