

COMMON COUNCIL
CITY OF WAUKESHA
WAUKESHA, WISCONSIN 53188



July 27, 2010

Matthew J. Frank, Secretary
Wisconsin Department of Natural Resources
101 S. Webster Street
Box 7921
Madison, WI 53707-7921

Re: City of Waukesha Application for Great Lakes Water

Dear Secretary Frank:

I am writing you on behalf of the Waukesha Common Council in response to your June 8, 2010 letter to Mayor Jeff Scrima regarding the City's application for a diversion of Great Lakes water (the "Application"). At the direction of the Common Council, we respectfully request that all future correspondence with the City of Waukesha regarding this matter be sent to the City of Waukesha in care of Dan Duchniak, General Manager of the Waukesha Water Utility, as the point person for communication and information relating to the Application.

On April 8, 2010, the City of Waukesha Common Council passed the attached resolution, with a veto-proof majority of 14 to 1, supporting the Application, as governed by the provisions of the Great Lakes Compact and state law, a certified copy of the Council's actions of April 8, 2010 is attached as Exhibit A. The official position of the City is established by the Common Council by following legislative processes established by state law. It is not determined or changed by the comments of an official who may disagree with the policy of the City. The action of the Council on April 8, 2010 represents the lawful and binding policy and continues to represent the official position of the City. See the City Attorney's letter concerning the corporate authority of the City dated July 22, 2010 attached as Exhibit B.

The Common Council of the City of Waukesha, which is comprised of publicly elected officials, along with the Water Utility Commission, continue to wholeheartedly support the submitted Application. Consequently, the Common Council asks that the DNR respect the City's legislative process and understand that, not unlike the relationship between the Wisconsin Legislature and the Governor, very few decisions are arrived at unanimously. Regardless of the public comments that surround this issue, the Waukesha Common Council has no desire to reconsider or reverse its previous action. The Common Council supports the City Water Utility Commission's decision to submit the Application and requests that the DNR continue its review of our City's lawful Application.

In your June 8 letter, you state that one of the Great Lakes Compact's key requirements for approving an application for a diversion is "demonstrating that there is no reasonable water supply alternative." The Application approved by the Waukesha Water Commission and the Waukesha Common Council specifically concludes that there is no reasonable alternative for the City's water supply. Further, the Application presents a detailed analysis of the water supply issues under the terms of 2007 Act 227, Wisconsin's implementation legislation for the Great Lakes Compact. The Application demonstrates that no other reasonable alternative (including

combinations of water supply alternatives) exists under the definitions provided by law and that the City is without adequate supplies of potable water that are environmentally and economically sustainable for the long term. No alternative or combination of alternatives is as protective of public health, as environmentally sustainable, as protective against environmental impacts as a Great Lakes supply or affordable.

Attached under Exhibit C is a Technical Memorandum prepared by CH2M Hill entitled "Review of Water Supply Alternatives" dated July 27, 2010. This Technical Memorandum provides a review of water supply alternatives including those raised by Mayor Scrima. This Technical Memorandum supports the City's Application.

In addition, the Wisconsin Court of Appeals issued an important decision which will affect ground water potable water supplies and high capacity irrigation wells. A summary of this case is provided in Exhibit D which discusses the implication of how this case could affect the City's current water supply and potential new groundwater sources, as well as how this ruling also supports the Application's conclusion that Great Lakes water is the only reasonable water supply alternative.

Your letter also questions whether the City is continuing to examine alternatives to Great Lakes water. The City has determined that there is no other reasonable alternative under the standards established by Act 227 and the Great Lakes Compact. Despite that determination, it is possible that our Application will be denied or litigated, or that negotiations with potential water suppliers will not be productive. In that case, the City will be required to pursue a different alternative, regardless of whether it is reasonable, in order to comply with the court-ordered June 30, 2018 deadline for final radium compliance and to address the City's water supply needs. In that case, the City's investigation of water supply sources other than a Great Lakes supply would be made to fulfill our obligations to our customers and meet the regulatory requirements (i.e. water quality, water quantity, system reliability, fire protection, etc.) that apply to the City as a result of owning and operating a public water system. Our citizens trust the City to advance the best long-term water supply alternative in a responsible manner. This responsibility includes developing a contingency plan in the event of an unsuccessful Application.

Regarding compliance with the Great Lakes Compact requirement that "return flow be as close as possible to the withdrawal source," the language of the Wisconsin Straddling Counties Exception Standard is: "The place at which the water is returned to the source watershed is as close as practicable to the place at which the water is withdrawn." 281.346(4)(f)(3m), Wis. Stats. (emphasis added). With the term "practicable" there are factors provided in the statute which include: economically feasible, environmentally sound and in the interest of public health. The return flow alternative provided in the Application was the alternative which best met these criteria. Also, the Waukesha Water Utility followed the direction provided by DNR staff at a meeting on December 4, 2009. DNR staff advised utility officials that the water supply and the return flow discharge aspects of the Application would be analyzed independently of one another and that the return flow analysis would be completed pursuant to Wisconsin Administrative Code chapter NR 110 and analyzed for cost-effectiveness. If this direction has changed since the time of our meeting, we request that we be informed so that we may amend our plan accordingly.

The letter also asks about the costs related to different potential suppliers of Lake Michigan water. The Water Utility Commission and Common Council are justifiably concerned about providing detailed information relating to the City's negotiating position with potential water suppliers. In the spirit of securing the most cost-effective Great Lakes solution, the City requested, and has received, letters of interest from three competing potential water suppliers.

Per your request, the City will provide the estimated cost of connecting to each possible supplier as a prompt follow-up to this correspondence. Other alternatives would require additional infrastructure and are potentially more expensive, but negotiations with suppliers could reduce or eliminate those extra costs.

Finally, we apologize for the oversight regarding our payment for the review of the Application. As you know, the Waukesha Water Utility approved the payment at its water commission meeting on June 24, 2010 and payment was made to the DNR the following day. This payment has since been returned to the City by the DNR. Attached with this letter is payment for review of the Application.

On behalf of the City of Waukesha Common Council, we consider the Great Lakes Water Supply Application complete and request that the DNR proceed to perform its duties in accordance with the law and promptly review and process this Application. Please contact Daniel Duchniak at (262) 521-5272 ext. 518, if you have any comments, questions or need further information. We look forward to working with the DNR as the City's Application goes through the extensive and complete review process that is necessary to advance our Application.

Passed by the Common Council by a vote of ____ for and ____ against, said Council having authorized its signature by Common Council President Paul Ybarra this 27th day of July, 2010:

Sincerely,

City of Waukesha
Common Council President
Paul R. Ybarra

Enc.

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