

**BEFORE THE GREAT LAKES-ST. LAWRENCE RIVER BASIN  
WATER RESOURCES COUNCIL**

**In the Matter of the Application by the City  
of Waukesha, Wisconsin for a Diversion of  
Great Lakes Water from Lake Michigan and  
an Exception to Allow the Diversion**

**No. 2016-1**

**FINAL DECISION**

**I. Introduction and Background**

- 1. Summary of the Application.** The City of Waukesha, Wisconsin (“Applicant”) applied for a New Diversion of Lake Michigan water from the Great Lakes-St. Lawrence River Basin (“Basin”) to serve the territory in the Waukesha water supply service area established under Wisconsin law. The Applicant requested to divert up to 10.1 million gallons per day (“MGD”) annual average day demand (“ADD”) of Basin water for this water supply service area, based on a projected average daily demand for the water supply service area at full build-out (approximately 2050) (“Application”).
- 2. Legal Basis for Submission of Application for a Diversion of Great Lakes Water.** Pursuant to Article 201 ¶ 3 of the Great Lakes—St. Lawrence River Basin Sustainable Water Resources Agreement (“Agreement”) and § 4.9.3 of the Great Lakes—St. Lawrence River Basin Water Resources Compact (“Compact”),<sup>1</sup> the State of Wisconsin, as the Originating Party, forwarded the Applicant’s Application for an exception to the prohibition of Diversions as a Community within a Straddling County on January 7, 2016 to the Great Lakes—St. Lawrence River Water Resources Regional Body (“Regional Body”) and the Great Lakes—St. Lawrence River Basin Water Resources Council (“Compact Council”) for Regional Review. The Originating Party provided a Technical Review, preliminary final Environmental Impact Statement, and the Application to the Regional Body and Compact Council for consideration.
- 3. Originating Party and Applicant Review Process.** The Originating Party has represented to the Regional Body that the Applicant held four informational meetings consisting of a presentation and questions and answers on a previous version of the Application submitted to the Originating Party in 2013. In addition, the Originating Party has represented to the Regional Body that it: (i) held three public comment periods in 2011, 2013, and 2015, and two sets of public hearings on various versions of the Application in 2011 and 2015 for a total of six public hearings prior to completing its technical review; (ii) considered public comments received during the public comment periods and hearings; (iii) provided opportunities for Tribal consultation via

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<sup>1</sup> Capitalized terms used in this Final Decision that are not defined in this Final Decision shall have the meanings ascribed to them in the Agreement and the Compact.

conference calls with Wisconsin Tribes on July 25, 2011 and July 14, 2015; and, (iv) although not required by the Compact, elected to follow the Environmental Impact Statement procedures under Wisconsin's Environmental Policy Act, with public participation.

4. **Regional Review Process.** In fulfillment of the Agreement and the Interim Procedures under the Agreement, as adopted on June 10, 2010, and the Compact and the Interim Guidance under the Compact, as adopted on June 10, 2010, the public as well as the Regional Body and Compact Council members were notified that the Application was submitted to the Regional Body and Compact Council for Regional Review on January 7, 2016. An opportunity for the public to comment on the Application was opened from January 12, 2016 to March 14, 2016. The Regional Body and Compact Council also notified the Tribes and First Nations that it had received an Application for a Diversion of Basin water and requested comments.

In addition, on February 17, 2016, the Regional Body and Compact Council toured sites in southeastern Wisconsin related to the Application, and in a face-to-face meeting in Waukesha, Wisconsin, asked a series of questions of the Wisconsin Department of Natural Resources and the Applicant regarding the Application. Furthermore, on February 18, 2016, the Regional Body and Compact Council held a meeting with Canadian First Nations and federally recognized U.S. Tribes, followed by a public meeting and hearing on the application in Waukesha, Wisconsin at which the public was provided an opportunity to provide comments to the Regional Body and Compact Council members.

The Originating Party received and answered questions on the technical review from six jurisdictions (Illinois, Michigan, Minnesota, New York, Ohio and Quebec) and the Originating Party responded to all questions submitted. The answers to questions were provided to the Regional Body and Compact Council. Two jurisdictions (Michigan and Ontario) submitted their own technical reviews to the Regional Body and Compact Council on March 22, 2016.

A public meeting of the Regional Body was held for the purpose of considering its Declaration of Finding, commencing on April 21-22, 2016 in Chicago, Illinois, and which was recessed to a May 2, 2016 meeting via webinar, which in turn was recessed to a public meeting held on May 10-11, 2016 in Chicago, and further recessed to a May 18, 2016 meeting via webinar. On May 18, 2016, the Regional Body approved its Declaration of Finding.

On May 20, 2016, the Regional Body and Compact Council notified the Regional Body and Compact Council members, the Applicant, the public, and Canadian First Nations and federally recognized U.S. Tribes that the Regional Body had issued its Declaration of Finding, and included with these notices a copy of the approved Declaration of Finding.

5. **Additional Compact Council Process.** On May 20, 2016, the Compact Council provided public notice as well as notice to the Tribes and First Nations that a Compact Council meeting would be held to consider the Application and the Regional Body's Declaration of Finding on the Application, in order to render a Compact Council decision on the Application. The Compact Council held a public meeting for these purposes on June 21, 2016 in Chicago, Illinois.
6. **Record of Decision.** The Regional Body and Compact Council jointly established the website [www.waukeshadiversion.org](http://www.waukeshadiversion.org) to make all information, including all Application materials, transcripts of meetings, public comments, calendar of events, public notices, and other relevant information available to the public. All such materials together shall be considered the record of decision. In addition, paper copies of all materials are available for public inspection at the office of the Secretariat to the Regional Body.

## **II. Findings**

After reviewing the Application, as well as Declaration of Finding and the materials in the record of decision, to determine whether the Application meets the Compact criteria related to the ban on Diversions and the Exception criteria for a Diversion to a Community within a Straddling County, the Compact Council makes the following findings. The bases for these findings as listed below are intended to highlight major reasons for reaching these findings without containing an exhaustive listing of every basis in the record that supports each finding.

1. **Community in a Straddling County.** The Applicant is located wholly outside the Basin and wholly inside Waukesha County, Wisconsin. Waukesha County straddles the Lake Michigan watershed boundary; therefore, the Applicant is a Community within a Straddling County. (Compact § 1.2)
2. **Water to Be Used for Public Water Supply.** The Applicant owns the Waukesha Water Utility, a public water supply system, and the Applicant has requested the use of the water solely for Public Water Supply Purposes. 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." (Compact § 4.9.3.a)
3. **Applicant Without Adequate Supplies of Potable Water.** The Applicant is without adequate sustainable supplies of potable water. (Compact § 4.9.3.a)
  - 3a. The Applicant's deep aquifer wells draw from an aquifer that is part of a regional aquifer system where withdrawals have exceeded the natural recharge rate. A cone of depression in the deep aquifer centered in eastern Waukesha County is attributable in large part to withdrawals from the Applicant's deep aquifer wells.

Continued pumping at rates in excess of recharge rates is not sustainable. Even at lower pumping rates, water levels are still approximately 350 feet below pre-development water levels. The Applicant does not control the overall use of the regional aquifer system; however, the Southeastern Wisconsin Regional Planning Commission (“SEWRPC”) water supply plan has recommended reducing water utility reliance on this deep aquifer. Cessation of the Applicant pumping from the deep aquifer is anticipated to result in additional recovery of the deep aquifer system.

**3b.** The Applicant’s deep aquifer wells also have total combined radium (radium-226 and radium-228) concentrations that are above the Safe Drinking Water Act standard of 5 picocuries per liter (pCi/L). The Applicant’s current system of blending deep aquifer water with shallow water and treating some deep aquifer water still does not meet state drinking water standards. Furthermore, the Applicant is under a court order to address the naturally occurring radium contamination and comply with all state and federal drinking water radionuclide standards by June 30, 2018.<sup>2</sup>

**3c.** The groundwater depletion, along with the radium contamination issue, demonstrates that the deep aquifer is not a sustainable or safe source of water for the people served by the Applicant. Eliminating the Applicant’s withdrawal from the deep aquifer will eliminate the extraction and redistribution of radium by the Applicant from the deep aquifer through releases from treatment processes, disposal of wastewater treatment byproducts and/or dispersion of residual radium into the environment through incomplete treatment.

**4. Applicant Without Reasonable Water Supply Alternative.** All of the Applicant’s water supply alternatives within the Mississippi River Basin (“MRB”) are likely to have, and cannot be sustained without, greater adverse environmental impacts than the proposed diversion. The Compact Council further finds, as stated in several Findings including 4a, 4b, 7b, 8c, 8e, and 11a, that the diversion as conditioned in this Final Decision does not have significant adverse impacts in the Basin. In addition, none of the evaluated MRB alternatives were found to be reliable sources for a long-term, dependable, and sustainable public water supply and, therefore, the Applicant is without a reasonable water supply alternative. (Compact § 4.9.3 and 4.9.3.d)

**4a.** It is the obligation of the Applicant to provide its customers with a safe, reliable water supply. The Applicant and Originating Party screened fourteen potential MRB water supply alternatives and analyzed in-depth six water supply alternatives. Environmental review conducted by the Originating Party considered a demand production of 8.5 MGD ADD for modeling purposes, which is lower than the Application request of 10.1 MGD ADD. This demand is the low end of the range presented by the Applicant.<sup>3</sup> The Compact Council finds that the difference in an

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<sup>2</sup> State of Wisconsin v. City of Waukesha, Case No. 2009-CX-4 (Wis. Cir. Ct. Waukesha Cnty. Apr. 9, 2009).

<sup>3</sup> Originating Party Technical Review, Section S2C. Environmental Impacts.

environmental projection analysis at 8.5 MGD ADD versus 8.2 MGD ADD is within the margin of error for the model, and would not change the expectation of significant adverse impacts to wetlands or lakes. The environmental analyses of water supply alternatives that included use of the shallow aquifer near the Fox River predicted significant adverse impacts to hundreds of acres of wetlands. An analysis of a water supply alternative using the unconfined deep aquifer west of the City of Waukesha predicted significant impacts to several seepage lakes, including a 6 to 12 inch decrease in lake levels and a greater than 10% decrease in groundwater inflow to these lakes. These modeled impacts indicate that the evaluated sources within the MRB are unreliable and not sustainable without adverse environmental impacts.

Public water suppliers have a responsibility to meet public health and safety needs to the best of their ability. The Originating Party also determined that none of the MRB water supply alternatives is as protective of public health as the proposed Lake Michigan water supply, because of greater risk for contamination.<sup>4</sup>

**4b.** None of the water supply alternatives that relies on treating the radium-contaminated water pumped from the deep aquifer prevents extraction and redistribution of radioactive waste into the environment, whether by land application of Waste Water Treatment Plant (“WWTP”) sludge, landfilling of waste byproducts or release of residual radium levels into the WWTP-receiving waters. All such alternatives are, therefore, not reasonable or sustainable for this Applicant at these volumes over the long term and present potential current and future avoidable risks to the environment and human health.

**4c.** Groundwater flow models have demonstrated a direct interconnection between the deep confined aquifer from which the Applicant withdraws groundwater and the Basin. The U.S. Geological Survey (“USGS”) and the Wisconsin Geological and Natural History Survey (“WGNHS”) have estimated<sup>5</sup> that about 30% of the replenishment of the water withdrawn by the Applicant’s deep wells originates from the Lake Michigan watershed. Water from the Lake Michigan watershed is then discharged into the MRB via the Fox River.

**4d.** The Compact requires Adaptive Management approaches to conservation and management of Basin Water resources (Compact § 1.3.2.h) and application of a scientific basis for sound decision making. (Compact § 1.4) USGS and WGNHS concluded<sup>6</sup> that the shallow groundwater aquifer and deep groundwater aquifer are interconnected across the surface water divide. This is illustrated by figure 23 in the Originating Party’s Technical Review. The demonstrated hydrological interconnection has a scientific basis and creates a nexus between the Basin and the MRB that supports the consideration of adverse environmental impacts (*see* Section

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<sup>4</sup> Originating Party Technical Review, Section S2B. Public Health.

<sup>5</sup> Originating Party Technical Review, Section AC1.

<sup>6</sup> SEWRPC Simulation of Regional Groundwater Flow in Southeastern Wisconsin, Report 1 and 2, Technical Report #41 (06/2005).

II.11 below) on the MRB when analyzing the request for a Diversion from the Lake Michigan watershed.

**4e.** The Applicant's deep aquifer wells induce water from the Lake Michigan watershed to replenish groundwater withdrawn by the Applicant. These wells withdraw water that, without the withdrawals, would have flowed toward Lake Michigan and instead, after use, is discharged to the Fox River without return flow.

**5. Proposed and Conditioned Diversion Amount and Area.** The Application requests a Diversion amount of 10.1 MGD as an ADD to meet projected demand at full build-out (approximately 2050) for the Waukesha water supply service area established under Wisconsin law. Compact Section 4.9.3.a requires that the proposed diversion must be used solely for the Public Water Supply Purposes of a "Community within a Straddling County." The Compact Council finds that the diversion area set forth in the original Application did not clearly meet Compact criteria. The Compact Council further finds that the Approved Diversion Area (defined below) set forth in Attachment 1 is the equivalent of a city or town and meets the Compact definition of a Community within a Straddling County as set forth in Compact Section 1.2 for the reasons set forth in paragraph II.5.b of these Findings. The Compact Council finds that the Diversion amount that is consistent with the Compact is 8.2 MGD as an annual ADD to meet the projected demands ("Approved Diversion Amount") within the Approved Diversion Area (defined below), subject to the conditions contained in this Final Decision, including, without limitation, those listed in Section III.2 below. The Compact Council finds that this Approved Diversion Amount and Approved Diversion Area are appropriately limited in quantity and area and are considered reasonable for the purposes for which the Diversion is proposed. (Compact § 4.9.4.b)

**5a.** The Applicant's public water supply system is the only public water provider to be served by the Diversion.

**5b.** The Applicant may provide water supply service to the following areas, each of which are part of the Diversion area described and depicted in Attachment 1 attached to and made a part of this Final Decision (collectively, the "Approved Diversion Area"). The limits of this Approved Diversion Area are fixed as of May 18, 2016:

- i. Incorporated land within the boundaries of the City of Waukesha and land outside the City of Waukesha's jurisdictional boundaries that is served with municipal water by the Applicant through the Waukesha Water Utility as of May 18, 2016. This land is referred to as the "Current Area Served" (and colored in dark blue) on Attachment 1; and,
- ii. Land lying within the perimeter boundary of the City of Waukesha that is part of unincorporated land in the Town of Waukesha. These areas are referred to as the "Town Islands" (and colored in light blue) on Attachment 1. The Town Islands are transected or bordered by a Waukesha Water Utility water main and are either fully surrounded by

territory incorporated in the City of Waukesha or are bordered on one side by a transportation right-of-way and on the remaining sides by territory incorporated in the City of Waukesha. For the purposes of defining the Approved Diversion Area, the Town Islands have been included because for all practical purposes they are within the Applicant's community boundaries.

**6. Proposed Diversion Cannot Be Avoided Through Water Conservation and Efficiency.** The proposed Exception cannot be reasonably avoided through the efficient use and conservation of existing water supplies and the Exception will be implemented to incorporate environmentally sound and economically feasible water conservation measures to minimize water withdrawals. (Compact § 4.9.4.a and 4.9.4.e)

**6a.** The Applicant has implemented a water conservation program consistent with the Originating Party's state law. The Approved Diversion Amount found to be consistent with the Agreement and Compact in Section II.5 (8.2 MGD) assumes a ten percent demand reduction due to conservation and efficiency measures. The Applicant used the Alliance for Water Efficiency Conservation Tracking Tool and projected that at full system build-out, it would achieve 1.0 MGD in conservation savings. With the Compact Council's determination of the Approved Diversion Amount, this corresponds to 0.8 MGD in conservation savings.<sup>7</sup>

**7. Maximize Return of Great Lakes Water and Minimize Discharge of Mississippi River Basin Water to Great Lakes.** The Applicant will return up to the previous year's average daily withdrawal amount per day and, therefore, a volume of water approximately<sup>8</sup> equal to the volume of water withdrawn from Lake Michigan will be returned to the Lake Michigan watershed.<sup>9</sup> The Applicant will maximize the portion of water returned to the source watershed (Lake Michigan watershed) and will minimize the water from outside the Lake Michigan watershed that is returned to the Basin.<sup>10</sup> Returned water will be required to meet Clean Water Act water quality discharge standards and prevent the introduction of invasive species into the Basin. (Compact § 4.9.3.b and 4.9.4.c)

**7a.** Through the Applicant's proposed return flow management plan, approximately 100% of the volume withdrawn from the Basin will be returned via flow through the Root River, a tributary of the Basin. This effectively results in no net loss of water volume to the Basin.

**7b.** The changes in the characteristics of the flow within the Root River, while potentially creating some negative changes for certain aquatic and benthic organisms, is expected to provide an overall net benefit to the Root River and the Lake Michigan watershed, including stabilizing river flows to reduce low flow

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<sup>7</sup> Originating Party Technical Review, Sections C1 and C2.

<sup>8</sup> Originating Party Technical Review, Section R1 and R2.

<sup>9</sup> Originating Party Technical Review, Sections R1 and R2.

<sup>10</sup> Originating Party Technical Review, Section R4.

periods and improving spawning conditions for salmonids to the Wisconsin Department of Natural Resources (“WDNR”)<sup>11</sup> Root River Steelhead Facility.<sup>12</sup>

**8. No Significant Individual or Cumulative Impacts.** The Diversion will be implemented to ensure that it will result in no significant individual or cumulative adverse impacts to the quantity or quality of the Waters and Water Dependent Natural Resources of the Basin with consideration given to the potential cumulative impacts of any precedent-setting consequences associated with the Application. (Compact § 4.9.3.e and 4.9.4.d)

**8a.** The antidegradation procedures in ch. NR 207 of the Wisconsin Administrative Code will be implemented to ensure the antidegradation standard in s. NR 102.05(1) is met. The Wisconsin Pollutant Discharge Elimination System (“WPDES”) permit terms and conditions and the application of antidegradation procedures will ensure that the diversion will comply with water quality standards in the receiving water and downstream waters (Lake Michigan). Chapter NR 207 requires a demonstration of at least one improvement to economic or social development and a Lake Michigan water supply with resulting return flow would provide several improvements. For example, it would correct a public health problem (radium contamination) by providing clean, safe and sustainable water in a manner that protects environmental, economic, and social health. WPDES permit terms and conditions will reflect applicable source reduction and pollution minimization practices and meet all applicable water quality standards. Additionally, the WDNR will ensure that the discharge is located in such a way to lessen any potentially deleterious environmental impacts as practicable.<sup>13</sup>

**8b.** The Originating Party and the Applicant, as part of their review of the Application, took into consideration the Regional Body and Compact Council’s “Cumulative Impact Assessment of Withdrawals, Consumptive Uses and Diversions: 2006-2010” that was released on December 4, 2013.

**8c.** A Diversion of Basin water will eliminate land-spreading of WWTP sludge that contains radium, and eliminate the introduction of radium into the environment from the City of Waukesha WWTP.

**8d.** Reduced withdrawals from the deep aquifer will support long-term recovery of that aquifer. The trend for groundwater levels to continue to recover may also contribute to the reduction of radium concentrations within the upper levels of the deep aquifer.<sup>14</sup>

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<sup>11</sup> All references to future actions by, or submissions to, the Wisconsin Department of Natural Resources shall mean and include any future successor to its responsibilities that are the subject of this Declaration of Finding.

<sup>12</sup> Originating Party Preliminary Final EIS, Section 4.4.2.3.1.7.

<sup>13</sup> See Application, Volume 4.

<sup>14</sup> See Application, Volume 2.

**8e.** The return of Basin water via the Root River is projected to provide a net environmental benefit to the Root River while simultaneously producing no loss of biological integrity to Lake Michigan.

**8f.** Eliminating the Applicant's withdrawal from the deep aquifer system will reduce the amount of groundwater lost from the Lake Michigan watershed without return flow (*see* Section II.11 below).

**8g.** The Applicant will be returning approximately 100% of the water Withdrawn.

**8h.** The return flow will meet the Originating Party's and federal permit requirements, providing high quality effluent to the Root River. The current WWTP processes include removal of chemical phosphorus, suspended solids and associated contaminants, as well as organic materials; tertiary filtration; and, ultraviolet light disinfection. The proposed phosphorus permit limits are well below the water quality standard for the Root River and are on an order of a magnitude lower than many existing dischargers to the Basin.

**9. Application to Comply with Applicable Laws.** The Compact Council has reviewed the Application and the Exception shall be implemented to comply with all applicable municipal, State, Provincial and federal laws as well as regional interstate, inter-provincial and international agreements, including the Boundary Waters Treaty of 1909. (Compact § 4.9.4.f)

**10. Precedent-Setting Impacts.** The Compact Council has reviewed the Application for precedent-setting impacts and finds that any precedent-setting consequences associated with the Application will not adversely impact the Waters and Water Dependent Natural Resources of the Basin. (Compact § 4.9.4.d)

**10a.** Based on these facts and circumstances, the findings in this Final Decision are unique to this Applicant and Application and do not necessarily apply to any other applicant or application. The unique circumstances in the Application include, without limitation:

- i. The Applicant is under a court order to achieve complete compliance with all federal and state drinking water radionuclide standards by June 30, 2018.
- ii. Terminating use of the existing deep aquifer well water supply system will eliminate Waukesha's water utility system as a source of radium and the dispersion of radium into the environment.
- iii. The Applicant's wells in the deep aquifer are in a confined aquifer which restricts recharge and contributes to groundwater decline.
- iv. The deep aquifer groundwater supply is hydrologically connected to waters of the Basin. Continued use of that aquifer draws groundwater away from the Basin. The subsequent discharge of treated wastewater into the MRB surface waters results in loss of water from the Lake Michigan watershed.

- v. An environmental analysis of MRB water supply alternatives predicts unavoidable significant impacts to hundreds of acres of wetlands or unavoidable significant impacts to three seepage lakes.
- vi. The Applicant's return flow management plan will return to the Lake Michigan watershed approximately 100% of the volume of water withdrawn.
- vii. The Applicant has separate storm and sanitary sewers, and the WWTP design and operation will prevent the spread of invasive species from the MRB and protect against return flow as the result of sewage overflow.
- viii. The Applicant's wastewater treatment plant includes removal of chemical phosphorus, suspended solids and associated contaminants, as well as organic materials; tertiary filtration; and, ultraviolet light disinfection.

**11. Hydrologically Interconnected to Waters of the Great Lakes Basin.** Most of the Applicant's existing water supply is derived from groundwater that is hydrologically interconnected to Waters of the Basin. Groundwater pumping from the deep aquifer in southeast Wisconsin has changed the predevelopment groundwater flow direction from flowing towards the Lake Michigan watershed to flowing towards pumping centers. Currently, the largest pumping center from the deep aquifer in southeast Wisconsin is in Waukesha County. The Applicant's existing deep aquifer wells are pumping and distributing water that once flowed towards the Lake Michigan watershed and is now flowing towards pumping centers. (Compact § 4.9.3)

**11a.** Groundwater modeling reported in 2005 (based on 2000 data) by USGS and the WGNHS estimated that about 30 percent of the replenishment of the water withdrawn by wells in the deep aquifer in southeast Wisconsin is derived from the Lake Michigan watershed. Of the Lake Michigan watershed water, approximately 4 percent is induced directly from Lake Michigan. Approving a diversion of Great Lakes water with return flow will result in a net increase of water in the Lake Michigan watershed.

**11b.** Reduced drawdown pressure on the regional deep aquifer would have important benefits to surface water hydrology and is of material interest to the Water Dependent Natural Resources of the Lake Michigan watershed and MRB.

**11c.** In 2014, the Applicant withdrew 6.6 MGD of water. Approximately 5.6 MGD of this withdrawal was from deep aquifer wells. Given the interconnection between the deep aquifer and the Lake Michigan watershed, cessation of this withdrawal will aid the recovery of the natural groundwater flow system.

**11d.** Based on USGS and WGNHS estimates and the Applicant's 2014 withdrawal rates, there will be approximately a 1.6 MGD net increase over time in water to the Lake Michigan watershed with cessation of the Applicant's withdrawals from the

deep aquifer. 1.6 MGD represents less than one percent of the total recharge of the Lake Michigan watershed in southeast Wisconsin.

**12. Additional Benefit to the Basin.** The return flow will benefit a Basin tributary, the Root River, by adding flow during times of low flow on the river. Increased flow will result in an improvement of the fishery and benefits to the Basin salmonid egg collection facility located downstream on the Root River (*see* Section II.7.b above). (Compact § 4.9.3.e and 4.9.4.d)

**13. Regional Review and Council Review.** The Application has undergone Regional Review by the Regional Body in accordance with the Agreement and the Interim Procedures as adopted on June 10, 2010, as well as Council Review in accordance with the Compact and the Interim Guidance as adopted on June 10, 2010. (Compact § 4.9.3.f and 4.7.2)

**14. Authority to Condition.** The Compact Council has the authority to impose on its decision on the Application the conditions included in this Final Decision on the Application. (Compact § 4.5.5.b.iii and 4.7.2)

**15. Enforceability.** The Compact Council finds that the authority to impose conditions on an approval is provided in several provisions of the Compact (Section 4.5.5.b.iii and 4.7.2). The Compact Council is also authorized under Section 4.7.2 to: “... take action on Proposals in accordance with this Compact and the Standard of Review and Decision.” The enforcement authority provided in Compact Section 7.3.2.a provides the authority to enforce any conditions so imposed. Pursuant to section 7.3.2.a of the Compact, “any Party or the Council may initiate actions to compel compliance with the provisions of this Compact.” Therefore, the Compact Council finds that an approval of this Application with conditions is an action authorized by and under the provisions of the Compact and further finds that this Final Decision and any conditions incorporated herein are enforceable by the Council and any Party to this Compact pursuant to section 7.3.2.a, up to and including voiding the diversion authorized by this Final Decision if warranted by the circumstances.

### **III.Final Decision and Conditions**

#### **1. Application Satisfies Agreement and Compact Criteria**

The Compact Council approves the Application for a Diversion of Basin water to a Community in a Straddling County as submitted by Wisconsin, as the Originating Party, because it satisfies all Agreement and Compact criteria for an Exception to the ban on Diversions to a Community in a Straddling County, as long as the conditions in Section III.2 below are met. (Compact § 4.9.3 and 4.9.4)

#### **2. Conditions on the Diversion**

The Compact Council finds that, pursuant to the requirements in Compact § 4.9.3.c, the Originating Party has the authority to manage the Applicant’s Diversion of Basin

water, and that the Originating Party will manage and regulate the Diversion including all conditions of this Final Decision, including, without limitation, the following specific conditions:

- A. *Compact Principles.* The Applicant will implement the Diversion in accordance with the overarching principles of the Compact.
- B. *Approved Diversion Amount and Approved Diversion Area.* The Approved Diversion Area shall be as described in Section II.5 and depicted in Attachment 1, and the amount of water diverted from the Basin by the Applicant shall not exceed the Approved Diversion Amount as defined in Section II.5. No part of the Diversion of water from the Basin authorized as the Approved Diversion Amount may be used by the Originating Party or the Applicant for any territory outside of the Approved Diversion Area.
- C. *Water Conservation and Efficiency Plan.* The Applicant must continue to implement and enforce all elements of its current water conservation and efficiency plan (and any future revisions) in the Approved Diversion Area, in order to meet or exceed if possible the 10% demand reduction due to the implementation of the water conservation and efficiency plan. This plan must be updated at a minimum of once every ten years.
- D. *Existing Deep Aquifer Groundwater Wells.* Some existing deep aquifer groundwater wells may be maintained by the Applicant to be used only under emergency conditions, but only for the duration of the emergency. These wells shall not be used as part of the Applicant's regular water supply under any circumstances. The Applicant will meet all water quality discharge standards in accordance with state and federal law, including during those periods when the deep aquifer wells are used for emergency purposes.
- E. *Groundwater Withdrawals in Approved Diversion Area.* The Application, the Originating Party's Technical Review and other comments submitted during the Regional Review process identified adverse consequences that would be caused by increased use of shallow or deep groundwater to meet the Applicant's water supply needs as part of the basis for concluding that no other reasonable water supply alternatives were acceptable, thereby justifying the Approved Diversion Amount for the Approved Diversion Area. These adverse consequences included: (i) impacts to certain surface water resources and wetlands, (ii) continued extraction and dispersion of radium into the environment, and (iii) withdrawal of groundwater from the Lake Michigan watershed and discharge into the MRB without return flow. As a condition of the approval of the Diversion, WDNR should use all of its available legal authority to prevent the same or substantially similar consequences from any other groundwater withdrawals within the Approved Diversion Area.
- F. *Other Controls on Groundwater Withdrawals.* The Application, the Originating Party's Technical Review and other comments submitted during the Regional Review process identified that the Approved Diversion Amount for the Approved

Diversion Area with return flow will produce net benefits within the Lake Michigan watershed due to the hydrological connection between the MRB and the Lake Michigan watershed. As a condition of approving the Diversion, WDNR should use all of its available legal authority to prevent any other groundwater withdrawals that would reverse this benefit.

- G. Pharmaceutical and Personal Care Products Recycling and Impacts.** The Applicant must implement a comprehensive pharmaceutical and personal care products recycling program and continually use the best available methods to encourage the further reduction of such products into the wastewater as recommended by the Originating Party.
- H. Return Flow to Root River.** The Applicant must return to the Root River, a Lake Michigan tributary, a daily quantity of treated wastewater equivalent to or in excess of the previous calendar year's average daily Diversion. On any days when the total quantity of treated wastewater is insufficient to meet this target, all treated wastewater must be returned to the Root River.
- I. Monitoring of Root River Flow.** For a minimum of 10 years from the beginning of return flow to the Basin, the Applicant must implement a scientifically sound plan to monitor the mainstem of the Root River to determine changes that may have resulted from return flow (such as volumes, water temperatures, water quality and periodicity of discharge) in order to adapt future return flow to minimize potential adverse impacts or maximize potential benefits to water dependent resources of the Basin source watershed (*i.e.*, Lake Michigan).
- J. Annual Reporting.** The Applicant must complete an annual report that documents the daily, monthly and annual amounts of water diverted and returned to the Lake Michigan watershed over the previous calendar year ("Annual Report"). An Annual Report must be submitted by the Originating Party to the Regional Body and the Compact Council by the due date established by the Regional Body and the Compact Council for the Annual Water Use Reporting to the Great Lakes water use repository, and include a section on the implementation and effectiveness of the water conservation and efficiency program, a summary of the results of the work conducted under Section III.2.I and a status and verification of compliance with each of the conditions stated in this Section III.2. The Annual Report must also be made available to the public on the Applicant's webpage.
- K. Federal and State Permits and Approvals; Incorporating Conditions into Originating Party Permits and Approvals.** The Applicant must obtain, and be in compliance with, all necessary federal and state permits and approvals from the Originating Party and other relevant governmental agencies before beginning the Diversion, and all of the above conditions imposing obligations upon the Applicant must be incorporated into the state permit or approval as legally enforceable provisions under the Originating Party's state law.

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**L. Performance Audit.** For as long as the City of Waukesha withdraws Basin water pursuant to this approved diversion, the City of Waukesha upon 30 days advance written notice shall allow the Compact Council or any Party to conduct an inspection and audit of the City of Waukesha operations; and the WDNR, upon 30 days advance written notice shall allow the Compact Council or any Party to inspect its records related to enforcement of this diversion and all conditions stated in this Section III.2.

**M. Enforcement.** This Final Decision will be enforceable by the Compact Council and any Party (as defined under Section 1.2 of the Compact) under the Compact pursuant to Compact Section 7.3.2.a.

Approved on this 21<sup>st</sup> day of June, 2016 by the Great Lakes-St. Lawrence River Basin Water Resources Council

AYES: (8)

NAYS: (0)

ABSTAIN: (0)

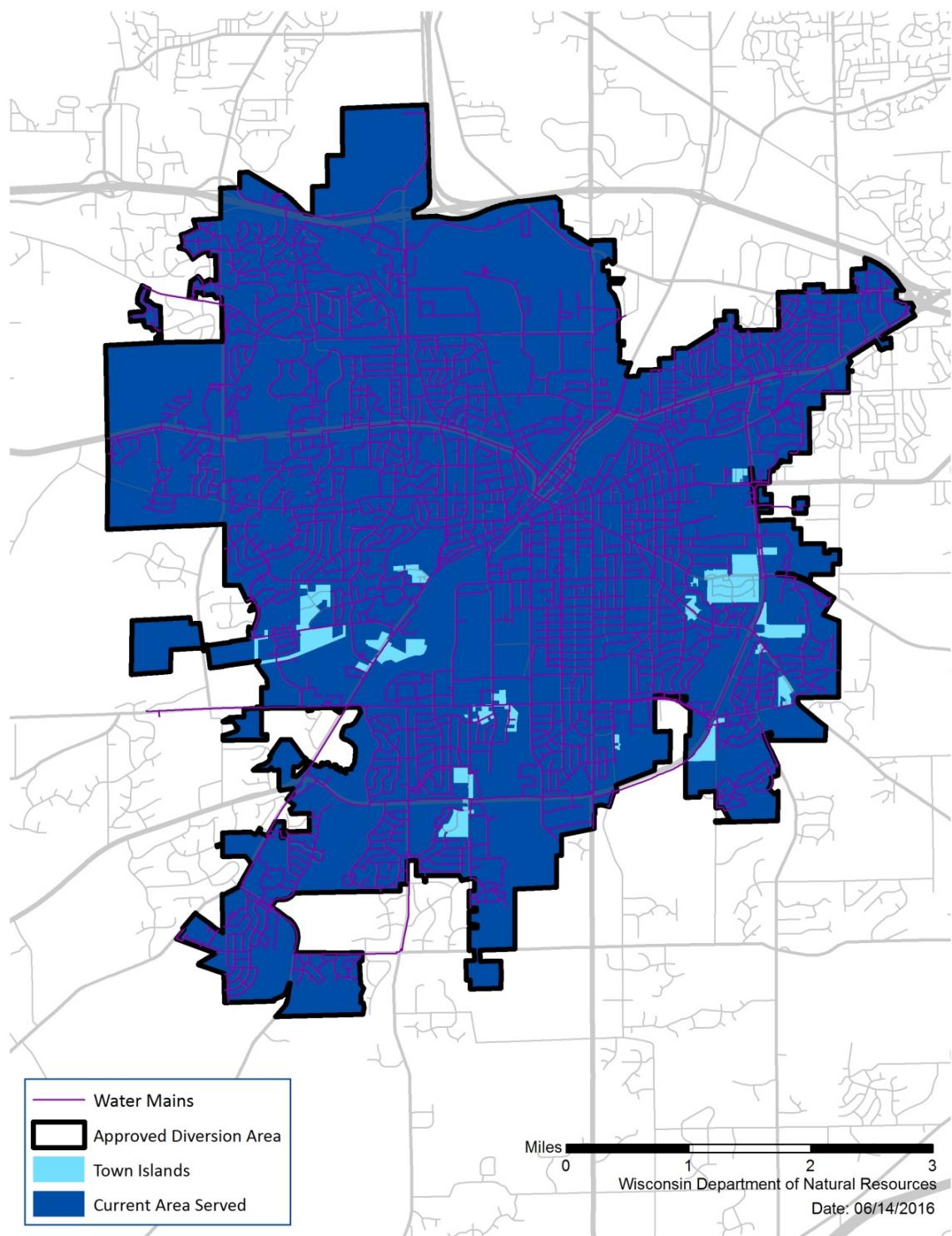
A handwritten signature in blue ink, appearing to read "Jim Zehniger".

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Chair  
Great Lakes-St. Lawrence River  
Basin Water Resources Council

June 21, 2016

Attachment 1: Approved Diversion Area



This Attachment was prepared based on the following as of May 18, 2016: (1) the City of Waukesha boundaries as recorded by the Waukesha County Register of Deeds; (2) unincorporated land lying within the perimeter boundary of the City of Waukesha, as recorded by the Waukesha County Register of Deeds, that is either fully surrounded by territory incorporated in the City of Waukesha or is bordered on one side by a transportation right-of-way and on the remaining sides by territory incorporated in the City of Waukesha; and (3) areas currently served that are outside the City of Waukesha's jurisdictional boundaries, consisting of the following tax parcels as registered by the Waukesha County Register of Deeds:

<u>We Energies</u>	PWC 0983031
WAKT1298986003	PWC 0983040
WAKT1298985	PWC 0983041
WAKT1297938	PWC 0983042
WAKT1297937	PWC 0983043
WAKT1298986001	PWC 0983044
WAKT1298986006	PWC 0983030
WAKT1298986005	PWC 0983028
WAKT1297936	PWC 0983012
WAKT1298986004	PWC 0983045
WAKT1298999	PWC 0983029
	PWC 0983046
	PWC 0983011
<u>Cloverland Farms</u>	PWC 0983047
PWC 0983017	PWC 0983010
PWC 0983018	PWC 0983009
PWC 0983020	PWC 0983048
PWC 0983016	PWC 0983008
PWC 0983019	PWC 0983049
PWC 0983021	PWC 0983007
PWC 0983015	PWC 0983006
PWC 0983022	PWC 0983050
PWC 0983014	PWC 0983005
PWC 0983025	PWC 0983051
PWC 0983023	PWC 0983004
PWC 0983039	PWC 0983052
PWC 0983038	PWC 0983003
PWC 0983037	PWC 0983053
PWC 0983024	PWC 0983002
PWC 0983026	PWC 0983054
PWC 0983036	PWC 0983001
PWC 0983035	PWC 0983055
PWC 0983034	PWC 0983056
PWC 0983033	PWC 0983058
PWC 0983013	PWC 0983057
PWC 0983032	
PWC 0983027	