

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Water, Bureau of Water Resource Management
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March 21, 2018

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

**SENT BY EMAIL AND
AND REGULAR FIRST
CLASS MAIL**

Re: City of Racine Water Diversion Application

Dear Mr. Freihoefer:

The New York State Department of Environmental Conservation ("NYSDEC") submits the following comment with respect to the application by the City of Racine to divert up to an annual average of 7 million gallons of water a day outside the Great Lakes-St. Lawrence River Basin to an area within the straddling community of the Village of Mt. Pleasant. Prior to processing the application, it must first be determined whether the proposed project is excepted from the prohibition against diversions under the Great Lakes-St. Lawrence River Basin Water Resources Compact (the "Compact").

In this regard, Section 4.8 of the Compact includes a prohibition on new or increased diversions except as provided for in Article 4 of the Compact. In order to qualify for the straddling community exception, Section 4.9.1 of the Compact states that "regardless of the of the volume of Water transferred, all Water so transferred shall be used solely for Public Water Supply Purposes within the Straddling Community." Section 1.2 defines "Public Water Supply Purposes" to mean "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." (Emphasis added.) Here, it is unclear that the proposed diversion is largely for residential customers where the water is intended to facilitate the construction and operation of the future industrial site of the Foxconn facility.

Section 4.9.1 (b) of the Compact also requires that a proposal meet the Exception Standard if it "results from a New or Increased Withdrawal of 100,000 gallons per day or greater average over any 90-day period." Here it is unclear whether the proposal represents a new or increased withdrawal and whether or not that withdrawal meets the Exception Standard as provided for in Section 4.9.4 of the Compact.

In light of the general prohibition against new or increased diversions (Section 4.8), the Compact favors, and potentially mandates, that proposals for Exceptions be subject to Council Review. See Section 4.7 of the Compact. Furthermore, the Compact vests the Council with the authority to "review and take action on Proposals in accordance with this Compact and the Standard of Review and Decision." This authority is consistent

with the Parties "*shared* duty to protect, conserve, restore, improve and manage the renewable but finite Waters of the Basin for the use, benefit and enjoyment of all their citizens, including generations to come." Section 1.3.1 (f) (emphasis added).

NYSDEC respectfully requests that the Wisconsin Department of Natural Resources ("DNR") consider these provisions and provide DNR's position to the following questions:

- Is it DNR's position that the sole use of this new diversion outside the Great Lakes Watershed is for public water supply purposes as defined in the Compact?
- Does the proposed diversion meet the Exception Standard?
- Does the Compact require the Compact Council to review and take action on the proposal prior to DNR authorizing this diversion?

NYSDEC respectfully requests that DNR respond to these questions prior to taking any action on the proposal. NYSDEC looks forward to your response. Thank you.

Sincerely,



Diane English, P.E.

Chief, Water Quantity Management Section
Bureau of Water Resource Management
Division of Water