

VIA E-MAIL AND HAND DELIVERY

September 16, 2016

Jill M. Hutchison
Tel +1 312 840 7490
JHutchison@jenner.com

Executive Director
Great Lakes-St. Lawrence River Basin
Water Resources Council
c/o Council of Great Lakes Governors
20 North Wacker Drive, Suite 2700
Chicago, Illinois 60606

Re: Written Submission and Hearing re Final Decision in the Matter of the Application by the City of Waukesha, Wisconsin for a Diversion of Great Lakes Water, No. 2016-1

To the Executive Director of the Great Lakes-St. Lawrence River Basin Water Resources Council:

On behalf of the Great Lakes and St. Lawrence Cities Initiative (the "GLSL Cities Initiative"), enclosed please find GLSL Cities Initiative's Written Statement in Furtherance of Request for Hearing and Compact Council Consideration ("Written Statement"), as referenced in my August 19, 2016 letter. Also enclosed is an Appendix, consisting of three volumes.

As detailed further in the Written Statement, the GLSL Cities Initiative respectfully submits that the Compact Council should:

1. Suspend the Final Decision pending further review.
2. Reverse the Final Decision regarding the Applicant's eligibility as a "Community within a Straddling County" and restrict the delineated service area to be consistent with the City of Waukesha boundaries.
3. Apply fundamental principles of contract interpretation and statutory construction to redefine how the Compact and the Council evaluates "no reasonable water supply alternative." A standard consistent with the Compact, rather than one improperly imported from Wisconsin law, would consider (a) whether an alternative would be allowed under existing regulations; (b) whether an alternative is consistent with existing permitted water uses and criteria in the region or with routinely-permitted exemptions granted by regulators; and (c) whether an alternative is feasible.
4. Require supplemental technical analysis (including a supplemental EIS) that details demand forecasts for a service area consistent with the boundaries of the City of Waukesha, or at a minimum the narrowed service area delineated in the

Final Decision, and that analyzes alternatives for supplying all *or part* of that demand.

5. Permit additional public comment on the proposed Diversion, including on alternatives associated with the narrower service area and on any supplemental technical analysis.
6. Conduct a substantive review of the Application that takes into account the supplemental technical analysis, new public comments, any revised interpretation of key Compact provisions, any further modifications to the delineated service area, and the requisite attention to the cumulative impact of the decision, including its precedential effects. Determine whether the narrowed proposal still meets the clarified criteria for an Exception for a Community in a Straddling County, including whether it meets the appropriate “no reasonable water supply alternative” standard and whether all or part of the Diversion can be avoided. Carefully evaluate the impact of the return flow on any water body to ensure that the return flow does not result in an adverse impact.
7. After proper interpretation and due consideration, for the reasons further explained in this submittal, the Compact Council should find that the Proposal does not satisfy the Exception criteria in the Compact and deny the Application.
8. If, after proper interpretation and due consideration, the Compact Council finds that this Proposal does not meet the criteria for an Exception to the prohibition on Diversions absent conditions and/or modifications, but finds that the Proposal could and should be approved with conditions and/or modifications, provide the draft Final Decision for public comment on the conditions or modifications prior to a final vote of the Compact Council. Going forward, revise the Compact Council’s Interim Guidance and Draft Sequence of Events for Consideration of “Straddling County” Exceptions to the Prohibition on Diversions to encompass this critical opportunity for full review of impactful modifications and conditions.

Above all else, clarification and rigorous application of appropriate, consistent standards is critical given the precedent-setting nature of this decision and the need to ensure a predictable process and equal treatment for any future applications.

Further, the GLSL Cities Initiative renews its request for prompt notice of the date, time, and location of the hearing, as well as any further guidance on procedures for such a hearing beyond those incorporated in the Compact or the Guidance, Resolutions, and other documents previously adopted by the Council and posted on the Council’s website. In particular, the GLSL Cities Initiative asks to be informed of the format of the hearing, including whether additional public comment will be permitted at the hearing. Further, as a matter of procedure, should the Applicant or any other entity submit a response in opposition to this Request, as the Petitioner the GLSL Cities Initiative

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respectfully requests the opportunity to submit a reply to any such opposition prior to any hearing on the matter.

The GLSL Cities Initiative continues to reserve all of its rights under the Compact and under all other applicable state, federal, and international laws regarding the hearing, as well as its ability to challenge the Compact Council's June 21, 2016 Final Decision in Matter No. 2016-1 through any other avenue or in any related matters.

Respectfully submitted,



Jill M. Hutchison

Cc by U.S. Mail without hard copy appendix:

State of Wisconsin

c/o Cathy Stepp, Secretary of the Wisconsin Department of Natural Resources

101 S. Webster St.

Box 7921

Madison, WI 53707-7921

City of Waukesha

c/o Mayor Shawn Reilly

201 Delafield Street

Waukesha, WI 53188

David Ullrich, Executive Director

Great Lakes and St. Lawrence Cities Initiative

20 N. Wacker Dr., #2700

Chicago, IL 60606

Board of Directors of the Great Lakes and St. Lawrence Cities Initiative

Great Lakes and St. Lawrence Cities Initiative

20 N. Wacker Dr., #2700

Chicago, IL 60606

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