GRATIOT AREA WATER AUTHORITY
APPLICATION FOR A WATER WITHDRAWAL

PERMIT DECISION
And
RESPONSE TO PUBLIC COMMENTS

July 31, 2014

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EXECUTIVE SUMMARY

GRATIOT AREA WATER AUTHORITY
APPLICATION FOR A WATER WITHDRAWAL

On April 2, 2014, the Department of Environmental Quality (DEQ) received from the Gratiot Area Water Authority (GAWA) a water withdrawal permit application submitted under Part 327, Great Lakes Preservation, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended. The permit application was for a proposed large quantity water withdrawal to replace the City of St. Louis community water supply which is impacted by a groundwater contamination plume.

Subsection 32723(4) of Part 327 requires the DEQ provide for a public comment period of not less than 45 days before a permit application is acted upon. The DEQ announced the permit application and invited public comment via public notice and Web site posting on May 19, 2014. A copy of the public notice was transmitted to the GAWA and to local units of government for postings accessible to the public. Public comments were accepted by DEQ until July 3, 2014.

On July 31, 2014, the DEQ rendered a decision in favor of permit issuance. It was concluded that all conditions for approval under Subsection 32723(6) have been met. This document includes the basis of the decision for issuance of a permit to the GAWA for a water withdrawal of up to 3.56 million gallons per day (MGD) from groundwater. This capacity is a one-to-one replacement of the existing City of St. Louis water supply, which will be decommissioned.
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I. BACKGROUND

Proposed Withdrawal

The proposed withdrawal is for up to 3.56 MGD for a community water supply. The permit applicant, GAWA, proposes to use the withdrawal to replace the existing City of St. Louis water supply which has been impacted by groundwater contamination. The City of St. Louis and the City of Alma have formed the GAWA to better provide water supply services to the neighboring communities. The consumptive use rate of total withdrawals for the public supply is estimated to be 10 percent, or up to 356,000 gallons per day from the Great Lakes Basin. This is not an increased withdrawal or an increase in consumptive use, but rather replaces the existing St. Louis water supply withdrawal and consumptive use at a new location. The four proposed withdrawal wells are located in Sections 4 and 8 of Arcada Township, T11N R03W, Gratiot County, at the following geographic coordinates:

a. Peska North well, 43.361695° latitude, -84.697097° longitude
b. Peska South well, 43.358947° latitude, -84.697112° longitude
c. Fredrickson North well, 43.370241° latitude, -84.682828° longitude
d. Fredrickson South well, 43.365938° latitude, -84.682287° longitude

II. STATUTORY STANDARD

A person who proposes to develop new or increased 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 required to apply for a water withdrawal permit shall do so by submitting an application for the withdrawal to the DEQ containing the following information (MCL 324.32723[2]):

- Capacity of equipment used to make the withdrawal.
- Location of the withdrawal.
- Withdrawal source, including depth and geologic stratum if the source is groundwater.
- Amount and rate of withdrawal, and whether the withdrawal will be intermittent.
- 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 DEQ to consider.

The application is required to include an evaluation of existing hydrological and hydrogeological conditions and a detailed description of any proposed preventative measures where relevant. The applicant must certify they will be in compliance with the environmentally sound and economically feasible water conservation measures (WCM) applicable to the water use sector, or to the specific proposed withdrawal. The application must also include a description of how the withdrawal will be implemented such that all criteria of Section 4.11, Decision-Making Standard of the Great Lakes – St. Lawrence River Basin Water Resources Compact (Compact) will be met. The application must be accompanied by an application fee of $2000.

Administrative Requirements

MCL 324.32723 requires that a permit application be considered administratively complete 30 days after receipt by the DEQ, unless the applicant is notified of deficiencies in the application requiring additional information. The DEQ is required to provide a public comment period of not less than 45 days prior to acting on an application, and shall render a decision within 120 days of receipt of an administratively complete application.
The DEQ received the permit application from the GAWA on April 2, 2014. On May 6, 2014, the DEQ sent a letter and public notice document to the GAWA notifying them of the 45-day public comment period and the requirement to post the notice at a nearby locality that is accessible to the public.

The DEQ announced the permit application and invited public comment via notice in the DEQ Environmental Calendars dated May 19, June 2, June 16, and June 30, 2014. Comments were accepted by the DEQ until July 3, 2014.

The consumptive use estimate of the proposed withdrawal does not exceed the 5 MGD threshold established in the Compact for proposals requiring prior notice and consultation with the other Great Lakes states and provinces. Accordingly, management and regulation of the withdrawal is at the discretion of Michigan, and no notification was made to the states party to the Compact, or to the provinces party to the international Great Lakes – St. Lawrence River Basin Water Resources Agreement.

**Conditions Required for Issuance of a Permit**

The DEQ shall 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 ensure there is no individual or cumulative adverse resource impact (ARI) based upon an evaluation of available information by the DEQ.
- 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 under common law principles.
- The permit applicant certifies compliance with the environmentally sound and economically feasible WCMs applicable to the 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.

A permit issued under MCL 324.32723 is considered to satisfy parallel conditions given in Section 4.11, Decision Making Standard, of the Compact. Subsection 4.11(5) of the Compact provides greater specificity on reasonable use conditions including: planned efficient use of the water; avoidance or minimization of waste; efficient use of existing water supplies; the balance between economic and social development and environmental protection as they relate to other existing or planned withdrawals and uses sharing the same water source; the supply potential of the water source; the degree and duration of any expected adverse impacts, and the proposed plans and arrangements for avoidance or mitigation of such impacts; and the restoration of hydrologic conditions and functions, if necessary.

**III. DECISION MAKING PROCESS**

**Returning Water to the Source Watershed**

The water source for the proposed withdrawal is groundwater from glacial drift aquifer(s) adjacent to the Pine River, which drains to Lake Huron. All water withdrawn, less the amount estimated for consumptive use, is discharged either directly to the Pine River after treatment, or a lesser amount is discharged locally to groundwater. Thus all water withdrawn, less the consumptive use, is returned to the source watershed.
Adverse Resource Impact

Subsection 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.” Subsection 32701(1)(a) defines an ARI as decreasing the flow of a river or stream by explicit percentages of flow, such that its ability to support characteristic fish populations is functionally impaired, or decreasing the level of a lake or pond through a direct withdrawal that would impair the uses made of the lake or pond, including its ability to support characteristic fish populations. Subsection 4.11(2) of the Compact similarly requires that a proposed withdrawal will be implemented so as to ensure 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 Great Lakes Basin.

The GAWA permit application included well drilling records for production wells, observation wells, and test borings used for hydrogeological investigations to determine the characteristics of the aquifer. Also included is the output from the Michigan Water Withdrawal Assessment Tool (WWAT). The WWAT is an online, automated screening system that is the first step in Michigan’s water withdrawal assessment process required of all new or increased large quantity withdrawals. The WWAT assesses withdrawals relative to the ARI standard for any location, and provides an estimate of potential impact to local stream and river flows as a result of the operation of a proposed withdrawal. The groundwater model used by the WWAT assumes that rivers and streams are hydraulically connected to the deeper glacial aquifer(s) where the proposed municipal wells are screened.

A hydrogeological study, including aquifer pumping test data, has not been submitted to the DEQ for the Fredrickson and Peska properties because of a non-disclosure agreement in the settlement of the litigation between the City of St. Louis and the potentially responsible parties for the Velsicol Chemical Corporation/Pine River Superfund site. This hydrogeological information will be required by the DEQ, Office of Drinking Water and Municipal Assistance (ODWMA), as part of a permit application for the proposed municipal wells under the Safe Drinking Water Act, 1976 PA 399, as amended, and the Administrative Rules, Supplying Water to the Public, promulgated pursuant to 1976 PA 399. Because a hydrogeological study demonstrating that the deeper glacial aquifers are not hydraulically connected with the Pine River and its tributaries as part of this permit application, the Part 327 permit application review was conducted using a conservative assumption that the deeper glacial aquifers are hydraulically connected to the Pine River and its tributaries.

The WWAT model identified three river or stream segments potentially impacted by the proposed GAWA wells. Two are segments of the Pine River, and the third is Honeyoey Creek, a small tributary of the Pine. The Pine River is the primary hydrologic feature of the area, with relatively high index flow rates estimated at 71 and 87 cubic feet per second for the two potentially impacted segments. Honeyoey Creek has an estimated index flow of 3.5 cubic feet per second. Using the full proposed capacity of 3.56 MGD as the withdrawal rate in the WWAT model at each of the four proposed well sites, the withdrawals’ cumulative impact is not predicted to cause an ARI in the two Pine River segments, but does exceed the ARI limit in Honeyoey Creek.

However, the Fredrickson South well, the only well predicted to impact Honeyoey Creek, is located on the opposite side of the Pine River from Honeyoey Creek. The other three wells are only predicted to impact the Pine River, and upon review this is expected to also be the case for the Fredrickson South well. The WWAT’s groundwater model is not capable of recognizing that the Pine River (with index flows of 71 and 87 cubic feet per second in this area) is a much larger...
water body than Honeyoey Creek (with an index flow of 3.5 cubic feet per second). The Pine River is the major groundwater discharge zone in this watershed.

Pumping the Fredrickson South well is not likely to capture groundwater from north of the Pine River because once the cone of depression of the water table from pumping the Fredrickson South well reaches the Pine River, it will induce recharge from the Pine River into the underlying aquifer, creating a barrier to the cone of depression's further expansion northward. The cone of depression would have to exhaust the recharge potential of the Pine River (thus causing an ARI) in order to expand northward beyond the Pine River. Since pumping these wells is not predicted to cause an ARI in the Pine River, it won't cause an ARI in Honeyoey Creek either.

It should also be noted that, because of the uncertainty about the individual well pumping rates for the final well system design, which will be determined following the completion of additional testing, this assessment was performed by simulating the effects of pumping at the total cumulative withdrawal rate of 3.56 MGD at each of the four proposed wells. This ensures that no matter how the pumping load is distributed, the impact to surface water resources could never exceed what has been assessed.

Preliminary hydrogeological information from the well logs for these wells and other private wells in the area submitted with this permit application indicate the presence of multiple clay layers. The static water levels for these wells are 25 feet or less below grade and some of the well logs indicate flowing artesian conditions when the wells were drilled. This means that, although the lateral extent of the overlying clay layers is unknown, the overlying clay layers appear to create confining (or leaky confining) conditions at these well locations. Confining or semiconfining conditions in the deeper aquifer(s) used by the proposed wells will decrease the potential for an ARI. The hydrogeological study that will be submitted with the application for the permit under 1976 PA 399 should include additional information that will allow the DEQ to determine whether the deeper aquifer(s) are hydraulically connected with the Pine River.

The depletions for the two segments of the Pine River were estimated using conservative pumping rates for all four wells far in excess of possible final well pumping rates. Once the DEQ, ODWMA issues a permit under 1976 PA 399, the watershed depletions will be adjusted using the maximum pumping rates from the system design. The DEQ determined the impact of the withdrawal as proposed is not likely to result in individual or cumulative ARIs as defined in Part 327, nor will it result in any significant individual or cumulative adverse impacts to the quantity and quality of the waters and water dependent natural resources of the Great Lakes Basin, as required in the Compact.

**Consumptive Use Considerations**

The consumptive use calculation for the GAWA proposed withdrawal is based upon a consumptive use coefficient of 10 percent. The GAWA relied primarily upon the United States Geological Survey publication “Consumptive Water-Use Coefficients for the Great Lakes Basin and Climatically Similar Areas,” Scientific Investigation Report 2007-5197. The published coefficient 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 ranges from 10 to 11 percent. It is noted that because the GAWA proposed withdrawal is for replacement of an existing withdrawal and identical water use, it is not an increase in consumptive use. Nevertheless, based upon the 10 percent coefficient for consumptive use, the proposed withdrawal is projected to have a consumptive use of up to 0.356 MGD.
Conservation Measures
As a condition of permit approval the applicant must self-certify that he or she is in compliance with the WCM associated with the applicable water use sector or with measures developed for the specific withdrawal. WCM for the public water supply sector have been developed by the Michigan Section of the American Water Works Association and have been adopted by the DEQ. The GAWA has certified they will be in compliance with the WCM, pending the completion and formal adoption of the new Water Use Ordinance by the cities of Alma and St. Louis. Submission of the final water use ordinances for the cities of Alma and St. Louis to the DEQ is a condition of this permit.

Reasonable Use
A proposed withdrawal must be deemed reasonable under common law principles of Michigan water law, and as required in the Compact as a condition of approval. The specific criteria from the Compact are outlined below, and are consistent with Michigan’s test for determining reasonable use as set forth in Michigan Citizens 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 for reasonable use are addressed as follows:

Efficiency of the Proposed Water Use: This requirement is tied to the user’s commitment to WCM in the future operation of the withdrawal. The GAWA certified they will be in compliance with the WCM applicable to the public water supply sector, which adequately address a commitment to avoidance or minimization of the waste of water.

Efficient Use of Existing Water Supplies: Efficient use of existing water supplies and withdrawal capacity is an essential consideration when an increased withdrawal is proposed. It is intended to ensure that water is being efficiently used by a large quantity user before they are granted approval for an increased withdrawal. The proposed withdrawal is not for an increased water use, but rather is a one-to-one replacement of an existing public water supply that is impacted by a groundwater contamination plume. The existing water supply will be decommissioned following the completion of a replacement water supply, which is the preferred remedial action identified in the Record of Decision for the Velsicol Chemical Corporation/Pine River Superfund site.

Balance between Economic Development, Social Development and Environmental Protection: The reasonableness of a water use relates to the balance between economic development, social development, and environmental protection and is an important consideration in the acceptability of a proposed withdrawal. The proposed withdrawal will have a low probability of adverse environmental impacts, balanced by positive economic and social development factors. Replacing the contaminated municipal wells in St. Louis with a safe, reliable public water supply is essential to human health as well as providing economic and social development benefits to the service area. In turn, a viable community center within the service area also provides economic and social benefits that support the surrounding area.

The agricultural community raised concerns regarding negative economic development factors for their industry. Concerns were raised about possible conflicts with the continued operation of existing agricultural irrigation systems and with the ability for future expansion of irrigation. The projected depletions for the Pine River watersheds still leave water available for future large quantity withdrawals. The GAWA also has contingency plans for replacing or repairing (e.g., lowering the well pumps in the affected wells) private wells that may be impacted by the
municipal wells’ pumping. The proposed withdrawal is determined to be a reasonable balance between human health, economic and social development, and environmental protection.

Supply Potential of the Water Source: The impact of the proposed withdrawal on the quantity, quality, reliability, and safe yield of hydrologically interconnected water sources is considered in the review process. Selecting a suitable site for an alternative water supply is somewhat challenging in the St. Louis area. Using the Pine River as a drinking water source was considered as one of the alternatives for the contaminated City of St. Louis municipal wells. Currently the City of Alma uses municipal wells along with the Pine River as its drinking water source, but Alma’s existing water treatment plant can only handle up to approximately a 25/75% mix of surface water and groundwater. The City of Alma itself has been shifting towards a higher percentage mix of groundwater to avoid the formation of byproducts from the disinfection process. Mixing drinking water from the Alma and St. Louis water systems is not feasible because Alma softens its drinking water and St. Louis doesn’t. Sections 29-32 in Pine River Township were considered as an alternate location for the proposed municipal wells. A well field in this area of Pine River Township would require significantly longer transmission lines. These locations might also cause an ARI in Honeyoey Creek because they are on the north side of the Pine River. The proposed locations of the Fredrickson and Peska wells in Sections 4 and 8 of Arcada Township were selected as the preferred alternative. The GAWA has made contingency plans and budgeted for the possible repair or replacement of nearby residential wells, should they experience interference as a result of the operation of the proposed withdrawal. Furthermore, the permit will be conditioned to require that the permit holder take corrective actions if the withdrawal interferes with the normal operation of other nearby wells. The DEQ, ODWMA will require a hydrogeological study and aquifer pumping test data as part of the permit application under 1976 PA 399, as amended.

Degree and Duration of Likely Adverse Impacts: The probable degree of any adverse impacts to the quantity or quality of the waters and water dependent natural resources of the Great Lakes Basin, or to other uses of water expected to be caused by the proposed withdrawal must be considered. As previously stated under the Adverse Resource Impacts section, the withdrawal is not expected to cause adverse impacts to the waters or water dependent natural resources of the Great Lakes Basin. However, the proposed withdrawal may have the potential to adversely impact other uses of groundwater in its vicinity by way of reducing the water level in the aquifer. Based on available information, the GAWA is anticipating the probability of repairing or replacing up to 70 wells nearby to restore them to normal operation. As previously noted, should adverse impacts occur to other uses of the aquifer, the GAWA is required to rectify the problem with the affected well owners as a condition of permit approval and compliance.

Restoration of Hydrologic Conditions and Functions: If a withdrawal proposal includes measures for restoration of hydrologic conditions and functions of the source watershed they may also be considered in the review process. The withdrawal proposal did not warrant measures for restoration of hydrologic conditions and functions of the source watershed.

Applicable Local, State and Federal Laws

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 to be approved. The Boundary Waters Treaty of 1909 was agreed to by the U.S. and Canada to provide a mechanism for the resolution of disputes over waters bordering the two countries and to ensure the waters of the Great Lakes remain navigable. The DEQ has concluded the proposed withdrawal would be in compliance with applicable state and federal laws, and international agreements including the Boundary Waters Treaty of 1909. A condition
of the water withdrawal permit will require the permittee to maintain compliance with all applicable local, state, and federal laws including but not limited to obtaining permits.

**Public or Private Rights, Limitations and Common Law**

The issuance of a permit for the proposed withdrawal must not violate public or private rights or the public trust doctrine, or exceed limitations imposed on the use of the resource by Michigan water law or other common law decisions. Specifically, the DEQ must ascertain if the issuance of the permit would interfere with the public’s use of the water resources, or with the state’s ability to maintain the resources for the public’s reasonable use. The GAWA is aware of the potential for interference with the public’s use of the water resources and has made contingency plans to correct for such an occurrence. The issuance of this permit does not in any way authorize any violation of public or private rights, property rights, or common law water rights.

**IV. PUBLIC PARTICIPATION PROCESS**

The DEQ announced the permit application and invited public comment via notice in the DEQ Environmental Calendars dated May 19, June 2, June 16, and June 30, 2014. The notice included an Internet link to the permit application packet and a draft permit made available on the DEQ Web site. The applicant was also required to post the public notice at a nearby locality that is accessible to the public. The public notice announced the 45-day public comment period beginning on May 19, and concluding July 3, 2014.

The following summarizes the comments received regarding the proposed withdrawal and the DEQ 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, Great Lakes Preservation, of NREPA.

**General Comments**

Comments were received regarding concerns of being affected by the groundwater contamination plume, and also about connecting to the public water supply in the event of the commenter’s wells becoming contaminated. The concerns about connecting to the public supply were specific to water service franchise agreements in existence, and where no agreements exist, the need for annexation in order to be provided water service.

**DEQ Response:** The comments are not related to the permit decision criteria. Part 327 requires the DEQ to issue a permit if all stipulated conditions and decision making criteria are met. Furthermore, Part 327 is not intended to diminish or create any existing authority of municipalities to require persons to connect to municipal water supply systems as authorized by law.

**Adverse Resource Impacts**

Comments were received regarding concerns that the operation of the proposed the GAWA withdrawals could interfere with the operation of existing high capacity wells for agricultural irrigation.

**DEQ Response:** The Design Work Plan, City of St. Louis Water Supply Replacement report prepared for the City of St. Louis by Fishbeck, Thompson, Carr & Huber acknowledges the potential for interference with the normal operation of nearby wells as a result of a lowering of the groundwater level due to the GAWA withdrawals. Contingency plans for such an occurrence have been made, and projected costs of repairing or replacing the affected wells have been budgeted for in the total project cost. Although the extent of such impacts is difficult
to forecast given the information currently available, there does not appear to be many irrigation
wells within close proximity to the proposed withdrawals. However, the GAWA is required to
rectify problems with the affected well owners as a condition of permit approval and compliance.
Additionally, issuance of this permit does not in any way authorize any violation of public or
private rights, property rights, or common law water rights.

Comments were received regarding concerns that the GAWA withdrawals will occupy an
unreasonable portion of the legally available water under Michigan’s cumulative impact
accounting system, which would not allow for new large quantity withdrawals for agricultural
irrigation.

DEQ Response: The GAWA proposed withdrawals are predicted to impact two segments of the
Pine River, which have relatively high index flow rates and correspondingly high ARI thresholds.
The ARI assessment was performed at rates far in excess of what will actually be withdrawn, to
err on the side of caution, and still the withdrawals did not nearly exhaust the available
withdrawal amounts under the ARI threshold.

Alternatives to the Proposed Withdrawal

Comments were received regarding alternatives to the proposed withdrawal in terms of the
location, and the source of the withdrawal. It was suggested that the existing St. Louis water
supply could be treated to remove the contaminants, saving the cost of replacing the water
supply.

DEQ Response: As addressed in the project Design Work Plan, the City of St. Louis has
explored this alternative. The determination was made that relying upon treatment of the
existing water supply to remove the contaminants may be possible, but significant concern and
uncertainty remain about the long-term efficacy of a treatment program. The U.S.
Environmental Protective Agency and DEQ, Remediation and Redevelopment Division oversee
the contamination site and clean-up efforts, and recommended replacing the water supply as a
more cost-effective and preferred remedy in the Record of Decision for the Velsicol Chemical
Corporation/Pine River Superfund site.

Comments were received that suggested the use of the Pine River exclusively as the source of
the water supply.

DEQ Response: As addressed in the project Design Work Plan, the City of St. Louis has
explored this alternative. The determination was made that due to the poor water quality of the
Pine River from a drinking water standpoint, significant treatment processes would be required
that preclude this from being a cost-effective or viable alternative water supply.

V. SUMMARY OF DEQ POSITION

The DEQ concludes that with the addition of specified permit conditions, the proposed
withdrawal meets all criteria for a water withdrawal permit under Part 327 and that a permit may
be issued. The authorized withdrawal capacity is 3.56 MGD from groundwater.