



WAUKESHA COUNTY
ENVIRONMENTAL ACTION LEAGUE

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November 16, 2006

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Ms. Maureen Connors
Office of Great Lakes
Wisconsin Department of Natural Resources
WDNR
Box 7921
Madison, WI 53707

Dear Ms. Connors:

RE: An Application for Water from Lake Michigan – City of New Berlin, Wisconsin

The Board of Directors of the Waukesha County Environmental Action League, Inc., (WEAL) respectfully submits the following comments regarding the City of New Berlin's application for water from Lake Michigan to supply areas outside the Lake Michigan surface water drainage basin.

WEAL was founded in 1978 and represents the Waukesha Community for the protection of Waukesha's natural resources through grass-roots participation and action. The WEAL membership and mailing list includes over 600 families living and working in Waukesha County, including the city of New Berlin.

WEAL supports the vision and need to protect and preserve the Great Lakes waters, including Lake Michigan, now and for the future generations. WEAL recognizes the Great Lakes, including Lake Michigan as a shared public treasure and resource, held in trust by the eight Great Lake states and two Canadian Provinces. On December 13, 2005, members of WEAL attended the historic signing of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement and the Great Lakes-St. Lawrence River Basin Water Resources Compact, referred to as **the Agreement** in this testimony. The general provisions of **the Agreement**, signed by the eight (8) Governors and two (2) Premiers includes the objective "to prevent significant adverse impacts of withdrawals and losses on the basin ecosystem and its watersheds". WEAL supports this objective of **the Agreement**. Chapter Two of **the Agreement** specifically prohibits or bans new or increased diversions of water from the Great Lakes to areas outside the Great Lakes drainage basin. WEAL supports this prohibition. Although **the Agreement** includes some limited exceptions to diversions of Great Lakes water to areas outside the basin, WEAL supports the conditions and provisions that must be satisfied before a new or increased water diversion is proposed or considered.

Approvals of diversions should be fully analyzed and reviewed by all Great Lake States and the two Provinces and only considered after all alternatives to provide potable water to areas outside the basin have been exhausted. Alternatives include, but are not limited to, cleansing local water sources, seeking shallow, deep and surface water sources, water reuse and recycling, water conservation, rainfall harvesting and aquifer recharging. Water Conservation plans, for communities requesting water to service areas outside the basin, must be well prepared, with public input, and executed. Measurable conservation goals and a means to measure success must be included in any plan.

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On behalf of the City of New Berlin, Ruekert-Mielke, a private-for-profit corporation, submitted an application for a **diversion of Great Lakes water** to portions of the city of New Berlin, lying outside of the surface water drainage basin of Lake Michigan. **The copy-right protected application is dated April 28, 2006.**

WEAL has reviewed this application for completeness, compliance with the conditions of **the Agreement** and other Wisconsin environmental protection regulations. **WEAL strongly recommends that this application be declared incomplete and rejected for the following reasons.**

1. No official City of New Berlin resolution or other evidence was submitted with the application, authorizing Ruekert-Mielke, a private-for-profit corporation, to prepare and submit this application or act on behalf of the City of New Berlin in seeking Lake Michigan water. Most, if not all, of the applications for state authorizations, permits, grants or entitlements must be accompanied by an authorized signature of the applicant. An authorizing resolution by the Common Council of the City of New Berlin or validation of the application from the Mayor of New Berlin was not included in the application material WEAL reviewed.

2. The City of New Berlin has not proven that the Fox-Illinois River Basin does not have an adequate supply of water. The City of New Berlin has not provided adequate data or scientific evidence verifying that an adequate water supply does not exist within the community outside the Lake Michigan drainage basin. Several wells in the City of New Berlin pump water from the deep sandstone aquifer and supply potable water to areas outside the Lake Michigan drainage basin. Ruekert-Mielke failed to prove that an adequate supply of water does not presently exist outside the basin. Water pumped from the deep aquifer contains combined radium 226 and 228 at concentrations exceeding the USEPA and WDNR maximum contaminant levels. Rather than treating the contaminated water or blending the contaminated water with water from shallow wells or other sources, the City of New Berlin is seeking Lake Michigan water as a new source of water. Without preparing and providing a cost analysis, it appears that Ruekert-Mielke simply dismissed local remedies and stated that alternative water sources or treatment methods, are too costly to develop. Ruekert-Mielke failed to provide the cost of transporting Lake Michigan water to New Berlin. Are we just to assume that a Lake Michigan diversion is a no-cost remedy?

3. The state review of this application is subject to the Wisconsin Environmental Policy Act, (WEPA, 1972). WEAL argues that this application is subject to the Wisconsin Environmental Policy Act, (WEPA, 1972). The WDNR, WisDOT, Wisconsin industries and private landowners are required to consider the environmental impacts of their proposed activities or actions, specifically when seeking State and Federal permits, authorizations or approvals, including the City of New Berlin's application for Lake Michigan water. The application did not include an environmental assessment, a determination of the need for an environmental impact statement or an environmental impact statement. The WDNR and other state agencies reviewing this application should gather the relevant environmental information and use it in their decision making, including the decision to forward this application to other Great Lake States and Provinces. Isn't it the WDNR responsibility to determine if this request has an adverse impact on the environmental resources? This application should be deemed incomplete and rejected because the WDNR failed to conduct its own environmental analysis and review and provide the opportunity for a public hearing on their review and their decision to forward this application.

WEAL strongly recommends that all applications for Great Lakes Water diversions be subject to WEPA and that the procedures contained in Chapter 150 of the Wisconsin Administrative Code be implemented in the preparation and review of any application.

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4. WEAL supports a ban on Lake Michigan diversions until the Wisconsin State Legislature and the US Congress have adopted implementation rules needed to ratify the Agreement. Article 202 of the Agreement specifically requires Wisconsin to establish a program for the management and the implementation of the exception standards for withdrawals, diversions and consumptive uses of Great Lakes waters. To our knowledge, this has not been completed in Wisconsin.

5. The Water Conservation Plan prepared for the City of New Berlin and submitted with the Application is poorly done, incomplete, not measurable and lacks any evidence of citizen participation in its preparation. WEAL is extremely disappointed in the quality and completeness of the water conservation plan for the City of New Berlin and submitted with the application. There was no evidence submitted that the City Council, considered, adopted, or financially supports this plan. In addition, there is no evidence that any citizen of New Berlin had an opportunity to review or participate in preparation of this plan. This conservation plan should be declared incomplete, invalid and rejected.

WEAL is disappointed that the WDNR would consider this application complete and forward it for regional review. WEAL has reviewed the comments submitted by the states of Illinois, Michigan, Ohio, and New York and the Ministry of Natural Resources of the Province of Ontario regarding the City of New Berlin's Application. WEAL shares many of the comments expressed by these reviewers regarding the incompleteness of the application. WEAL stands firm that any diversion application must have a Regional Review and approval pursuant to the Agreement.

WEAL is disappointed that the WDNR would even advise the City of New Berlin to submit such an incomplete application, just 4 months after the signing the historic Agreement.

WEAL recommends that public meetings be held to allow citizens the opportunity to provide a public voice on this application and all future applications. In keeping with Wisconsin's long and honored tradition of open government and pursuant to the Public Trust Doctrine, the WDNR has the duty and the responsibility to review the environmental impacts of this application and provide an opportunity for citizens to judge WDNR recommendations, conclusions and decisions.

Thank you so much for giving WEAL and other citizens the opportunity to share our comments and concerns regarding this application.

Respectfully,



Fay U. Amerson
WEAL Board of Directors
Water Issues Team

cc. WEAL Water List