

BOARD OF DIRECTORS

DAVE CLAUSEN
President
Amery

MANDELA BARNES
Milwaukee

DAN COLLINS
Sturgeon Bay

SUSAN DAVIDSON
Secretary
Madison

TOM DAWSON
Madison

MAUREEN FREEDLAND
La Crosse

JIM GOODMAN
Wauwac

WILLIAM H. LYNCH
Milwaukee

MELISSA SCANLAN
Founder
Norwich, VT

KELLY PARKS SNIDER
Madison

GORDON STEVENSON
Black Earth

STEPHANIE TAI
Madison

DAVID WERNECKE
Treasurer
Baraboo

ARLEN CHRISTENSON
Emeritus Board Member
Madison

STAFF

KIMBERLEE WRIGHT
Executive Director

JIMMY PARRA
Staff Attorney

SARAH GEERS
Staff Attorney

TRESSIE KAMP
Staff Attorney

JACKLYN VELASQUEZ
Equal Justice Works Fellow
sponsored by Lynde Uihlein

LAUREN RUDERSDORF
Office Manager

RY CARPENTER
Community Services
Coordinator

JODI HABUSH SINYKIN
Of Counsel



Midwest
Environmental
Advocates



DNR

3:10 P.M.

Friday, May 25, 2018

BY HAND DELIVERY

Secretary Daniel Meyer
Wisconsin Department of Natural Resources
101 S. Webster Street
P.O. Box 7921
Madison, WI 53707-7921

MAY 25 2018

OFFICE OF THE
SECRETARY

RE: *Petition for contested case hearing of The Wisconsin Department of Natural Resources (DNR) approval of the City of Racine's application to divert Great Lakes water to the Village of Mount Pleasant*

Dear Secretary Meyer:

Enclosed please find a copy of a Petition for Contested Case Hearing challenging DNR's April 25, 2018, approval of the City of Racine's application to divert Great Lakes water to the Village of Mount Pleasant. A copy of DNR's approval is included along with the petition.

Sincerely,

/s/

Jimmy Parra
MIDWEST ENVIRONMENTAL ADVOCATES, INC.

cc: Keith Haas, Water Utility General Manager, City of Racine (via certified mail)

MIDWESTADVOCATES.ORG

**TO THE
WISCONSIN DEPARTMENT OF NATURAL RESOURCES**

In the Matter of an approval to begin a diversion of Great Lakes water to an area outside of the Great Lakes Basin issued to the City of Racine on April 25, 2018.

Petition for Contested Case Hearing

TO THE DEPARTMENT OF NATURAL RESOURCES:

League of Women Voters of Wisconsin, Milwaukee Riverkeeper, Minnesota Center for Environmental Advocacy, and River Alliance of Wisconsin (collectively “Petitioners”) by their attorneys, James Parra, Jodi Habush Sinykin and Tressie Kamp, Midwest Environmental Advocates, hereby petition the Wisconsin Department of Natural Resources (“DNR”) for a hearing to be held as a contested case, pursuant to Wis. Stat. § 281.93 and Wis. Admin. Code § NR 2.05, regarding the DNR’s April 25, 2018, approval of the City of Racine’s application to begin a diversion of Great Lakes water to an area outside the Great Lakes Basin. A true and correct copy of the above-referenced approval is attached as Exhibit A.

On May 27, 2008, the State of Wisconsin entered into the Great Lakes–St. Lawrence River Basin Water Resources Compact (“Great Lakes Compact” or “Compact”), a legally binding interstate compact among the eight Great Lakes states that establishes a framework for joint management and protection of the Great Lakes. The enactment of the Great Lakes Compact was a historic accomplishment at both the regional and national level and celebrated as a means to safeguard the world-class freshwater resources of the Great Lakes.

A centerpiece of the Compact is its ban on diversions. The ban reflects the region’s determination to prohibit the transfer of Great Lakes water outside the Basin unless a proposal

can meet the narrowly defined exceptions outlined in the provisions of the Compact and state law implementing the Compact.

DNR's approval of the City of Racine's application violates the Compact requirement that any water diverted out of the Basin must be used solely for "Public Water Supply Purposes." The purpose of the City of Racine's diversion, as identified in the City's application, is exclusively to supply water to industrial and commercial customers in a newly-designated "electronics and information technology manufacturing zone" in the Village of Mt. Pleasant. The City's application identifies no transferred water that will be used to supply residential customers in the out-of-basin portion of Mt. Pleasant subject to the diversion request.

Accordingly, Petitioners challenge DNR's approval of the City of Racine's application on the basis that it violates federal and state law, including but not limited to sections 4.3(3), 4.8 and 4.9 of the Great Lakes Compact and Wis. Stat. §§ 281.343(4n)(a) and 281.346(4)(c).

PETITIONERS

The League of Women Voters of Wisconsin ("Wisconsin League") is located at 612 W. Main Street, Ste. 200, Madison, WI 53703. The League of Women Voters is a nonpartisan, grassroots, political organization established in 1920 that advocates for informed and active participation in government. Its members are women and men who work to improve our systems of government and impact public policies through education and advocacy. The League operates at the local, state and national levels with local Leagues joining together around particular concerns as an interleague organization. Since the 1960's the League has been at the forefront of efforts to protect air, land and water resources and understands that environmental protection must be a seamless web. As a member of the multi-state League of Women Voters of the Lake Michigan Region, the Wisconsin League advocates for the preservation and enhancement of the

environmental integrity and quality of the Great Lakes–St. Lawrence River Ecosystem. In this role, the Wisconsin League submitted comments to DNR on the City of Racine’s diversion application. The comments raised concerns including, but not limited to, DNR’s interpretation of “public water supply purposes” pursuant to DNR’s obligations under the Great Lakes Compact.

Milwaukee Riverkeeper is located at 1845 N. Farwell Ave., Ste. 100, Milwaukee, WI 53202. Milwaukee Riverkeeper is a science-based licensed 501(c)(3) non-profit advocacy organization working for swimmable, fishable rivers throughout the Milwaukee River Basin. Milwaukee Riverkeeper is a licensed member of the Waterkeeper Alliance, an international coalition ensuring clean water and strong communities. Milwaukee Riverkeeper is also a member of the Compact Implementation Coalition, which works to ensure a thorough legal, economic, environmental, and public review of new applications for out-of-basin diversions of Great Lakes waters under the Great Lakes Compact. In this capacity, Milwaukee Riverkeeper submitted comments to DNR regarding the City of Racine’s diversion application. The comments raised concerns including, but not limited to, DNR’s interpretation of “public water supply purposes” pursuant to DNR’s obligations under the Great Lakes Compact.

Minnesota Center for Environmental Advocacy (“MCEA”), located at 1919 University Avenue West, Saint Paul, MN 55105, is a Minnesota non-profit organization whose mission is to use law, science, and research to preserve and protect Minnesota’s natural resources, wildlife, and the health of its people. For over forty years, MCEA has worked with citizens and government decision-makers to protect and improve the quality of Minnesota’s natural resources, including Lake Superior. MCEA was an early advocate for, and pivotal partner in the formation of, the Great Lakes Compact. Since that time, MCEA has diligently worked with other Great Lakes entities to defend the Great Lakes Compact and ensure compliance with its terms,

including the active role MCEA played in the City of Waukesha's diversion application. With respect to the City of Racine's application, MCEA submitted comments to DNR in its capacity as an advocate for clean water within the Great Lakes Compact. MCEA's comments raised concerns including, but not limited to, DNR's interpretation of "public water supply purposes" pursuant to DNR's obligations under the Great Lakes Compact.

River Alliance of Wisconsin ("River Alliance") is located at 147 S. Butler St., Ste. 2, Madison, WI 53703. River Alliance is a 501(c)(3) non-profit organization and represents more than 2,000 individuals and businesses as well as over 80 local watershed groups in its mission to empower people for the protection and restoration of water. River Alliance was a member of the Compact Implementation Coalition, an organization working to ensure a thorough legal, economic, environmental, and public review of new applications for out-of-basin diversions of Great Lakes waters under the Great Lakes Compact, and actively participated in the Waukesha Water Diversion Application process by submitting comments and providing testimony. In its capacity as an advocate for clean water, River Alliance submitted comments to DNR regarding the City of Racine's diversion application. The comments raised concerns including, but not limited to, DNR's interpretation of "public water supply purposes" pursuant to DNR's obligations under the Great Lakes Compact.

ISSUES FOR REVIEW

Petitioners raise the following issues for review at the hearing:

1. Whether DNR's approval of the City of Racine's application violates §§ 4.3(3), 4.8 and 4.9 of the Great Lakes Compact; and
2. Whether DNR's approval of the City of Racine's application violates Wis. Stat. §§ 281.343(4n)(a) and 281.346(4)(c).

REASONS A HEARING IS WARRANTED

In support of their Petition, Petitioners assert that a hearing on these issues is warranted for the following reasons:

1. On May 27, 2008, former Governor of Wisconsin Jim Doyle signed 2007 Wisconsin Act 227, thereby entering the State of Wisconsin into the Great Lakes Compact, a legally binding interstate compact among the eight Great Lakes states establishing a framework for joint management of Great Lakes water resources. *See Wis. Stat. §§ 281.343 and 281.346.*
2. 2007 Wisconsin Act 227 ratified the Great Lakes Compact and codified the procedures by which the State of Wisconsin will carry out its obligations under the Great Lakes Compact. *Id.*
3. On October 3, 2008, U.S. Congress consented to the Great Lakes Compact. Great Lakes–St. Lawrence River Basin Compact, Pub. L. No. 110-342, 122 Stat. 3739 (2008).
4. Upon Congressional consent, the Compact became federal law. *Id.* § 9.4.
5. The Great Lakes Compact and Wisconsin’s implementing legislation prohibit transfers of Great Lakes water to areas outside of the Basin unless the diversion meets one of three narrowly-defined exceptions. Compact §§ 4.8 and 4.9; Wis. Stat. § 281.346(4).
6. One such exception regards transfers of water to communities that lie partly within and partly outside of the Basin—referred to as “straddling communities.” *See* Compact § 4.9.1 and Wis. Stat. § 281.346(4)(c).
7. The Compact and Wisconsin’s implementing legislation authorize DNR to approve diversions “to an area within a straddling communities but outside the Basin” if, among other things, “*all the water so transferred* shall be used solely for Public Water Supply Purposes.” Compact § 4.9.1 (emphasis added); *see also* Wis. Stat. § 281.346(4)(c) (“The

department may approve a proposal to begin a diversion . . . to an area within a straddling community but outside the Great Lakes basin . . . if the water diverted will be used solely for public water supply purposes”).

8. The Compact defines “Public Water Supply Purposes” as “water distributed to the public through a physically connected system . . . serving a group of largely residential customers.” Compact § 1.2.28.

9. Wisconsin’s implementing legislation similarly defines “Public Water Supply” as “water distributed to the public through a physically connected system . . . that serve[s] a group of largely residential customers.” Wis. Stat. § 281.346(1)(pm).

10. On January 26, 2018, the City of Racine submitted an application to DNR requesting approval to begin a diversion of 7 mgd of water from Lake Michigan.

11. Although the City of Racine itself is located entirely within the Lake Michigan Basin, the City’s diversion application was submitted on behalf of the Village of Mt. Pleasant, a “straddling community” as defined by the Compact and Wisconsin’s implementing legislation.

12. The purpose of the diversion, as identified in the City of Racine’s application, is to exclusively supply water to industrial and commercial customers in a newly-designated “electronics and information technology manufacturing zone” in the Village of Mt. Pleasant.

13. A vast majority of the water, 5.8 mgd, will be used by a single industrial customer, Foxconn Technology Group (“Foxconn”), at a proposed manufacturing campus in the Village of Mt. Pleasant. The remaining 1.2 mgd of diverted water will supply ancillary industrial and commercial customers surrounding the Foxconn facilities.

14. The City of Racine’s application identifies no amount of transferred water that will be used to supply residential customers in the designated “electronics and information

technology manufacturing zone” or any other out-of-basin portion of Mt. Pleasant subject to the diversion request.

15. On April 25, 2018, DNR approved the City of Racine’s application to begin a diversion of up to 7 mgd of water from Lake Michigan to an area outside of the Great Lakes Basin.

16. DNR’s approval of the City of Racine’s application to begin a diversion violates sections 4.3(3), 4.8 and 4.9 of the Compact and Wis. Stat. §§ 281.343(4n)(a) and 281.346(4)(c) because the water that the City of Racine is proposing to transfer across the subcontinental basin divide will not be used for “Public Water Supply Purposes” as defined in the Compact and Wisconsin state law.

RELIEF REQUESTED

Petitioners request that DNR’s April 25, 2018, approval of the City of Racine’s application to begin a diversion of Great Lakes water be WITHDRAWN.

STAY OF DNR’S APPROVAL

This petition stays the effectiveness of DNR’s April 25, 2018, approval of the City of Racine’s application to begin a diversion of Great Lakes water. Pursuant to Wis. Stat. § 283.91(1), the effectiveness of an approval is stayed upon the filing of a challenge by an approval holder or applicant. Wisconsin Statute § 283.91(2) grants Petitioners the same right to review and remedies under subd. (1) as are afforded to any approval holder or applicant.

WHEREFORE, Petitioners request that DNR grant their petition for a contested case hearing.

Dated this 25th day of May, 2018.

MIDWEST ENVIRONMENTAL ADVOCATES



James Parra
SBN 1091742
jparra@midwestadvocates.org

Jodi Habush Sinykin
SBN 1022100
hslaw@bizwi.rr.com

Tressie Kamp
SBN 1082298
tkamp@midwestadvocates.org

Midwest Environmental Advocates
612 W. Main St., Suite 302
Madison, WI 53703
608-251-5047

Attorneys for Petitioners

BEFORE THE STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL MANAGEMENT DIVISION

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND DIVERSION APPROVAL

The Wisconsin Department of Natural Resources (DNR) has the authority under Wis. Stat. §§ 281.343(4n)(a) and 281.346(4)(c), to approve a proposal to begin a diversion of Great Lakes water to an area within a straddling community but outside of the Great Lakes basin if certain conditions are met. DNR has reviewed an application for a proposed diversion from the City of Racine to a straddling community, the Village of Mount Pleasant, and issues the following Findings of Fact, Conclusions of Law and Diversion Approval.

FINDINGS OF FACT

The Department of Natural Resources (DNR) finds that:

- 1) The City of Racine (applicant) applied to DNR for a diversion of Great Lakes water under Wis. Stat § 281.346(4)(b) on January 26, 2018.
- 2) The application and supplemental materials included the following: The City of Racine Application (application) for a Water Diversion including a water conservation plan; Racine Water Utility Volumes 1995 through 2016, memorandum dated January 30, 2018; Racine Water Utility Customers by Class in Mount Pleasant, memorandum dated February 15, 2018; Racine Industrial Pretreatment memorandum and a copy of Racine Wastewater Utility's Industrial Pretreatment Program's Enforcement Response Plan (Approved July 20, 2013) dated April 2, 2018; Consumptive Use Coefficient memorandum (Ruekert and Mielke) dated April 3, 2018; and Foxconn's responses to DNR questions regarding Water efficiency, Cooling and Consumptive Use memorandum (Ruekert and Mielke) dated April 24, 2018.
- 3) The applicant owns and operates a public water supply system which provides Lake Michigan water for public water supply purposes to the City of Racine, Village of Sturtevant, and portions of the Villages of Mount Pleasant and Somers within the Great Lakes basin.
- 4) The Racine Water Utility is a public water system as defined by Wis. Admin. Code § NR 811.02(56), and is a public water utility under Wis. Stat. § 196.01(5), subject to the Public Service Commission of Wisconsin (PSC) regulation.
- 5) The Racine Water Utility distributes water to the public through a physically connected system of treatment, storage and distribution facilities serving a group of largely residential customers and also serves industrial, commercial and other institutional customers.
- 6) The diversion application proposes to expand Racine Water Utility service to portions of the Village of Mount Pleasant within the Mississippi River basin. The areas outside the Great Lakes basin to which the City of Racine proposes to extend Lake Michigan water are currently served by private wells. See Attachment A.

- 7) The Village of Mount Pleasant is a “straddling community” per Wis. Stat. § 281.346(1)(t).
- 8) Ninety-two percent of the total area of the Village of Mount Pleasant (approximately 20,000 acres) lies within the Great Lakes Basin. Customers in the Village that are served by a public water supply system are currently served solely by the by the City of Racine Water Utility. Eight percent of the total area of the Village of Mount Pleasant (approximately 1,800 acres) lies within the Mississippi River Basin.
- 9) The applicant requests to divert up to 7,000,000 gallons of water per day to the area within the Village of Mount Pleasant that lies outside the Great Lakes basin.
- 10) The Racine Water Utility has a water use permit, dated Dec. 8, 2011, issued pursuant to Wis. Stat. § 281.346(5)(c), with an approved water withdrawal amount of 60,010,000 gallons a day, as determined under Wis. Stat. § 281.346(4g), and established as the baseline per Wis. Stat. §§ 281.343(4t)(b) and 281.346(4e), based on the maximum hydraulic capacity of the most restrictive component of the water supply system as of Dec. 8, 2008.
- 11) The Racine Water Utility reported to the DNR that it withdrew an average of 17,144,688 gallons a day in 2017.
- 12) The Racine Water Utility has sufficient capacity to supply the proposed diversion within Racine’s baseline withdrawal amount. Racine’s excess capacity is due in part to reported decreases in water sales to industrial customers. Racine’s industrial water use decreased by 51% between 1995 and 2016, from 10.5 million gallons per day (MGD) to 5.1 MGD (see Racine Water Utility Volumes 1995 through 2016, memorandum dated January 30, 2018).
- 13) As of February 8, 2018, the Racine Water Utility served water to 6,321 customers in the Village of Mount Pleasant including 5,579 residential single-family customers, 349 residential multi-family customers, 353 commercial customers, 33 industrial customers, and 7 public authority customers (see Racine Water Utility Customers by Class in Mount Pleasant, memorandum dated February 15, 2018).
- 14) Eighty-eight percent of the Racine water utility customers within the Village of Mount Pleasant are residential customers. The proposed additional industrial and commercial customers within the diversion area will not significantly change the fact that the utility’s distribution of water to the public in the Village of Mount Pleasant will serve a group of largely residential customers.
- 15) The percentage of residential customers served within the Village of Mount Pleasant (eighty-eight percent) is comparable to the percentage of residential customers served by other municipal water suppliers drawing water from Lake Michigan (range of eighty-seven percent to ninety-three percent).
- 16) The applicant proposes to return the diverted water to the basin through the Racine wastewater treatment plant. The Racine wastewater treatment plant discharges to Lake Michigan. The discharge is regulated by a Wisconsin Pollutant Discharge Elimination System (WPDES) permit, issued pursuant to Wis. Stat. § 283.31.
- 17) The application included a letter dated October 26, 2017, indicating the willingness and capacity of the City of Racine’s Wastewater Utility to accept the return flow of the diverted water (see application, Appendix F).

- 18) The City of Racine's Wastewater Utility is designed for an average flow of 35.5 MGD. The Racine Wastewater Utility treated an average flow of 21.4 MGD in 2017. The application indicates that the diversion would result in a maximum of 4.3 MGD returned to the Racine Wastewater Utility.
- 19) The State of Wisconsin has delegated the Racine Wastewater Utility to act as the local control authority for permitting industries that discharge to the Racine Wastewater Utility. The Racine Wastewater Utility issues Industrial Wastewater Discharge Permits and requires dischargers to abide by applicable local, state and federal requirements (see pretreatment standards and requirements in Wis. Stat § 283.21(2), Wis. Admin. Code chs. NR 211, 220 through 297, and Racine Municipal Code §§ 98-150 through 98-156). Industrial customers must apply for a permit at least 90 days before connecting to the wastewater system (see Racine Industrial Pretreatment memorandum and a copy of Racine Wastewater Utility's Industrial Pretreatment Program's Enforcement Response Plan (Approved July 20, 2013) dated April 2, 2018).
- 20) Under Wis. Stat. § 281.346(4)(c)2., no surface water or groundwater from outside the Great Lakes basin may be returned to the Great Lakes basin unless the returned water will be from a wastewater treatment system that combines water from inside and outside the Great Lakes basin and that minimizes the amount of water from outside the Great Lakes basin that will be returned. The application indicates that the only Mississippi River Basin water that will be included in the return flow would be through infiltration and inflow and that all new infrastructure for the wastewater from the Village of Mount Pleasant will minimize infiltration and inflow in the diversion area.
- 21) The proposed diversion will result in a new water loss from consumptive use of up to 2.7 MGD. This consumptive use level is under the 5 MGD threshold that would require regional review by the regional body, under Wis. Stat. §§ 281.346(4)(c)4 and 281.343(4n)(a)3., Compact Section 4.9.1.c. and Agreement Article 201 1.c.
- 22) Industrial consumptive use is highly variable and site specific. However, given the projected uses of the diverted water, the estimated consumptive use of approximately 40 percent is within the consumptive use ranges for comparable processes.
- 23) The DNR held a public hearing on March 7, 2018 at the SC Johnson iMET Center, 2320 Renaissance Boulevard, Sturtevant, Wisconsin to give interested persons an opportunity to comment on the diversion application. Prior to the public comment portion of the hearing, the DNR held an informational meeting and question and answer session.
- 24) The DNR issued a summary of the comments and a response to comments dated April 25, 2018, which includes additional information and findings.

CONCLUSIONS OF LAW

DNR concludes that:

- 1) The City of Racine's diversion application complies with the requirements of Wis. Stat. § 281.346(4)(b).
- 2) The Racine Water Utility operates a public water supply system, as defined by Wis. Admin. Code § NR 811.02(56), that would receive water from the proposed diversion.
- 3) The Racine Water Utility will serve water in the Village of Mount Pleasant, a "straddling community," as defined in Wis. Stat. § 281.346(1)(t).
- 4) The diversion proposal is governed by the requirements of Wis. Stat. § 281.346(4)(c) because the proposal is to provide a public water supply within a single "straddling community."
- 5) The proposed diversion is for "public water supply" purposes, as defined in Wis. Stat. § 281.346(1)(pm) (see also Wis. Stat. § 281.343 (1)(pm)) and in compliance with Wis. Stat. § 281.346(4)(c)(intro.), because the Racine Water Utility currently serves and will continue to serve a group of largely residential customers including within the straddling community of the Village of Mount Pleasant. The Utility will also serve industrial, commercial, and other institutional customers within the Village.
- 6) The City of Racine's diversion application complies with the requirements of Wis. Stat. § 281.346(4)(c)1., because an amount of water equal to the amount of water withdrawn from the Great Lakes basin, less an allowance for consumptive use, will be returned to Lake Michigan.
- 7) The City of Racine's diversion application complies with the requirements of Wis. Stat. § 281.346(4)(c)2., because the water will be treated to meet applicable state and federal water quality discharge standards and returned to Lake Michigan through the Racine wastewater treatment plant. The proposal maximizes the amount of diverted water that will be returned and minimizes the amount of Mississippi River Basin water that will be returned to Lake Michigan. The returned water will be required to meet applicable water quality discharge standards under Wis. Stat. § 283.31 and to prevent the introduction of invasive species into the Great Lakes basin.
- 8) The City of Racine's submitted Water Conservation and Efficiency Plan meets the requirements of Wis. Admin. Code §. NR 852.07, promulgated pursuant to Wis. Stat. § 281.346(8).
- 9) The straddling community of the Village of Mount Pleasant includes an electronics and information technology manufacturing zone designated under Wis. Stat. § 238.396(1m). Therefore, pursuant to Wis. Stat. § 281.346(4)(c)2m., the diversion proposal is not required to be consistent with an approved water supply service area plan.
- 10) The requirements of Wis. Stat. § 281.346(4)(c)3. do not apply because the proposal will not result in a new withdrawal or an increase in a withdrawal that would average 100,000 gallons or more per day in any 90-day period.
- 11) The requirements of Wis. Stat. § 281.346(4)(c)4 do not apply because the proposal will not result in a new water loss or an increase in water loss from consumptive use that would average 5,000,000 gallons or more per day in any 90-day period.
- 12) DNR complied with the public notice and comment and public hearing procedures set forth in Wis. Stat. § 281.346(9).

APPROVAL

The Wisconsin Department of Natural Resources (DNR), pursuant to its authority in Wis. Stat. § 281.346(4) hereby approves the City of Racine's proposal to divert Lake Michigan water to an area outside of the Great Lakes basin and approves the water conservation plan, as outlined in the City of Racine's Diversion Application. This approval is subject to the terms and conditions described in this approval.

1. Approved Diversion Area

The approved diversion area includes part or all sections of 1903N22E, 2003N22E, 2903N22E, 3003N22E, 3103N22E, and 3203N22E in Racine County. Attachment B entitled "Approved City of Racine Diversion Area" shows the approved diversion area and is included herein for reference.

The subcontinental divide boundary between the Lake Michigan basin and the Mississippi River basin is identified as the watershed boundary between Hydrological Unit Code 04 and Hydrological Unit Code 07 identified in the National Hydrography Dataset available from the United States Geological Survey.

2. Approved Diversion Amount

Lake Michigan water diverted pursuant to this approval shall be used solely for "public water supply" purposes, as defined in Wis. Stat. § 281.346(1)(pm), in the approved diversion area. The DNR approves a maximum diversion amount of 7,000,000 gallons per day averaged over a calendar year.

3. Conservation and Efficiency Plan

The Conservation and Efficiency Plan submitted by the applicant meets all requirements outlined in Wis. Admin. Code Ch. NR 852 and is hereby approved.

4. Monitoring

The approved diversion amount shall be monitored by the City of Racine by measuring water sales or usage by customers of Racine's Water Utility. The City of Racine shall accurately report to DNR the amount of water diverted to the Mississippi River Basin, as specified in section 6 below.

The City shall use the boundary between the Hydrological Unit Code 04 and Hydrological Unit Code 07 identified in the National Hydrography Dataset available from the United States Geological Survey to determine the extent of the Great Lakes Basin.

As customers are added to the City's water utility, the City shall update its database of water utility customers to assign each customer of the utility to either the Lake Michigan basin or the Mississippi River basin. For residential customers, where the basin line passes through a single parcel, the City shall assign the water customer or customers that occupy that parcel to the basin in which the junction of the water main and the service line to the parcel is located. Any alternative method of assigning water customers to either the Lake Michigan basin or the Mississippi River basin must be approved by the DNR. For all other Public Service Commission

(PSC) customer classes, where the basin line passes through a single parcel, the City shall consult with the DNR to determine the basin to which to assign the customer.

The City shall assign each water utility customer within the approved diversion area to one of the Public Service Commission (PSC) categories of water user.

The City shall maintain records of quarterly or monthly sales to each water customer within the approved diversion area. The City shall read all meters within two weeks of the close of each quarter or month. The City may reassign a customer to another category to reflect water user changes.

Each new customer the city adds outside of the Great Lakes Basin will be identified as such in the city's records to monitor and record all sales or delivery of water to the diversion area.

5. Return Flow

All water diverted, less an allowance for consumptive use, shall be returned to the Lake Michigan basin. Discharge from the Racine Wastewater Treatment Plant to Lake Michigan is required to meet all applicable WPDES permit requirements under Wis. Stat. § 281.31 and to prevent the introduction of invasive species into the Lake Michigan basin. Any industrial discharger within the diversion area will be required to meet federal, state and local requirements under the Racine Wastewater Utility's pretreatment program. All water returned from the diversion area to the Lake Michigan basin will be routed through and treated by the Racine Wastewater Utility.

The Racine Water Utility, in cooperation with the Racine Wastewater Utility and the Village of Mount Pleasant Wastewater Utility, shall monitor return flow from the diversion area. Return flow from within the approved diversion area shall be monitored and reported separately from return flow from areas outside of the diversion area. The Utilities are required to obtain approval from DNR for the methods for monitoring and estimation of sanitary sewerage system return flow and the methods shall be consistent with best engineering practices.

All new water supply customers in the diversion area must simultaneously connect to sewer service¹ with return to the Racine Wastewater Treatment Facility.

6. Reporting

On or before March 1st, on an annual basis, the City of Racine shall report to DNR the following information for the prior calendar year:

1. The total amount of water sold monthly or quarterly to each category of customer within the approved diversion area.
2. The total monthly sewerage flow to the City of Racine Wastewater Plant from the diversion area.

¹ On March 15, 2018, the DNR received a request to amend the regional water quality management plan as detailed in the SERWPC Community Assistance Planning Report No. 147 (2nd Edition) *Sanitary Sewer Service Area for the City of Racine and Environs, Racine and Kenosha Counties, Wisconsin*, which was formally adopted by the Regional Planning Commission on March 7, 2018.

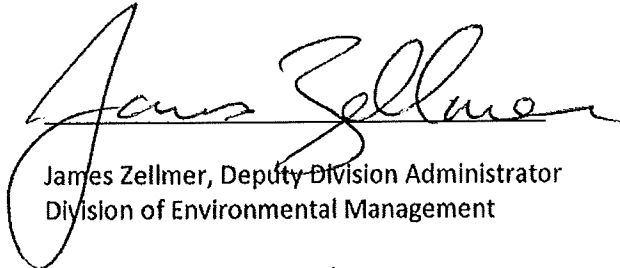
3. The total consumptive use as specified by the DNR.
4. A summary of the impact of the implemented Conservation and Efficiency Measures (CEMs) required under Wis. Admin. Code §§ NR 852.04 and NR 852.05, including quantifiable impacts to water use intensity, as defined in Wis. Admin. Code § NR 852.03(29).
5. A description of any additional CEMs implemented.

7. Non-Compliance

Failure to comply with the terms of this approval is subject to the penalty provisions in Wis. Stat. § 281.346(14).

8. Revisions

If the City of Racine wishes to revise the approved diversion amount or the approved diversion area, the City shall apply to DNR for approval, in accordance with the requirements in Wis. Stat. § 281.346(4) and any administrative rules promulgated by the DNR to implement this statute.



James Zellmer, Deputy Division Administrator
Division of Environmental Management

04/25/2018

Date

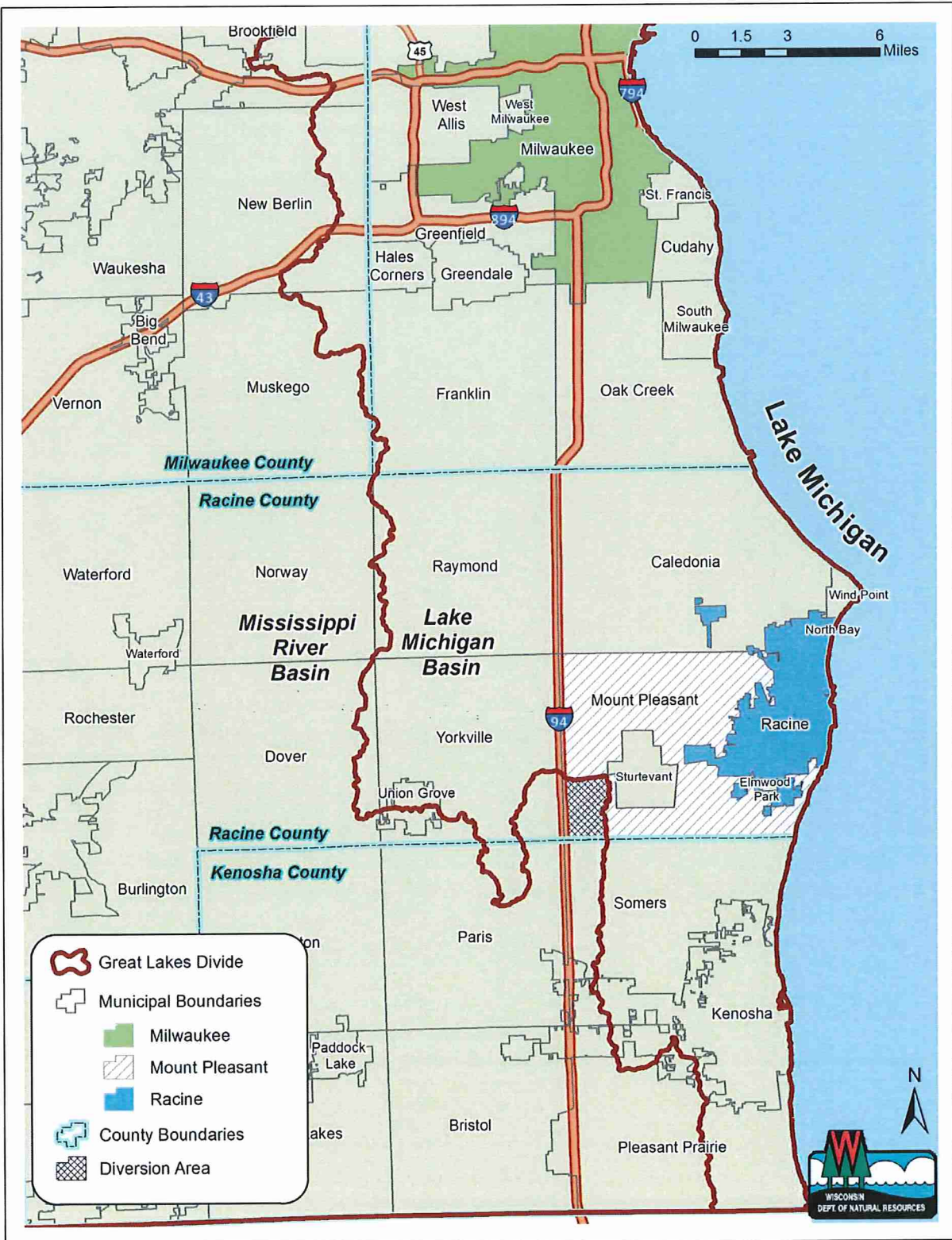


Adam Freihoefer, Chief
Water Use Section
Bureau of Drinking Water & Groundwater

04-25-2018

Date

Attachment A - Diversion Area within Southeast Wisconsin



Attachment B – Diversion Area Map (Mount Pleasant, Sections)

