



BILL SCHUETTE
ATTORNEY GENERAL
STATE OF MICHIGAN

March 9, 2016

Great Lakes and St. Lawrence Governors' and Premiers' Regional Body
Great Lakes-St. Lawrence River Basin Water Resources Council
20 N. Wacker Drive, Suite 2700
Chicago, Illinois, 60606

Re: City of Waukesha, Wisconsin Diversion Application

Dear Members of the Regional Body and Compact Council:

As Attorney General of the State of Michigan, one of my highest priorities is protecting the Great Lakes, our most precious natural resources. The Great Lakes literally define our state and are the lifeblood of our environment and economy. Moreover, the waters and other aquatic resources of the Great Lakes are held in public trust by each of the eight Great Lakes states and the two Great Lakes provinces for the benefit of our respective citizens.

Two related agreements play a vital role in preserving the integrity of these shared natural resources: the 2005 Great Lakes - St. Lawrence River Basin Sustainable Water Resources Agreement and the 2008 Great Lakes - St. Lawrence River Basin Water Resources Compact. The two agreements address the same goals – preserving the Great Lakes and fostering economic development through sustainable management of water resources- and are intended to work in concert. A critical element of the Compact is that it presumptively bans diversions of Great Lakes water to areas outside the Great Lakes basin, subject to limited, narrowly-defined exceptions.

As you know, the City of Waukesha, Wisconsin, supported by the State of Wisconsin, has now applied, under the Compact, to divert up to 10.1 million gallons of water per day from Lake Michigan. The City, which is located in the Mississippi River Basin, relies upon the exception in the Compact for a "Community within a Straddling County," since the county where it is located – Waukesha County – straddles the divide between the Great Lakes and Mississippi River basins.

To qualify as a Community in a Straddling County, the Compact requires Waukesha to demonstrate that the City meets the "Exception Standard," the "Decision Making Standard," and certain requirements set forth in Article 4 of the Compact. Collectively, these requirements are referred to as the "Standard of

Review and Decision," and require Waukesha to demonstrate, among other things, that the City:

- will use the water for a public water supply;
- will maximize the portion of water returned to the source watershed and minimize the return of water from outside that basin;
- is without an adequate supply of potable water;
- has no reasonable alternative water supply within its own basin, including the possibility of meeting its own water demands through conservation efforts; and
- will not, by diverting water, endanger the integrity of the Great Lakes Basin ecosystem.

Because Waukesha's application is the first of its kind under the Compact, it is essential to get this right. My basic position is to oppose water diversion from the Great Lakes in order to preserve this precious resource for future generations. The Compact established narrow exceptions to the ban on water diversion from the Great Lakes. Unless the criteria for an exception are met, Waukesha's request should be denied. Before the proposal can be approved, the City of Waukesha and the State of Wisconsin must demonstrate, first to the Regional Body, and ultimately to the entire Compact Council, that all of the exacting requirements of the Compact are satisfied. To date, they have not done so.

Although the Wisconsin Department of Natural Resources conducted an extensive Technical Review before transmitting the application to the Regional Body and Compact Council, serious questions have been raised during the Wisconsin review process and in the ongoing public review process about whether the application satisfies various requirements contained in the Standard of Review and Decision under the Compact.

At this stage, a number of these questions have yet to be fully answered. Some of the key questions include:

- **Need and service area:** The City proposes to divert Lake Michigan water for use not only by the City itself, but some other adjoining communities. Do the other communities included in Waukesha's proposal actually lack an adequate supply of potable water and need the Lake Michigan water? Is the larger water supply service area even a "Community within a Straddling County" eligible to apply for diversion under the Compact?

- **Alternatives:** Is there a reasonable water supply alternative that would not require Lake Michigan water?
- **Return flow:** Does Waukesha's proposal satisfy Compact requirements for maximizing return flow of Lake Michigan water? Does it include enforceable mechanisms ensuring that the full volume of water will actually be returned to Lake Michigan?
- **Protection of Great Lakes:** Does the proposal ensure that there would be no significant adverse impacts to the Great Lakes? For example, will it ensure that invasive species, such as viruses, are not transferred into the Great Lakes through the return flows?

It is up to the City of Waukesha, and the State of Wisconsin, as the Party advocating the proposed diversion under the Compact to fully and satisfactorily answer these and all other relevant questions. Unless and until the proponents of this diversion demonstrate that all criteria included in the Compact's Standard of Review and Decision are met, the Regional Body and the Compact Council should not approve this precedent-setting proposal.

Sincerely,



Bill Schuette
Attorney General

cc: Wisconsin Department of Natural Resources
City of Waukesha, Wisconsin

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