



# Minnesota Center for Environmental Advocacy

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April 20, 2018

Great Lakes - St. Lawrence River Water Resources Regional Body  
c/o Council of Great Lakes Governors  
20 North Wacker Drive, Suite 2700  
Chicago, Illinois 60606 Madison, WI 53703

**VIA ELECTRONIC MAIL**

*Re: Great Lakes Water Diversion Application Submitted by the City of Racine*

Dear Members of Regional Body:

Minnesota Center for Environmental Advocacy and the undersigned organizations write in support of the Wisconsin Compact Implementation Coalition's letter requesting the Regional Body initiate Regional Review proceedings for the City of Racine's (the "City") straddling-community diversion application (the "Application"). The Great Lakes—St. Lawrence River Basin Water Resources Compact ("Great Lakes Compact") authorizes the Regional Body, after a majority vote, to review "regionally significant or potentially precedential" diversion proposals that may not otherwise be subject to Regional Review.<sup>1</sup>

Here, the Application raises important issues of first impression that strike at the core of the Great Lakes Compact; specifically, the Great Lakes Compact's water-diversion prohibitions. Notably, the Application raises two issues of first impression: (1) whether an in-basin community can act as the entity seeking approval to divert water outside the Basin; and (2) whether the Great Lakes Compact allows a diversion for purposes of supplying water exclusively to commercial and industrial customers. The Regional Body should consider and resolve these issues through the Regional Review process for the following reasons.

With regard to the first issue, the undersigned organizations submit that the City is not the proper party to submit the Application. Under the Great Lakes Compact, an "Applicant" is a person or entity "who is *required* to submit a Proposal."<sup>2</sup> The person or entity *required* to submit a Proposal to divert water outside the Basin under the straddling-community exception is the straddling community. Here, the City is not *required* to make the Proposal because it is not a "straddling community." The City lies fully within the Basin and "all of [its] current water customers are located within the . . . Basin."<sup>3</sup> Instead, the Village of Mount Pleasant "straddles the divide between the Great Lakes basin and

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<sup>1</sup> Great Lakes—St. Lawrence River Basin Water Resources Compact § 4.5(1)(f), Dec. 13, 2005 [hereinafter "Great Lakes Compact"].

<sup>2</sup> *Id.* § 1.2 (emphasis added).

<sup>3</sup> Ruekert & Mielke, Inc., *The City of Racine Application for Water Diversion 2* (2018) [hereinafter, "Appl."].

the Mississippi River basin.”<sup>4</sup> and, as the “straddling community” is *required* to make a Proposal to divert water for its needs. Here, the Village of Mount Pleasant has not made a Proposal under the Great Lakes Compact for a diversion using the straddling-community exception. Therefore, the Application is procedurally flawed.

Regarding the second issue, the undersigned parties offer that the Great Lakes Compact expressly prohibits diversions with the sole purpose of supplying water exclusively to commercial and industrial customers. The Great Lakes Compact provides that a diversion should “be used solely for Public Water Supply Purposes within the Straddling Community.”<sup>5</sup> The Compact defines “Public Water Supply Purposes” to mean “water distributed to the public through a physically connected system of treatment, storage and distribution facilities *servicing a group of largely residential customers* that may also serve industrial, commercial, and other institutional operators.”<sup>6</sup>

Here, the City intends to transfer the water outside the Basin to *solely* serve industrial and commercial customers. Reviewing Table D-1 in the Application, the City plans to use 5.8 mgd for the Foxconn facility and the remaining 1.2 mgd to supply *commercial* and *industrial* customers.<sup>7</sup> The City does not propose to use *any* of the diverted water to serve residential customers.

**Table D-1**

2050 Forecast Diversion Volume by Land Use

Land Use	Forecast Basis	Water Use Coefficient	Average Day Volume (mgd)
Industrial - Foxconn	Design Volume	Design Volume	5.8
Commercial and Industrial	1,077 acres	1,100 gallons per acre per day	1.2
		Total	7.0

The City attempts to circumvent this inadequacy by referencing its entire customer base.<sup>8</sup> But “all of [the City’s] current water customers” – including residential customers – are located within the Basin.<sup>9</sup> Thus, the proposed diversion would not serve residential customers, only commercial or industrial customers.

The Great Lakes Compact intended the straddling community exception to provide a *narrow* avenue for specific communities that straddle the Basin to access water for

<sup>4</sup> *Id.* at 1, 3.

<sup>5</sup> Great Lakes Compact § 4.9(1).

<sup>6</sup> *Id.* § 1.2 (emphasis added).

<sup>7</sup> Appl. at 17.

<sup>8</sup> *Id.* at 16.

<sup>9</sup> *Id.* at 2.

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“Public Water Supply Purposes.” The issues raised in the Application implicate the core of the narrow exception and making the potential diversion both “regionally significant” and “potentially precedential” such that Regional Review proceedings are appropriate and necessary.<sup>10</sup>

We appreciate your consideration of the points raised here and respectfully request the Regional Body commence Regional Review of the Application. Please feel free to contact us with any questions or concerns.

Sincerely,

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<sup>10</sup> See Great Lakes Compact § 4.5(1)(f).