

# GREAT LAKES INDIAN FISH & WILDLIFE COMMISSION

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## • MEMBER TRIBES •

### MICHIGAN

Bay Mills Community  
Keweenaw Bay Community  
Lac Vieux Desert Band

### WISCONSIN

Bad River Band  
Lac Courte Oreilles Band  
Lac du Flambeau Band

### MINNESOTA

Fond du Lac Band  
Mille Lacs Band

Red Cliff Band  
St. Croix Chippewa  
Sokaogon Chippewa

March 21, 2018

VIA ELECTRONIC MAIL

DNR Drinking Water and Groundwater Program DG/5  
Attn: Adam Freihofer  
PO Box 7921  
Madison WI 53707-7921

Re: Comments on the City of Racine Water Diversion Application

Dear Mr. Freihofer,

Great Lakes Indian Fish and Wildlife Commission (GLIFWC) staff submits these comments on the City of Racine's Water Diversion Application. GLIFWC is an agency exercising delegated authority from 11 federally recognized Indian Tribes in Wisconsin, Minnesota and Michigan. Those Tribes retain hunting, fishing and gathering rights in territories ceded to the U.S., which include portions of Lakes Michigan and Superior and their basins. GLIFWC's Board of Commissioners (Board) has authorized GLIFWC staff to participate and develop comments from a ceded territory perspective on any process or decision that involves implementation of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Compact or Agreement, including its implementation under state law.

GLIFWC's Board of Commissioners has gone on record several times with regard to the diversion of Great Lakes water and the governmental processes that govern decisions about the uses of Great Lakes water. In 1999, GLIFWC's Board passed a resolution opposing the diversion of Great Lakes water. In 2006, it urged the governments to fully integrate affected tribes into all processes and decisions regarding water withdrawals.

This proposal presents a test for a particular provision of the Great Lakes-St. Lawrence River Water Resources Compact (Compact) and the Great Lakes-St. Lawrence River Water Resources Agreement, and will likely set a precedent for how this provision will be interpreted in the future. That test is whether this proposed diversion meets the Compact's requirement that ". . .all the Water so transferred shall be used solely for Public Water Supply Purposes within the Straddling Community. . . ." Public Water Supply Purposes is defined as follows:

Public Water Supply Purposes means water distributed to the public through a physically connected system of treatment, storage and distribution facilities serving a group of largely residential customers that may also serve industrial, commercial, and other institutional operators. Water Withdrawn directly from the Basin and not through such a system shall not be considered to be used for Public Water Supply Purposes.

Racine's proposal would supply the overwhelming majority of the diverted water to one industry (Foxconn), and not to a group of "largely residential customers." The intent of the Compact (and its implementation in state law) is that diversions to straddling communities should primarily supply residential customers, not industrial operators. The City of Racine argues that because the city supplies water to its residents as a whole through a public water supply system, this diversion, as distributed through that system, meets the definition. However, the requirement is not simply that the totality of water provided by Racine be used as a public water supply, the requirement is that the *diversion* (that is, "all Water so transferred") be used solely for public water supply purposes. These are two different things, and it is clear that while the system as a whole is a public water supply system serving largely residential customers, the *diversion* will be used to serve primarily a single industrial entity. Any service to the residents of Mount Pleasant is purely incidental; there would be no diversion request if not for the needs of the Foxconn project.

The application is not specific about wastewater treatment. It states that the Racine wastewater utility would treat the water, and that the industrial customer (Foxconn) must pretreat the wastewater if it does not meet the Racine utility's standards. In order to ensure that this proposal would meet applicable water quality standards, the application should contain more information about potential constituents in Foxconn's wastewater that may require pretreatment by the applicant, whether Foxconn does in fact intend to (or will be required to) pretreat the water, and for what constituents. It should also be made clear what Racine utility's standards are, or would be, for incoming wastewater. Finally, an analysis should be performed to identify any constituents that may be present in the wastewater but which currently have no standard in Racine's discharge permit. That permit may need to be amended to account for pollutants that would not have been expected to be present in Racine's wastewater, but which may become an issue due to the particular characteristics of this industry.

The Conservation Plan in the application discusses Racine's water efficiency plans but does not discuss how Foxconn will minimize its water use. One of the fundamental tenants of the Compact and Agreement is that those who use Great Lakes water must do so responsibly, sustainably, and efficiently. The State should require that Foxconn demonstrate that its water needs are reasonable and that its use of water will occur as efficiently as possible.

A diversion for Foxconn would be a privilege, not a right. As such, additional information about water efficiency and wastewater treatment should be provided. This

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diversion would also set a precedent for the interpretation of "Public Water Supply Purposes" under the Compact. The State should ensure that the Compact Council and Regional Body are aware of this proposal so that they can determine whether they wish to request Regional Review pursuant to section 4.5.1(f) of the Compact. GLIFWC staff would urge the Regional Body to seriously consider requesting such a review.

Thank you for the opportunity to submit these comments, we look forward to further discussion of these issues as the process moves forward.

Sincerely,



Ann McCammon Soltis, Director  
Division of Intergovernmental Affairs

cc: GLIFWC Board of Commissioners  
Great Lakes-St. Lawrence River Water Resources Regional Body  
Great Lakes-St. Lawrence River Basin Water Resources Council