

**BENTON CHARTER TOWNSHIP
APPLICATION FOR A WATER WITHDRAWAL FROM LAKE MICHIGAN**

**PERMIT DECISION
And
RESPONSE TO PUBLIC COMMENTS**

February 5, 2010

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EXECUTIVE SUMMARY

BENTON CHARTER TOWNSHIP APPLICATION FOR A WATER WITHDRAWAL FROM LAKE MICHIGAN

On August 31, 2009, the Department of Natural Resources and Environment (the Department) received from Benton Charter Township (BCT) a permit application submitted under Section 32723 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). The permit application included a request that the Department begin the required evaluation and public notice under Part 327, Great Lakes Preservation, of NREPA for a proposed water withdrawal from Lake Michigan.

Section 32723(4) of Part 327 requires that the Department provide for a public comment period of not less than 45 days before a permit application is acted upon. The Department invited public comment on the permit application via public notice and Web site posting on October 22, 2009. A copy of the public notice was transmitted to the BCT on October 22, 2009, for posting at the entrance to their premises and at the shoreline parcel where a "shore well and pumping station" are to be constructed. The public notice announced the public comment period and requested comments be submitted to the Department by December 11, 2009.

After considering the information submitted relevant to the factors used in determining the acceptability of a permit application and the comments received, the Department determined that the proposed BCT withdrawal is in compliance with the applicable standards and should be issued.

On February 9, 2010, the Department issued the permit concluding the BCT proposed withdrawal would not likely cause an adverse resource impact (ARI) and that all other factors in rendering a permit decision had been met.

This document includes the basis of decision for issuance of a permit to the BCT for the future withdrawal of 12 million gallons per day (MGD) from Lake Michigan. Responses are provided to comments received on the permit application during the public comment period including concerns related to the efficient use of existing water supply facilities, the economic and social impact on the city of Benton Harbor and neighboring townships, and the environmental impact to the Lake Michigan fishery, aquatic life, and boating.

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I. BACKGROUND

Proposed Withdrawal

The proposed 12 million gallons per day (MGD) water withdrawal is from a Lake Michigan water intake. The permit applicant, Benton Charter Township (BCT), proposes to use the water for a community public water supply system to be owned and operated by the township. The proposed withdrawal will be via a Lake Michigan water intake located approximately 3,800 feet offshore and a shore well and pumping facilities located in the south east quarter of section 12, Benton Township, T.04S, R.19W, Berrien County, Michigan. The maximum proposed withdrawal of 12 MGD, corresponds to a pumping rate of ~8,300 gallons per minute (gpm).

Public water supply is a use that the Department estimates to be 10 percent consumptive. While 90 percent of the water will remain in the Lake Michigan watershed, the consumptive use estimate places the loss from the Great Lakes hydrologic system at 1.2 MGD, at the maximum withdrawal rate.

II. STATUTORY STANDARD

A person who proposes to develop withdrawal capacity of 2 MGD or more from the waters of the state to supply a common distribution system, is required to obtain a water withdrawal permit prior to making the withdrawal (MCL 324.32723[1]).

Application Submittal

A person proposing a withdrawal from the waters of the state is required to apply for a permit by submitting an application for the withdrawal to the Department containing the following information (MCL 324.32723[2]):

- Capacity of equipment used to make the withdrawal
- Location of the withdrawal
- Withdrawal source
- Amount and rate of withdrawal
- Intended maximum monthly and annual volumes and rates, if different from the capacity of equipment used to make the withdrawal
- Relevant information related to seasonal use
- Description of how the water will be used and location, amount, and rate of return flow
- Any other information the person would like the Department to consider

The application is required to include an evaluation of existing hydrological and hydrogeological conditions and a detailed description of proposed preventative measures where relevant. In addition, the applicant is required to submit an application fee in the amount of \$2,000.

Administrative Requirements

MCL 324.32723 requires the Department to determine whether a permit application is administratively complete. The Department has 30 days to make this determination, unless the applicant is notified of deficiencies in the application requiring additional information. Once an application is determined to be administratively complete, the Department is required to provide a public comment period of not less than 45 days and render a decision on the permit application within 120 days from the completeness determination.

The Department received the original permit application from the BCT on August 31, 2009. The information was submitted in accordance with Part 327 and included all that is required on the Water Withdrawal Permit Application. On September 10, 2009, the Department requested additional information to fulfill the information requirements and intent of the Great Lake – St. Lawrence River Basin Water Resources Compact (the Compact), Part 342 of the NREPA, which was signed into law in October 2008. Upon receipt of the additional information, the

Department sent a letter to the BCT dated October 22, 2009, notifying them that the application was complete and the Department's intent to proceed forward with the public notice and public comment period.

The Department invited public comment on the permit application via public notice and Web site posting on October 23, 2009. The BCT was provided a copy of the public notice for posting at the entrance to their premises and at the shoreline parcel where the proposed shore well and pumping station are to be constructed. The notice announced the 45-day public comment period and requested that comments be submitted to the Department by December 11, 2009.

The consumptive use estimate of 1.2 MGD does not exceed the 5 MGD threshold established in the Great Lakes Charter, Principles for the Management of Great Lakes Water Resources (the Charter) requiring a prior notice and consultation with the other Great Lakes states and provinces. Accordingly, Michigan provided no notification to the states and provinces that are party to the Compact or Charter.

Conditions Required for Issuance of a Permit

The Department is required to issue a permit for a water withdrawal if all of the following conditions are met (MCL 324.32723[6]):

- All water withdrawn, less any consumptive use, is returned to the source watershed.
- The withdrawal is implemented to insure there is no individual or cumulative ARI based upon an evaluation of available information by the Department.
- The withdrawal will be implemented in compliance with all applicable local, state, and federal laws, as well as legally binding regional interstate and international agreements.
- The proposed use is reasonable.
- The permit applicant certifies compliance with the environmentally sound and economically feasible water conservation measures for the applicable water use sector.
- The proposed withdrawal does not violate public or private rights and limitations imposed by Michigan water law or other common law duties.

Parallel requirements for approval are spelled out in Section 4.11, Decision Making Standard, of the Compact. Section 4.11(5) of the Compact provides greater specificity on reasonable use conditions and requires the parties to consider efficient use of the water, efficient use of existing water supplies, the balance between economic and social development and environmental protection as they relate to other planned withdrawals and uses sharing the same source, supply potential of the water source, and the degree and duration of likely adverse impacts and the restoration of hydrologic conditions.

III. DECISION MAKING PROCESS

Consumptive Use Considerations

The consumptive use calculation was based upon a consumptive use coefficient of 10 percent. The Department relied primarily upon the United State Geological Survey publication "Consumptive Water-Use Coefficients for the Great Lakes Basin and Climatically Similar Areas," Scientific Investigation Report 2007-5197. There is a relatively narrow range of consumptive use coefficients for public water supplies in comparison with many other types of uses. It is generally conceded the range for public water supplies is 10 to 15 percent as identified in Table 3-1, Consumptive-use coefficient used by Great Lakes jurisdictions, by water use category of the report. Upon review of the aforementioned report, the Department ultimately decided that 10 percent was the best estimate of consumptive use. This is the published value for the public water supply sector in Table 3-2, Total water use by category for the Great Lakes Basin, by year, from the Great Lakes Commission annual reports, 1998-2002. Based upon the

10 percent coefficient for consumptive use, the proposed withdrawal is projected to have a consumptive use of 1.2 MGD, at the maximum rate of withdrawal.

Adverse Resource Impacts

Section 32721(1) of Part 327 prohibits a person from making a "...new or increased large quantity withdrawal from the waters of the state that causes an adverse resource impact." Section 32701(1)(a)(vii) defines an ARI for a surface water body as "decreasing the level of a lake or pond with a surface area of 5 acres or more through a direct withdrawal from the lake or pond in a manner that would impair or destroy the lake or pond or the uses made of the lake or pond, including the ability of the lake or pond to support characteristic fish populations, or such that the ability of the lake or pond to support characteristic fish populations is functionally impaired." For flowing streams and rivers, an ARI is defined as decreasing the flow by part of the index flow such that the ability of the stream to support the characteristic fish population is functionally impaired.

A comparison of the water lost from the Great Lakes Basin as a result of the proposed withdrawal to the water availability from the surface water body from which the withdrawal originates is one means of assessing the likelihood of an ARI. As noted previously, the proposed withdrawal capacity of 12 MGD corresponds to a daily consumptive use of 1.2 MGD, 1.604×10^5 cubic feet per day (ft^3/day), or 5.855×10^7 cubic feet per year (ft^3/year). The area of Lake Michigan and Lake Huron, which hydraulically act as a single source at the same elevation, possess a combined surface area of 45,300 square miles, or 1.263×10^{12} ft^2 . The consumptive use losses from a one-year withdrawal of 12 MGD without any recharge to Lakes Michigan and Huron would result in a projected decline in water level of 0.00004635 feet (0.000556 inches or 0.0014 centimeters). Accordingly, the Department concludes the impact of the proposed 12 MGD withdrawal on lake levels and the corresponding impact to the characteristic fish population would be insufficient to result in an ARI as defined in Part 327.

Applicable Local, State and Federal Laws

To be approved, a withdrawal must be in compliance with all applicable local, state, and federal laws as well as legally binding interstate and international agreements, including the Boundary Waters Treaty of 1909. Section 32726 governing local ordinances, specifically prohibits a local unit of government from enacting or enforcing an ordinance that regulates a large quantity withdrawal. The information contained within the permit application indicates the withdrawal would be implemented in compliance with applicable state and federal laws and applicable international agreements. The Boundary Waters Treaty of 1909 was agreed to by the United States (U.S.) and Canada to provide a mechanism for the resolution of disputes over waters bordering the two countries and to insure the waters of the Great Lakes remain navigable. The proposed withdrawal is located in Lake Michigan. Construction of the intake would not have an impact on navigation. Further, the U.S. and Canada share no border on Lake Michigan so there can be no violation of the Boundary Waters Treaty of 1909.

Reasonable Use

Part 327 requires that a proposed use be reasonable. As noted above, the specific criteria for consideration are the efficient use of the water and the efficient use of existing water supplies; a consideration of the balance between economic development, social development and environmental protection, the supply potential of the source; the degree and duration of likely adverse impacts; and the restoration of hydrologic conditions. These considerations are consistent with Michigan's test for determining a reasonable use as set forth in Michigan Citizen for Water Conservation V. Nestle Waters of North America, Inc. [Michigan Citizens for Water Conservation v Nestlé Waters N America Inc, 269 Mich App 25; 709 NW2d 174 (2005)]. The considerations are addressed as follows:

Efficient Use of the Water: This requirement is tied to the user's commitment to Environmentally Sound and Economically Feasible Water Conservation Measures (Conservation Measures). In the application process, the BCT identified the Conservation Measures applicable to the public water supply sector of which they are willing to certify compliance. Conservation Measures that BCT has indicated they will certify compliance include metering of water use, meter calibration, meter replacement, and water system audits. A leak detection and repair program will also be implemented. .

Efficient Use of Existing Water Supplies: The language of the Compact specifies efficient use as a consideration when an increased withdrawal is proposed. The Compact language is intended to assure that water from a source is being efficiently used by a large quantity user before they are granted approval for an increased withdrawal. Since the BCT proposal is for a new withdrawal, this criterion does not apply.

Balance between Economic Development, Social Development, and Environmental Protection: Reasonableness of a water use as it relates to the balance between economic development, social development, and environmental protection is an important consideration in the acceptability of a proposed withdrawal.

Merritt Engineering, Inc., acting on behalf of BCT, outlined a few benefits to pursuit of the water withdrawal authorization. Primary among the benefits was the ability of BCT to separate from the city of Benton Harbor water supply, which they characterized as suffering, "numerous deficiencies" as identified by the Department. Among the social benefits will be the ability to provide a safe and more reliable water supply with interconnections to adjacent water supplies providing necessary redundancy. The economic impact to the area is projected at approximately \$19 million dollars in labor, materials, and professional services over a two-year construction period.

From a social standpoint, the proposed withdrawal and related facilities would benefit the area by enhancing the health, safety, and security of area residents. The Department, Water Bureau (WB) has identified deficiencies in the city of Benton Harbor from which BCT is attempting to separate. Significant effort will be placed on improving system reliability in the design of system components associated with the proposed BCT withdrawal. These efforts will meet the requirements of the Safe Drinking Water Act. With the construction of new facilities, the BCT would also be improving system reliability for surrounding public water supply systems by offering emergency interconnects and entering into mutual aid agreements.

Lastly, given the net effect of the withdrawal on the water resources as described above, the economic and social benefits to the area would be obtained without a perceptible impact on the environment.

Supply Potential: Supply potential consideration requires the Department to look at the impact of the withdrawal on the quantity, quality, reliability, and safe yield of hydrologically interconnected water sources. The proposed withdrawal does not present any known or anticipated threat to the quantity or quality of Lake Michigan as a water source. Also, the proposed withdrawal would have no impact on the reliability or the safe yield of the source as it relates to others using Lake Michigan or hydrologically connected sources, such as Lake Huron.

Degree and Duration of Likely Adverse Impacts: The Department concluded the proposed withdrawal would not cause a significant decline in water level and is, therefore, not likely to cause an ARI.

Restoration of Hydrologic Conditions: The water withdrawn by the BCT, less consumptive use, would all be returned to the source watershed. The consumptive use losses for inside Great Lakes Basin uses are considered reasonable. Under Part 327, the restoration of hydrologic conditions does not apply to the proposed withdrawal.

Conservation Measures

For permit applications received on or after January 1, 2009, the applicant must self-certify that they are in compliance with Conservation Measures. More specifically they must certify that they are in compliance with the Conservation Measures developed by the applicable water user's sector or developed for the water use associated with that specific withdrawal (MCL 324.32723[6(e)]).

The BCT has certified that when operating a new facility and handling their own water supply distribution, they will comply with the accepted practices as developed and submitted to the Department for the public water supply sector by the Michigan Section of the American Water Works Association (MSAWWA). BCT will certify to compliance with the metering, meter calibration and meter replacement programs, and a leak detection program identified by the MSAWWA. They are committed to implementing use restrictions when necessary, full cost pricing, and "conservation pricing," the latter as a tool to control periods of excessive peak demand.

Public information and educational programs are to also be given a high priority and include informationally loaded billing statements that include usage, rates, charges, home conservation, and contact information. BCT also intends to provide educational opportunities to local schools and community groups with the promotion of irrigation system efficiency, water efficient landscaping, water reuse, and recycling. While not currently having direct control over building code issues, BCT has pledged to promote the use of water efficient fixtures and appliances, efficient use of water in heating and cooling systems, and land use planning that takes into consideration water as a natural resource.

Public or Private Rights, Limitations and Common Law

The issuance of a permit on the proposed withdrawal must not violate public or private rights or interfere with limitations imposed on the use of the resource by Michigan water law or other common law decisions. Specifically, the Department must ascertain if the issuance of the permit would interfere with the principle that certain natural resources, which in this case is Lake Michigan, are preserved for public use and that the state is required to maintain the resource for the public's reasonable use. The issuance of a permit for the proposed withdrawal would not interfere with the public's access to Lake Michigan, the public interest in Lake Michigan as a natural resource, or maintenance of Lake Michigan for drinking and recreational purposes.

VI. PUBLIC PARTICIPATION PROCESS

The Department invited public comment on the permit application via public notice and Web site posting. The public notice and posting on the Department Internet Web site occurred on October 23, 2009. The Web posting included the permit application packet for the proposed withdrawal and the public notice announcement. The public notice announced the 45-day public comment period and requested comments be submitted to the Department by December 11, 2009.

The remainder of this document summarizes the comments received based on the proposed 12 MGD withdrawal by the BCT and the Department response to the comments on the basis of applicable rule, policy, and procedure in administration of the permit application and review process under Part 327 of the NREPA.

General Comments

Many of the comments were related to the existing system and the ongoing disagreement and negotiations between the BCT and the city of Benton Harbor relative to continued provisions for water supply service.

It was expressed by some commenters that the existing water plant provides enough water and a new plant is not necessary. There was a claim that only 1/3 of the plant capacity was being used right now. There were criticisms of BCT for failing to partner in water plant renovations that would help improve the system. There is some concern with the revenue stream should BCT leave the system as 48 percent of revenue comes from customers within the city, 38 percent from customers in BCT, and 13 percent from customers in St. Joseph Township. The move will deprive the city of \$1.5 million in annual revenue. BCT officials were criticized for action on the proposed water plant construction without proper resident input resulting in the circulation of recall petitions. The governments of the city and township should be forced to work together.

Response to Comments: The Department does not consider comments or opinions on the existing situation between the city of Benton Harbor and BCT to be legally relevant to a permit decision. Part 327 specifically requires the Department to issue a permit if on the basis of the submitted material the proposed water withdrawal meets the decision making criteria. The Department is precluded from using part 327 to "...diminish or create any existing authority of municipalities to require persons to connect to municipal water supply systems as authorized by law" (MCL 324.32726).

Regarding revenue loss, any addition or loss of a major customer of a regional public water system has the likelihood of affecting water rates – clearly a major addition or loss affects both revenues and costs of operation. Water rates and the basis for establishing water rates are not an issue under Part 327. It is appropriately an issue for water service contract negotiations between the city of Benton Harbor and its water supply customers. To do otherwise invites unwanted intervention of the state into local decision making. There is nothing in Part 327 or any provisions of the Agreement and Compact that would either mandate connection to a regional water system or bind a customer permanently to a regional water system.

Applicability of Law and Regulations

One specific comment criticized the BCT's application under Part 327. As a community public water supply, it was inferred the application would have been more appropriately made under the Michigan Safe Drinking Water Act, 1976 PA 399, as amended (Act 399) and rules. The application did not address access and easements for the plant construction, and there was no submittal of plans and specifications.

The commenter cited the application of requirements in the Compact and expressed the opinion that the BCT proposal did not meet the applicable standards. Most frequently referenced were the Compact standards identified in *Section 4.11, Decision Making Standard* and *Section 4.12, Applicability*. Among the standards theoretically not met were those related to efficient use of water blaming BCT for much of the unaccounted for water loss in the system. There were also questions as to BCT's understanding of system water losses and plans to address the issue in the future.

Response to Comments: Part 327 and the companion amendments to Act 399 do not provide any restrictions as to who may apply for a permit to make a large quantity water withdrawal nor specify how one must go about obtaining a permit. The Department assumes BCT submitted their request for approval through Part 327 in large part to obtain the appropriate authorization of the withdrawal before investing significant monies in developing plans and specifications for the new water works systems. Conformity with the requirements of the Compact is, in part, the basis for the Department's decision on the permit application.

Consumptive Use, ARI and Preventative Measures

At least one comment was received questioning the validity of the application since there was no mention of consumptive use, the ARI evaluation, or preventative measures. Specifically, the

commenter believed BCT should have been required to more thoroughly evaluate hydrologic and hydrogeologic conditions and the impact on discharges to Lake Michigan.

Response to Comments: By treating the withdrawal as new the Department has projected the consumptive use to be 1.2 MGD. As an in-basin use, the consumptive use is of insufficient magnitude to trigger any of the review thresholds of the Compact. In the short term, the combined use of water for BCT and the city of Benton Harbor will not significantly increase, suggesting in reality there will be no change in consumptive use. Regarding the ARI, hydrologic and hydrogeologic critiques, the WWAT is intended to provide this evaluation. However, the WWAT is only applicable to withdrawals from the inland waters of Michigan. The Department performed what is believed to be a reasonable evaluation of conditions based upon the ARI standard relative to the lowering of lake levels. The projected impact provides no evidence of concern relative to the occurrence of an ARI, or adverse impact to the hydrologic conditions of Lake Michigan.

Conservation Measures

The city of Benton Harbor was critical of BCT's commitment to water conservation measures noting they had done no analysis of water loss, meter reliability, or meter failures. There were no indications of how these issues might be addressed as part of a separate system served by the new withdrawal.

Response to Comments: After January 1, 2009, permit applicant's are required to "self-certify" that they are in compliance with conservation measures developed by the applicable water user's sector or developed for the water use associated with that specific withdrawal.

The BCT has certified when operating a new facility and handling their own water supply distribution they will comply with the accepted practices developed by the MSAWWA for the public water supply sector. BCT has certified as to their intent to comply with metering, meter calibration, meter replacement, and leak detection programs as identified by the MSAWWA. They have committed to water use restrictions when necessary, full cost pricing, and conservation pricing. Public information and educational programs are to be given a high priority and include informational billing statements that include usage, rates, charges, home conservation, and contact information. Other education opportunities will target local schools and community groups with the promotion of irrigation system efficiency, water efficient landscaping, water reuse, and recycling. BCT has pledged to promote the use of water efficient fixtures and appliances, efficient use of water in heating and cooling systems, and land use planning that takes into consideration water as a natural resource.

In summary, BCT has certified as to their intent to meet virtually all of the water conservation measures identified for the public water supply sector. The Department commits to working with public water supplies to further water conservation efforts and will do so with the BCT.

Reasonableness of Proposed Withdrawal

A number of comments were received relative to the reasonableness of the proposed withdrawal. Part 327 requires a withdrawal be deemed reasonable under common law principles of water law in Michigan. Under provisions of the Compact, the reasonableness of a proposed withdrawal must be considered on the basis of a number of factors. For the purpose of this section, the discussion centers on comments related to efficient use of the water and existing water supplies and the balance between economic and social development and environmental protection. Comments were received on the proposed withdrawal expressing the following concerns:

- BCT had not appropriately addressed the issue of efficient use of water or the efficient use of existing water supplies.

- There would be a potentially devastating social impact to the city of Benton Harbor with a potential for bankrupting the city.
- The construction of a new intake and associated facilities would be a waste of public monies since the city of Benton Harbor has received \$13 million in Drinking Water Revolving Fund (DWRF) funding for water treatment plant improvements making the construction of another facility unnecessary.
- There would be little to no social benefit outside of the possible creation of jobs.
- The city questioned the lack of analysis relative to improvement in system reliability and economic responsibility. They argued the construction of the new plant is unnecessary since the city of Benton Harbor had addressed system reliability and redundancy issues.

Response to Comments:

The efficient use of water by a system is a valid consideration. However, it is the understanding of the Department that many operations related to efficient use, including metering of water use and billing on the BCT portion of the system, are handled under agreement by the city of Benton Harbor. In such an arrangement, the burden for efficient use of the water would be on the city. The efficient use of existing systems is an applicable consideration when a proposal for an increased withdrawal and consumptive use is before the Department for approval. That is to say, an existing system must demonstrate that it is not wasteful of its water before a request for an increase in use can be approved. Because this is a new withdrawal, the requirement for efficient use of existing systems, specifically the efficient use of the system owned and operated by the city of Benton Harbor is not germane to the permit decision. Efficient use of water by Benton Township is a condition of the permit for the proposed water withdrawal.

Individual concerns that there might be a social impact since the separation might bankrupt the city of Benton Harbor and the observation that the move is a waste of public money are not consistent with other information the Department has officially received. In the DWRF loan application, the city of Benton Harbor was confident that the loss of the BCT customer base would not jeopardize loan repayment. Their argument was the money lost would be offset by a reduction in required service to BCT customers, in particular since they handle a majority of the water supply issues on the BCT portion of the system. The economic benefit to the area is projected at approximately \$19 million dollars, resulting in a clear benefit to the local economy for the minimum two-year construction period.

The Department, WB has identified numerous deficiencies in the city of Benton Harbor public drinking water supply system. An analysis of the deficiencies as they relate to system reliability and economic solvency are not the responsibility of BCT. BCT is attempting to separate. In doing, so significant effort will be placed on improving system reliability in the design of system components associated with the proposed BCT withdrawal. The design as approved by the Department will meet the requirements of the Act 399. With the construction of new facilities, the BCT would be improving system reliability for surrounding public water supply systems if for no other reason then the plant would provide additional redundancy.

The Department determined there would likely be no ARI to the commonly shared water source as the withdrawal is not of sufficient magnitude to perceptibly lower the level of Lake Michigan. In total, the benefits that might be derived with authorization of the withdrawal and the construction of facilities will be obtained with no perceptible impact on the environment. From a social standpoint, the proposed withdrawal and related facilities would benefit the area by enhancing the health, safety, and security of area residents. Accordingly, the Department concludes the BCT proposal meets the reasonableness criteria relative to social development, economic development, and environmental impact.

Adverse Impact and Requirements for Ecological Improvement

Many comments expressed concern over the potential for environmental damage. Among the specific concerns were those for impacts to the Lake Michigan fishery, aquatic life associated wetlands and floodplains. Commenters believed that BCT should identify those preventative measures that would be proposed as part of the withdrawal. There were also concerns over quantity and quality impacts to Lake Michigan, and a concern that construction activities on the proposed intake might result in substantial beach erosion and commensurate loss of structures.

Response to Comments: The Department has determined there would be no ARI caused by the impact of the proposed withdrawal, and no perceptible impact on the levels of the Lake Michigan/Lake Huron complex. Given the likely near term affect of the proposed withdrawal on the volume of the city of Benton Harbor withdrawal, there is no identifiable issue of cumulative impacts. Part 327, the guiding legislation in the issuance of the permit, requires “preventative measures” be submitted as part of a permit application only when necessary to preclude an otherwise prohibited environmental impact. Part 327 provides no language specifically addressing the issues of quantity, quality and beach erosion. There are a number of other permits that are required from the Department and the Army Corps of Engineers that will specifically consider and address those issues.

Inadequate Information

A number of comments criticized the adequacy of information. Specifically, there was an opinion held by some that BCT should be required to complete a study and provide a conceptual plan and data in support of the proposed water withdrawal and associated construction.

Response to Comments: A permit applicant under Part 327 is required to submit information including pumping capacity; location of withdrawal; withdrawal source; amount and rate of withdrawal; the maximum monthly and annual volumes and rates; relevant information related to seasonal use; a description of how the water will be used; the location, amount and rate of return flow; and an evaluation of existing hydrological and hydrogeological conditions. Other information may be provided at the discretion of the applicant with a description of preventative measures required where relevant. BCT provided the information request in the permit application and additional information to clarify their compliance with the Compact. Part 327 provides no requirement the applicant go to great length in justifying their request for the withdrawal authorization in excess of that required by the part. BCT met that obligation.

V. Summary of the Department Position

The Department has determined the application for the BCT proposed withdrawal of water from Lake Michigan was submitted in accordance with the permit requirements of Part 327. Further, the proposed withdrawal is deemed not likely to cause an ARI and, as proposed, meets the intent of the decision making standards of the Compact. The Department based this determination on a review of the submitted information and data pertinent to the factors used in making a decision on a permit application, including thoughtful consideration of comments received from the public.

The authorized withdrawal capacity is 12 million gallons per day (maximum withdrawal in any single day). The Department will assure that capacity is not exceeded in the issuance of the required Act 399 construction permits. In addition, the Department will require as a condition of this Part 327 authorization that the BCT public water supply system when up and operating independently demonstrate a commitment and certify compliance with the water conservation and water use efficiency programs consistent with the public water supply guidelines accepted by the state under Part 327, and posted on the Department Web site.