

- Alliance for the Great Lakes ♦ A Few Friends of the Environment and World
- ♦ Clean Water Action ♦ Door County Environmental Council ♦ Friends of Jean Klock Park
 - ♦ Great Lakes Aquatic Habitat Network and Fund ♦ Michigan Division of the Izaak Walton League of America ♦ Indiana Division of the Izaak Walton League of America ♦ Kalamazoo River Protection Association ♦ Lake Erie Region Conservancy ♦ Manistee Citizens For Responsible Development ♦ Muskegon River Watershed Assembly ♦ Muskegon Save Our Shoreline ♦ National Wildlife Federation ♦ Preserve the Dunes ♦ Save the Dunes Council
 - ♦ Religious Coalition for the Great Lakes ♦ Tip of the Mitt Watershed Council

November 22, 2006

Maureen Connors
Office of the Great Lakes
Wisconsin Department of Natural Resources
PO BOX 7921
Madison WI 53707

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Dear Ladies and Gentlemen:

The Alliance for the Great Lakes and the undersigned organizations strongly support Governor Doyle's and the Wisconsin Department of Natural Resources' (Department) commitment to the Great Lakes and your recognition that they are a resource for all of us to use and protect. The Great Lakes are the foundation of Wisconsin's environment and economy, playing host to thousands of boaters, anglers, and beachgoers. Each day we wait to build stronger protections for the 20% of the world's freshwater in our backyard, the risk of losing our lakes forever grows.

Besides acting as home for fish and wildlife, the lakes provide drinking water and inestimable quality of life for 40 million people throughout the region. We appreciate your hard work over the last six years to create the Great Lakes Water Resources Compact (Compact), a set of ecologically-based water management standards for the Great Lakes, in partnership with the other states and provinces of the basin. Only through the full ratification of the Compact - through the states and Congress - will we realize adequate protection of our water supply. For this reason, the undersigned organizations do not support any effort to approve New Berlin's current application for a water diversion (application). We believe:

- Consideration or approval of New Berlin's application prior to ratification of the regional standard would hinder the approval of the Compact in Wisconsin, other states, and in Congress;
- New Berlin's application is subject to the provisions of the federal Water Resources Development Act (WRDA); and
- New Berlin should improve its water conservation program to avoid need for a diversion and potential cumulative impacts on Lake Michigan.

Consideration Of The New Berlin Application Will Hinder Approval Of The Compact

The Compact and the related Agreement with two Canadian provinces are the result of six years of difficult negotiations between 10 jurisdictions and numerous stakeholders. The Compact will

provide first of its kind, legally binding protections for the Great Lakes, ensuring a healthy economy and ecology for today's and future generations. These new protections are timely, as pressures for diversions of Great Lakes water increase from communities outside the Great Lakes basin and water shortages are increasing inside the Great Lakes basin.

Laudably, the city of New Berlin used the Compact as a guide for its application. While the spirit of the application was apparently in good faith, it is wholly counterproductive for municipalities to propose applications for new diversions under provisions of the Compact prior to state legislative approvals and federal ratification. Problems present at three levels.

1. Application of an "interim protocol" as described by the Department would give the Wisconsin legislature little incentive to move ahead and pass the Compact into force as state law.
2. A successful attempt to apply an interim protocol in Wisconsin would likely spark similar developments in other states, resulting in time wasted on developing consistency in these interim protocols rather than spent productively on passing the Compact through state legislatures. Additionally, as other states do not have strong water use statutes on the books to support interim protocols, Wisconsin may see approval of undesirable diversions around the region if such program gains traction.
3. Loss of momentum due to use of interim protocols as described would result in a loss of interest from Congress to approve a final, binding Compact – the final step in the interstate Compact's entry into force. This gives regional stakeholders no legal recourse for bad diversion decisions.

As chair of the CGLG, Governor Doyle's leadership was key to the final agreement on the Compact language among the eight Great Lakes states. As part of this agreement, the CGLG committed to taking the next steps toward ratification of the Compact – passage by each state legislature and approval by Congress. The Department's consideration of an application by New Berlin for a new water diversion is clearly at odds with this stated goal of the CGLG. We find this to be an irreconcilable position, and request that the Department comply with the stated position of the CGLG under Governor Doyle's chairmanship.

The Application Is Subject To The Water Resources Development Act

We firmly believe all Great Lakes diversion proposals are subject to WRDA review prior to approval by any state. The language is clear in section 1962d-20-d of WRDA:

"No water shall be diverted or exported from any portion of the Great Lakes within the United States, from any tributary within the United States of any of the Great Lakes, for use (emphasis added) outside the Great Lakes basin unless such diversion or export is approved by the Governor of each of the Great Lakes States."

New Berlin's application makes it absolutely clear that the water proposed for diversion will be used outside of the Great Lakes basin, as its available water supply system cannot distinguish between supply from groundwater or Lake Michigan. This means that WRDA authority applies. As the Compact has not been ratified by Congress and the states have not recognized any other

regional authority beyond WRDA, the State of Wisconsin is legally bound to consider the New Berlin application under this regional authority. We do not believe the State has recognized its commitment to federal law and suggest the WDNR re-examine its applicability.

Aggressive Water Conservation Will Likely Provide Necessary Water Resources Until The Compact Is Ratified

For a community dealing with limited water supplies, New Berlin's current water conservation measures are glaringly weak. According to the application, the measures include:

- *Sprinkling restrictions* limited to even or odd days depending on a person's address. Notices of these restrictions are supposedly posted on the City's website, in the quarterly leaflet, on utility bills and on a local access cable channel. However, we did not see the restriction on the City's website and it was listed in only one of the quarterly newsletters for 2006. If it is on the website, it is not easily accessible.
- *A leaflet* available on the City's website that encourages people to not use toilets as wastebaskets, place a brick in a toilet to reduce water usage, let water sink slowly into lawns and gardens, avoid outdoor watering on hot or windy days, and use a bucket for soapy water when washing a car. Again, we did not find this leaflet on the City's website.
- *An optional leak detection test* offered to customers who request them. This does not seem to be a widely used service. According to the application, 2005 appears to be a record year, giving 103 tests, which represents .007% of the housing units in New Berlin.

In sum, these measures are an unsatisfactory antecedent to requesting a new Great Lakes diversion. Aggressive mandatory conservation programs have helped countless communities around the United States meet their water supply needs. There are seemingly endless examples of such programs in existence. New Berlin's proximity to Lake Michigan does not excuse its responsibility to use water resources wisely and efficiently – a pillar of the eventual Compact standards is the achievement of aggressive and consistent conservation practices across the Great Lakes basin.

On page 8 of New Berlin's application for water diversion it states "Conservation can only postpone the eventual need for Lake Michigan water for a few years." Taken in the positive, this means an aggressive, strong and enforceable conservation program would meet the community's water supply needs for at least the next several years. This would provide time for the Compact to be ratified by Congress and ensure that New Berlin's weak conservation program could be strengthened, become "Compact compliant," and minimize the amount of water needed by New Berlin. Ultimately, this will minimize New Berlin's added contribution an already overloaded sewage system that continually threatens to spill raw sewage into Lake Michigan.

Until the Compact is ratified, we support the use of the WRDA to make decisions about Great Lakes diversions. We do not support any effort to approve diversion proposals outside of WRDA before the Compact is ratified. If you have any questions or concerns, please feel free to contact Joel Brammeier at 312-939-0838x224.

Sincerely,

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