

> Maureen Connors
> Office of the Great Lakes
> Wisconsin Department of Natural Resources Box 7921 Madison, WI 53707

> Dear Ms. Connors:

> Thank you for providing Pennsylvania with a copy of New Berlin's concept for using Great Lakes water to rectify their municipal water problems. Contrary to some of the assertions made in that document and subsequent published commentary, the federal statute, WRDA 1986, as amended 2002 (WRDA), says nothing about the return of the water to the Great Lakes divesting the Great Lakes Governors (Governors) of jurisdiction, nor does it define diversion to include only consumptive loss. 42 U.S.C. Section 1962-20(d) is entitled "Approval by Governors for diversion of water" and states that "no water shall be diverted or exported from any portion of the Great Lakes within the United States, or from any tributary within the United States of any of the Great Lakes, for use outside the Great Lakes Basin unless such diversion or export is approved by the Governor of each of the Great Lake states."

> Concurrent with the signing of Annex 2001 to the Great Lakes Charter of 1985, the Governors passed a resolution, the "Annex 2001 Resolution on Water Resources Development Act" (June 18, 20001). This resolution attests that WRDA affirms the Great Lakes Governors' (joint) authority to make decisions regarding diversions and exports of Great Lakes water in the United States." It goes on to state that "...pending finalization of the agreement(s) outlined in the Great Lakes Charter Annex and to continue to foster bi-national cooperation, (the Great Lakes States) will notify and consult with the Premiers of Ontario and Quebec on all proposals subject to the U.S. WRDA utilizing the prior notice and consultation process established in the Great Lakes Charter of 1985." For the Great Lakes States, the process called for in 2001, even though it has extended beyond the three years envisioned in the resolution, isn't final until the Compact is enacted by all of the Great Lakes States and Congress consents.

> That said, we believe that WRDA applies to the New Berlin proposal. If it is officially brought forward, the proposal should be formally submitted to the Governors (approval) and Premiers (consultation) through the prior notice and consultation process as administered in the past by the Council of Great Lakes Governors. The Annex Implementing Agreements: "The Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement" and "The Great Lakes-St. Lawrence River Basin Water Resources Compact", signed and recommended by the Governors respectively in December 13, 2005, suggest that the common standard and criteria expressed in those documents would be applied in judging future requests for use of Great Lakes water, including diversions. In our capacity of advising Governor Rendell on Great Lakes water use, until the Compact is in effect and requires its application, we would expect to use that standard as a guide in evaluating New Berlin and any other

diversion proposals.

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