



DNR Drinking Water and Groundwater Program DG/5
Attn: Adam Freihoefer
PO Box 7921
Madison WI 53707-7921

March 21, 2018

Dear Mr. Freihoefer:

Thank you for the opportunity to provide comments on behalf of the Great Lakes and St. Lawrence Cities Initiative on the *City of Racine Application for Water Diversion*. Any application for a water diversion in the Great Lakes and St. Lawrence River Basin is significant, as the Great Lakes-St. Lawrence River Basin Water Resources Compact and the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement both expressly state that diversions are prohibited, save for a few exceptions.

We look forward to continuing dialogue with the Wisconsin Department of Natural Resources and Governor Walker about the City of Racine's application. If you have any questions about the comments provided herein, please don't hesitate to contact us.

Sincerely,

John Dickert
President/CEO
Great Lakes and St. Lawrence Cities Initiative

Great Lakes and St. Lawrence Cities Initiative
Comments Submitted to the
Wisconsin Department of Natural Resources, Drinking Water and Groundwater Program
on the City of Racine Application for a Water Diversion
March 21, 2018

The Great Lakes and St. Lawrence Cities Initiative (“Cities Initiative”) is a coalition of 131 US and Canadian mayors and other local elected officials, representing more than 17 million people in the region, working to advance the protection, restoration and promotion of the Great Lakes and St. Lawrence River. We are a 501c3 organization headquartered in Chicago, Illinois with staff in Toronto, Ontario and Montreal, Quebec as well. Our member mayors represent cities, towns, and regional municipalities ranging in populations from 481 in Bayfield, Wisconsin to 2.5 million in Toronto. We represent a diverse group of mayors working to integrate their environmental, social and economic agendas to ensure the sustainable management of the Great Lakes and St. Lawrence River Basin’s (“Basin”) freshwater resources for generations to come.

The Cities Initiative supports and encourages economic development in the Great Lakes-St. Lawrence River Region (“Region”). The binational regional economy of \$5.8 trillion demonstrates the value of this Region to the two countries, the significance of the Lakes and River, and the opportunity for economic development. However, economic development cannot occur at the expense of our water and natural resources. The Region depends on the Lakes and River for many things, perhaps the most important of which is a source of drinking water. Additionally, the Region as a whole benefits from the Lakes and River through tourism, recreation, ecosystem services, and industry, to name a few. More so than anywhere else, economic development and environmental stewardship must go hand and hand in the Great Lakes and St. Lawrence River Region.

This Region is unique in its binational, multi-jurisdictional character. We are stewards to a water resource that spans two countries, eight states, two provinces, and many hundred local governments. We must act in good faith and respect the binational, multi-jurisdictional efforts that have been made to sustainably manage and protect water resources, such as the Great Lakes-St. Lawrence River Basin Water Resources Compact (“Compact”) and the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement (“Agreement”). As an important reminder, the Compact and Agreement prohibit diversions, with a few limited exceptions.

We understand that a project like the Foxconn manufacturing facility is expected to help grow the State of Wisconsin’s economy and we commend the State of Wisconsin for bringing jobs and economic growth to the state. However, with respect to the City of Racine’s Water Diversion Application (“Racine Application”), we request the Wisconsin Department of Natural Resources (“WI DNR”) hold the application at this time until there is a more robust review of the application with regard to the requirements of the Compact and Agreement, and until Foxconn has provided more detail around chemicals used in their manufacturing process and the proposed pretreatment process at the plant. Quite simply put, there are too many questions around the application to rush the review and approval process.

The Cities Initiative has concern over the Racine Application as a result of five issues and/or questions:

1. Based on the intended use of the majority of the diverted water, the diversion requested in the Racine Application is not primarily for public water supply purposes;
2. The water quality of the return flow is of utmost importance and there is a lack of information available on the chemicals involved in the Foxconn manufacturing process and how Foxconn will pretreat its wastewater;
3. It is questionable as to whether the City of Racine is the appropriate applicant for a water diversion requested by the Village of Mount Pleasant for use by a private business;
4. There is debate over whether it is appropriate to categorize the diversion request as volume that can be met within the City of Racine's existing withdrawal capacity, or whether this is in fact a new withdrawal;
5. Given these issues and questions, as well as the significance of Lake Michigan and the Great Lakes and St. Lawrence River to the livelihood of more than 40 million people, and the importance of the Compact and Agreement, there should be a thorough and robust review of the application by all parties of the Compact and Agreement.

To reiterate, the Cities Initiative urges the WI DNR to hold the Racine Application until some of these fundamental questions around the application are reviewed and considered, and until more information is provided by Foxconn. We recommend that the parties of the Compact and Agreement, that is the eight Great Lakes states and the two Canadian provinces represented by the Regional Body, review and consult on the application.

Issue 1: The Diversion is not primarily for a public water supply purpose

The Compact defines a public water supply purpose as "...water distributed to the public through a physically connected system of treatment, storage and distribution facilities ***servicing a group of largely residential customers*** that may also serve industrial, commercial and other institutional operators (Compact, Page 3). As well, under Section 4.9 of the Compact, Exceptions to the Prohibition of Diversions, a "...Proposal to transfer Water to an area within a Straddling Community but outside the Basin or outside the source Great Lakes Watershed shall be excepted from the prohibition against Diversions...provided that, regardless of the volume of Water transferred, all the Water so transferred ***shall be used solely for Public Water Supply Purposes*** within the Straddling Community..." (Compact, page 15, section 4.9.1). The Racine Application states that the City of Racine is applying for up to 7 million gallons per day (MGD) of Lake Michigan water -- 5.8 MGD of which is for Foxconn operations, including 2.4 MGD for cooling processes, 3 MGD for manufacturing operations, and 0.5 MGD for domestic purposes (Racine Application, page 21, Table D5). Of the 7 MGD requested for the diversion, approximately 83% will go to a private company, the majority of which will be used in its manufacturing and cooling processes. This intended use of the water does not fulfill the intent of the Compact that diverted water be used solely for public water supply purposes. The Cities Initiative expresses concern that the foundation of the Racine Application, which is to supply Lake Michigan water to a private company, clearly does not meet the definition of a public water supply purpose as defined in the Compact.

Issue 2: There is concern over the quality of the water that will be returned to Lake Michigan

Advancing the protection and restoration of the Great Lakes and St. Lawrence River is at the core of the Cities Initiative's mission. At the end of the day, mayors are responsible for providing clean and safe drinking water to their residents. It is for these reasons that the Cities Initiative strongly urges the WI DNR to hold the Racine Application until Foxconn is able to provide detailed information regarding the pretreatment process they will employ at the plant and the chemicals used in their manufacturing process. It is not prudent for the WI DNR to approve a water diversion application without having all the information necessary to understand the critical elements of wastewater treatment and return flow. The Cities Initiative has confidence in the Racine Wastewater Utility's ability to treat and manage wastewater from users, however, the Foxconn manufacturing operations will be new to the Racine Wastewater Utility. We advise slowing down the review and approval process until there is complete understanding of the chemicals used in the manufacturing process and the proposed pretreatment process at the plant, at the very least. The Cities Initiative expects the Foxconn facility will be fully compliant with all applicable local, state, and federal environmental regulations associated with water, air and waste.

Of additional concern, and associated with this application, is the easing of state environmental regulations around wetlands, construction in and around streambeds, the state requirement for environmental impact statements, and the altering of state statutes to accommodate the development. The Great Lakes Compact brought the eight Great Lakes States and two Canadian Provinces together to sustainably manage our water resources and "...to act together to protect, conserve, restore, improve and effectively manage the Waters and Water Dependent Natural Resources of the Basin..." (Compact, page 5, section 1.3.2.a). Relaxing state requirements and revising state statutes to accommodate a new development raises questions around transparency and accountability. What assurances are in place that the private entity, the ultimate benefactor of the diverted water, will act to protect, conserve, restore, improve and effectively manage the water dependent natural resources of the basin if the state itself has relaxed its responsibility and ability to do so?

Issue 3: Is the City of Racine the appropriate applicant for the water diversion?

The Racine Application maintains that since the City of Racine through the Racine Water Utility is the public water supplier for the Village of Mount Pleasant, where the Foxconn development is to be located. Since Mount Pleasant doesn't have a public water supply system of its own, the City of Racine maintains that it is the appropriate entity to apply for the diversion. However, the City of Racine is not the straddling community requesting the water; Mount Pleasant is. And in fact, Mount Pleasant isn't the entity with the water need; Foxconn, a private business, is. Uncertainty around the appropriate applicant for the water diversion requires more clarification and thorough review.

Issue 4: Is the requested diversion a new or increased withdrawal

The Compact states that an application for a straddling community with a new or increased withdrawal of 100,000 gallons per day or greater average over 90 days would have to meet the Exception Standard. The Exception Standard has another set of requirements that a diversion application must satisfy. The Racine Application states that the 7 MGD withdrawal is not new or increased because it can be met within the Racine Water Utility's approved withdrawal volume of 60 MGD. However, the primary use of

the diverted water is for a new entity starting business in the state. There is quite a bit of new infrastructure being built for the project, there will be new manufacturing processes occurring, and in fact, the state created a new zoning category, the Electronics and Information Technology Manufacturing Zone, for the project. While the diversion volume falls within the City of Racine's approved withdrawal volume, the use for the water, for the Foxconn plant, is new. This critical nuance merits further review and consideration by the parties of the Compact and Agreement.

Issue 5: Robust review by the parties of the Compact and Agreement is needed

There is enough concern and uncertainty among the public and even among those familiar with the Compact and Agreement over the Racine Application, that it seems critical to ensure the application has gone through a rigorous review. We understand this water diversion is a key element in a broader economic development project in the State of Wisconsin. However, the prospects of economic gains should not preclude the application from rigorous review. As well, as an act of good faith and collaboration, the State of Wisconsin should consult with the other parties of the Compact and Agreement on these and other questions raised over the application. Each diversion application is an opportunity for us to test and strengthen the Compact. We should not rush through the review or rubber stamp the application just to get a deal or project done.

Conclusion:

It is the opinion of the Cities Initiative that the WI DNR should hold the Racine Application until adequate consultation and review of the application with respect to the requirements of the Compact and Agreement is conducted. As an act of good faith and in the spirit of the Compact and Agreement, the Cities Initiative suggests that the State of Wisconsin seek consultation from the Regional Body on the Racine Application. Finally, the Cities Initiative advises the WI DNR to hold the application until Foxconn provides more information on the chemicals used in their manufacturing process and provides detail on the pretreatment process for the plant.