

February 16, 2016

**Supplemental Questions to WDNR regarding Waukesha Diversion Application**

- 1 We continue to struggle with the connection WDNR contends exists between your water service area planning requirements and the Compact requirement that any community seeking a diversion must demonstrate need, etc. It is clear, as the applicant, the City of Waukesha must meet that burden – but if part of the application includes service to adjoining communities do they not also need to meet that burden? It is also possible WDNR miss understands the basis of Michigan’s concern – Michigan understands the wisdom in planning utility service and the work done by SEWRPC. The issue is NOT if that makes sense but rather it appears that WDNR is using the defined water and service area boundaries to suggest that all communities within the service area need not demonstrate compliance with the Compact criteria if the applicant has. Even if this application may appear to be simply adding a few existing customers (250) in a few small adjoining areas, the apparent precedent may be the exception that has the potential to swallow the rule. If this is approved as presented what prevents any straddling county to arrange/adopt a water service area that covers the entire county and then seeks a diversion to serve the entire county when only one community has a demonstrated need? We do not believe that was intended under the Compact. Wisconsin’s intent to “control any diversion amount through the Applicant’s water supply service area plan.” Has the potential to cut both ways – that is – can Wisconsin “control any diversion amount” by expanding the water supply service area plan to include communities that have not meet Compact criteria – arguing that such action is required by State law. We ask WDNR to explain what conditions/laws/controls WDNR intends to impose or adopt to ensure Compact criteria are met in each community served – for example a commitment to ensure conservation conditions are met does not address, a demonstrated need, that there are no other reasonable alternatives and that return flow is guaranteed. Finally, WDNR suggests that somehow raising these issues implies that the water supply must be cut off at the jurisdictional boundary – which would be contrary to Wisconsin law. The real issue is how does one allow this and tell any other community that has not met Compact criteria that it cannot have diversion water? What is WDNR’s legally enforceable strategy to address this concern?
  
- 2 (IN OTHER WORDS) Upon reviewing the WDNR comments, they appear to rely heavily upon “service area boundaries” as being consistent with Compact principles. This jurisdictional distinction could allow communities that have not demonstrated a “need” to support and encourage expanded growth based on new water supply as a marketing tool. Doesn’t this approach require Compact law to be viewed with greater flexibility than its expressed terms? This could drive demand for diversions based on water service rather than need. How can that be reconciled with Compact strict criteria? NOTE – good planning principles support everything proposed by Waukesha – but how can the Compact criteria be trumped by planning issues? This discussion is not about the merits of good planning – its how can what is proposed comply with the Compact criteria?
  
- 3 Please supply a map that shows where within the water service area current residents are served in adjoining communities and confirm that the sanitary service area coincides with the

water service area. Moreover, what legally enforceable mechanism does WDNR have to ensure that if a customer using well water switched to diversion water they will also be connected to the sanitary system and not use a septic system?

- 4 WDNR suggests that the Waukesha water service area meets the Compact definition of a Community as an “or equivalent thereof”. However, Wisconsin statute does not have the same phrase “or equivalent thereof” – so how can an area that does not qualify as a “Community” under state law nonetheless comply with the Compact? Wisconsin argues that State law must be followed regarding establishment of water service areas so how can it be ignored that a water service area is not a Community under state law? WDNR submitted testimony (Mr. Henderson) that supports the proposition that the Compact was adopted with the understanding that a water service area qualifies as an “equivalent thereof” – yet, if so, why is that language not in Wisconsin law which was enacted before the Compact was approved by Congress?
- 5 Please expand on the legal authority that Wisconsin will use to enforce any conditions imposed under a possible approval with conditions – this is predicated on the expectation that the Compact Council will not plan to engage in direct enforcement but rather the Compact process must depend on the host State’s administration and enforcement of any approved diversion. For example can you cite to enforcement authority under Wisconsin Compact law that addresses this issue?
- 6 With respect to the water conservation goals and the anticipated 1 million gallon per day savings – how much of that has already been attained (as of February 2016) and how much is expected going forward? How much is expected in the initial stages of the program and how much is expected over time?
- 7 In our initial set of questions under the permit heading we asked what legally enforceable mechanism does Wisconsin have to ensure return flow is maintained – WDNR’s answer referenced NPDES permit compliance - how will an NPDES permit be used to ensure return flow is maintained?
- 8 We noted that in the discussion of alternatives the potential of connecting to Milwaukee was described but not included in the alternatives analysis. Can the reasoning to reject that alternative be explained further and why more discussion was not included on that option? This information would allow a reviewer the opportunity to understand the alternative better.
- 9 How is Waukesha managing Radium waste generation from their existing deep water aquifers? How is the waste Radium disposed of? Beyond the process of reverse osmosis, are there filters being used now, and why cannot this be a viable option for future continued use of groundwater? Can the additional wells being utilized all have HMO filtration systems installed? What would be the long term cost of using more technologically advanced filtration systems vs. building the pipelines? How much of Waukesha’s current water usage

(approx. 6 mgd) is being effectively treated for radium, vs. how much of the proposed additional volume of water (up to 10.1 mgd via the diversion) could also be treated for radium? How is the concentrated radium now being disposed of? How much of the “up to 10.1 mgd being applied for” is strictly to meet the future needs of Waukesha vs. the expanded communities anticipated needs beyond Waukesha?

- 10 After reviewing the alternatives analysis we are interested in more background on alternative 5 – which reduces the amount of water from groundwater sources and also requires less water from Lake Michigan – it appears that the primary reasons for rejecting this option were impacts on wetlands from shallow pumping and possible contamination burdens for treatment purposes. Yet is it possible reduced draw from groundwater sources will allow further recovery of the aquifer and improved water quality in that aquifer through, in effect, more prudent aquifer management – something that should be encouraged not just in the Great lakes but across the country. If the aquifer is managed to return to a sustainable level is it also true that less groundwater flow will be directed away from the Great Lakes?