



November 21, 2006

RECEIVED

NOV 22 2006

OFFICE OF THE
SECRETARY

Secretary Scott Hassett
Wisconsin Department of Natural Resources
101 S. Webster Street
Madison, Wisconsin 53707-7921

Todd Ambs
Wisconsin Department of Natural Resources
101 S. Webster Street
Madison, Wisconsin 53707-7921

Re: Public Comments on New Berlin's Application for Great Lakes Water

Dear Secretary Hassett and Mr. Ambs:

Thank you for the opportunity to submit public comments on New Berlin's diversion application to use Great Lakes water in the Mississippi River Basin. The points emphasized below, along with the more detailed comments attached, represent a compilation of our respective organization's comments. Our organizations and the individuals and interests that we represent are drawn from throughout the State of Wisconsin.

There are four major points that we wish to emphasize regarding the New Berlin application.

I. The Wisconsin Department of Natural Resources ("DNR") should not consider applications for Great Lakes water diversions until Wisconsin has passed state legislation that includes standards for implementing the Great Lakes – St. Lawrence River Basin Water Resources Compact ("Compact"). Considering diversion applications prior to the implementation of the Compact legislation will lead to confusion and may undermine passage of the Compact in Wisconsin and in the other Great Lakes Basin states. Once in place, the Compact will offer a superior process and standards for protecting the Great Lakes, a world class natural resource which is inextricably tied to our future prosperity and quality of life.

II. Until all the Great Lakes states adopt the Compact and Congress ratifies it, the existing federal Water Resource Development Act (WRDA), that covers Great Lakes diversions, is in full force. WRDA requires that any



122 State Street • Suite 200
Madison, WI 53703-4333
www.cleanwisconsin.org

Phone 608-251-7020
Fax 608-251-1655
Email: info@cleanwisconsin.org

Printed on recycled paper using soy based inks



proposed Great Lakes diversion must be approved by all eight Great Lakes states. The Michigan Attorney General recently raised this issue regarding New Berlin, noting that his state would invoke WRDA if Wisconsin moved on the application.

III. It is imperative that the process for considering any diversion application, now and in the future, must be open and transparent to the public throughout the application process, including public notification of all applications for water diversions and any notice of intent to file such applications, as well as public access to all documents necessary for meaningful, well-informed public participation. Because we believe it would assist public officials and the public, we strongly encourage a public hearing be held on this application.

IV. The New Berlin application for water diversion lacks critical information and has numerous data gaps. It also lacks an analysis of viable water supply alternatives to meet the future community needs. This point is underscored by the fact that Illinois, New York, Ohio and the Province of Ontario have all raised significant questions and issues with the New Berlin application. This is an excellent example of why it is premature and potentially harmful to review this or any other application for diversion without clear standards or legislative authority in place.

Our detailed comments on the New Berlin application can be found in the attachment. Our comments are not a complete list of our concerns, and we would look forward to discussing our further concerns with the DNR at their convenience. It is our hope that New Berlin would begin to respond to these deficiencies while our State pursues strong Great Lakes legislation. We would welcome the opportunity to work with the community and the DNR in this regard, but it needs to be an open and transparent process.

We appreciate the opportunity to comment. Thank you.

Sincerely,

Melissa Malott, Clean Wisconsin
Lynn E. Broaddus, Friends of Milwaukee's Rivers
Derek Stack, Great Lakes United
Jodi Habush-Sinikyn, Midwest Environmental Advocates
Peter McKeever, Milwaukee County Conservation Coalition
Molly Flanagan, National Wildlife Federation
Denny Caneff, River Alliance of Wisconsin
Emily Green, Sierra Club
Dan McDermott, Sierra Club of Canada
Peter McAvoy, Sixteenth Street Community Health Center
Bill Pielsticker, Trout Unlimited
Kerry Schumann, Wisconsin League of Conservation Voters
George Meyer, Wisconsin Wildlife Federation

Attachment
Detailed Comments on the New Berlin Diversion Application

The New Berlin diversion application is deficient in a number of critical respects with regard to the Compact's Exception Standard criteria applicable to Straddling Communities. In its application, New Berlin refers to the standards contained in the Great Lakes—St. Lawrence River Basin Sustainable Water Resources Agreement ("Agreement"). As the Compact and Agreement are substantially similar in this regard, and as the Compact will become a binding agreement once effective, we refer here to the Compact's requirements. We would recommend that the City of New Berlin and the Wisconsin Department of Natural Resources begin to address these deficiencies while the Wisconsin legislature moves ahead to pass the Compact.

1. In order to demonstrate that the proposed diversion will be used solely for Public Water Supply purposes, as required under Compact Section 4.9 (1), New Berlin needs to provide missing factual information/substantiation concerning: (i) the presence and extent of its "physically connected system of treatment, storage and distribution facilities;" (ii) whether there are incoming treatment, storage and distribution, and incoming treatment facilities; and (iii) for each of the intended uses and volumes of the diverted water that would be needed for each use category.
2. In order to demonstrate compliance with the Compact's "Return Flow" criteria, as outlined under Compact Section 4.9(1)(a) and 4.9(4)(c), New Berlin needs to provide missing factual information/substantiation concerning: (i) reasons for New Berlin's proposal to add out-basin water to the return flow of non-consumed water withdrawn from Lake Michigan; (ii) confirmation of what portion of New Berlin west of the Basin surface water divide will be served by Lake Michigan water; (iii) confirmation of what portion of New Berlin west of the Basin surface water divide will be served by Milwaukee Water Works and MMSD for waste water treatment; (iv) insights to be gained from a necessary (but, as yet, not requested) MMSD and Milwaukee Water Works' evaluation of New Berlin's proposal; (v) New Berlin's plan and monitoring expectations regarding reduction of sewer infiltration and inflow; and (vi) scientific basis for the city's assertion that a hydrogeologic connection exists in the deep sandstone aquifer.
3. In order to demonstrate compliance with the Compact's "Unavoidable Need" criteria, as set forth under Compact Section 4.9(4)(a), New Berlin needs to provide missing factual information/substantiation concerning: (i) the effectiveness and extent of New Berlin's current water conservation program—including analysis of the amount of water currently being conserved and to what extent conservation measures reduce the amount of Lake Michigan water needed; (ii) identification of all existing water supplies and their potential capacity; (iii) the studies referred to on pages five and six of the Application Discussion Document (including study copies); (iv) exploration and price comparison of all

water supply alternatives; and (v) explanation of New Berlin's plan to use existing water supplies within applicable radium limits.

4. In order to demonstrate compliance with the Compact's "No Adverse Impacts" criteria, as set forth under Compact Section 4.9(4)(d), New Berlin needs to provide missing information/substantiation concerning (i) the potential of any adverse impacts to Basin waters, including reduction in lake water levels or changes in river and stream flow; (ii) the potential of any adverse impacts to the Basin's water-dependent natural resources and wildlife; (iii) source and location of the diversion and return flow; (iv) description of baseline conditions regarding hydrologic flow, water quality and habitat; (v) projected diversion schedule including peak 30-day demand over the 90-day averaging period; (vi) anticipated changes in water quality and water dependent natural resources; (vii) all measures that will be implemented to prevent or eliminate significant impacts; and (viii) how the proposed diversion would relate to other existing withdrawals, diversions and consumptive uses.
5. In order to demonstrate compliance with the Compact's requirement that an exception incorporate "Environmentally Sound and Economically Feasible Conservation Measures to Minimize Water Withdrawals or Consumptive Use," as set forth under Compact Section 4.9(4)(e) and Article 1.2, New Berlin needs to provide missing information/substantiation concerning: (i) the city's current water use profile; (ii) evaluation of the extent and effectiveness of the city's current water conservation and efficiency measures, methods, technologies and/or best management practices; (iii) analysis of best management practices, conservation measures and technologies that are available, environmentally sound, technically feasible and applicable to the water use sector, including recycling and reuse of water; and (iv) analysis of economic feasibility, cost effectiveness and applicability of the aforesaid conservation methods, measures, technologies, and practices.
6. In order to demonstrate that the proposed diversion will be in compliance with all applicable laws, as required under Compact Section 4.9(4)(f), New Berlin needs to identify these applicable laws and explain how it intends to meet their requirements. Existing state laws governing water systems and water losses apply to New Berlin's requested diversion. Much of the information required by those laws has not been provided in this application.

After our initial review of the application, it is difficult, at best, to determine to any sufficient degree the present and future water needs of New Berlin. In consideration of the preceding non-exhaustive list of substantive, factual deficiencies, New Berlin's application fails to meet the criteria under the Exception Standard in a way that will meaningfully protect the water and water dependent natural resources of the Great Lakes Basin.