

June 13, 2018

Jimmy Parra
Midwest Environmental Advocates, Inc.
612 W. Main St., Suite 302
Madison WI 53703

Subject: Petition for Contested Case hearing; Wisconsin Department of Natural Resources Approval of the City of Racine's application to divert Great Lakes water to the Village of Mount Pleasant

Dear Mr. Parra:

You submitted a petition for contested case hearing, received on May 25, 2018, under Wis. Stat. § 281.93 and Wis. Admin. Code § NR 2.05, on behalf of League of Women Voters of Wisconsin, Milwaukee Riverkeeper, Minnesota Center for Environmental Advocacy, and River Alliance of Wisconsin (collectively "Petitioners"), regarding the above-referenced Approval issued by the Wisconsin Department of Natural Resources ("WDNR"). On April 25, 2018, WDNR issued its Findings of Fact, Conclusions of Law and Diversion Approval to the City of Racine to divert Lake Michigan water to an area within the Straddling Community of the Village of Mount Pleasant ("Approval"). The Approval was issued pursuant to the Great Lakes—St. Lawrence River Basin Water Resources Compact ("Compact") and Wisconsin's implementing legislation (Wis. Stat. §§ 281.343 and 281.346).

Under Wis. Stat. § 281.93(2), any person who is not the diversion approval holder may seek review of a diversion approval if the person meets the requirements of Wis. Stat. § 227.42 or if the person submitted comments in the public comment process under Wis. Stat. § 281.346. Your petition does not allege a dispute of material fact, as required by Wis. Stat. § 227.42(1)(d), so Petitioners may not seek review of the Approval on that basis. However, Petitioners all submitted comments in the public comment process under Wis. Stat. § 281.346 for the Approval, so Petitioners may seek review of the Approval on that basis under Wis. Stat. § 281.93(2).

Therefore, your petition for hearing under Wis. Stat. § 281.93, is granted with respect to, and the hearing itself will be limited to, the following issue relating to the Approval:

Whether WDNR's Approval violates Wis. Stat. §§ 281.343(4n)(a) and 281.346(4)(c) and Sections 4.3.3, 4.8 and 4.9.1 of the Compact with respect to WDNR's interpretation of "public water supply purposes."

Insofar as your request for contested case hearing seeks to raise any issues not granted above, it is denied.


You allege that your petition stays the effectiveness of the Approval, pursuant to Wis. Stat. § 283.91. Your rationale is that a petition filed by the approval holder stays the effectiveness of the approval under Wis. Stat. § 283.91(1), and Petitioners have the same right to review and remedies, under Wis. Stat. § 283.91(2). WDNR disagrees with this allegation. First, the relevant statute is Wis. Stat. § 281.93, not Wis. Stat. § 283.91. Second, the plain language in Wis. Stat. § 281.93(1) is that the approval, "shall become effective unless the ... approval holder ... seeks a hearing challenging the action ..." (emphasis added). Similarly, Wis. Stat. § 281.93(1m) provides that if an, "approval holder ... seeks a hearing challenging part of a ... approval or a condition or requirement in a ... approval under sub. (1), the remainder of the ... approval shall become effective ..."

(emphasis added). Although Wis. Stat. § 281.93(2) allows any other qualified person to “seek review under sub. (1) of any ... approval,” there is nothing in Wis. Stat. § 281.93 providing that the approval does not become effective if it is challenged by a person who is not the approval holder. Therefore, WDNR’s conclusion is that the petition does not stay the effectiveness of the Approval.

You may seek judicial review of this decision. You must file a petition with the appropriate circuit court and serve the petition on the WDNR within 30 days of this decision. A petition for judicial review must name the WDNR as the respondent. If you have questions, please contact Attorney Cheryl Heilman at (608) 266-0235 or Attorney Judy Mills at (608) 266-9972.

Sincerely,



 Daniel Meyer
Secretary

c: Jake Curtis—LS/8
Cheryl Heilman—LS/8
Judy Mills—LS/8
Adam Freihoefer—DG/5