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March 14, 2016

**Great Lakes –St. Lawrence Regional Body and Compact Council
Waukesha Diversion Comments**

c/o Conference of Great Lakes and St. Lawrence Governors and Premiers
20 N. Wacker Drive, Suite 2700
Chicago, Illinois 60606

Dear Regional Body & Compact Council Members,

Buffalo Niagara Riverkeeper submits the following comments to respond to the Regional Body and Compact Council concerning the City of Waukesha’s proposed Water Diversion Application under the Great Lakes – St. Lawrence River Basin Water Resources Compact (Compact). These comments are specific to evaluating precedent and relevance to New York State. In addition to these policy comments, Buffalo Niagara Riverkeeper has co-signed a technical comment letter on behalf of the eight (8) Great Lakes Waterkeeper organizations.

The stated intent of the Compact is to keep water from leaving the basin unless the user can meet a strict set of criteria. Setting a prudent precedent is of the utmost importance to the integrity of the Great Lakes and is of great importance to the health and function of the Great Lakes freshwater system into the future. New York, in particular, stands a great risk of facing a similar challenge. Eighteen counties straddle the basin and moreover there are forty-nine municipalities within just one of those counties that could meet the definition of “Straddling Community” or “Community with a Straddling County.” That aggregates to hundreds of opportunities for petitions for use of Great Lakes water. Thus, strictly applying the terms of the compact now is of specific importance to New York State. A true community in need that meets the requirements of the compact should be able to access the water and thereby provide abundant and potable water to their community. However, the requirements stated in the compact are there to protect quality and quantity of the basin as a shared resource. The diversion application for Waukesha is inadequate and should be denied because the City has 1. Not met a key provision of the compact by failing to show that there are no reasonable alternatives and 2. Inappropriately expands the definition of “community.”

1. A Feasible and Less Costly Alternative Exists

Section 4.9.3.d of the Compact states that those applying for a diversion must show that, “There is no reasonable water supply alternative within the basin in which the community is located, including conservation of existing water supplies.” We support the March 14, 2016 comments submitted by Great Lake Waterkeepers with regard to this point. A July 2015 Report, “Non-Diversion Alternative Using Existing Water Supply With Treatment City of Waukesha Water Supply” by GZA GeoEnvironmental, Inc. amended in March

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2016, clearly outlines a non-diversion solution at a reasonable cost. The report finds that Waukesha can meet its water needs through its existing deep and shallow wells by investing in water treatment infrastructure to address radium contamination in the deep wells. Many other communities in Wisconsin have successfully undertaken similar means to address radium contamination. The report states, that for a modest cost, Waukesha can come into compliance with federal regulation and provide an ample, safe, potable water supply for its residents. This shows there is a reasonable water supply alternative and therefore Waukesha's request does not meet the requirements of the § 4.9.3.d.

2. The Proposed “Water Service Area” does not meet the definition of a “community” under the Compact

Under Section 4.9.3.a of the Compact, communities seeking a water diversion must show that: “The Water shall be used solely for the Public Water Supply Purposes of the Community within a Straddling County that is without adequate supplies of potable water.” Waukesha's proposed water service area goes beyond this boundary, extending into neighboring towns that have not requested and moreover have stated they do not need Great Lakes water. Both Waukesha and the Wisconsin DNR have stated, in their January 2016 formal “Comments and Responses to the Technical Review [for the] Waukesha Great Lakes Water Diversion,” that the water service area should be considered an “equivalent thereof” under the definition of a “Community within a straddling County” under Section 1.2 of the Compact. Defined as, “A community within a straddling county means any incorporated city, town or equivalent thereof, that is located outside the basin but within a county that lies partly within the Basin and that is not a Straddling Community.” Extending this definition to an amalgam of municipalities following an arbitrarily designated sewer service area is outside the meaning of the term. Second, as stated by the Great Lakes Waterkeepers comments, Waukesha has not finished the rule-making regarding these water service areas as part of their Great Lakes Compact Implementation Rules. Therefore, this boundary is inappropriate and not applicable under the compact.

The Compact only expressly refers to city and towns. As a state with both villages and hamlets, how to apply the definition of this particular boundary is of great importance in New York. A hamlet or village could meet the “equivalent thereof” language under the definition of Community within a Straddling County or Straddling Community. Hamlets and villages are not specifically stated in the compact language or definitions but a village is functionally the same and a hamlet, while not a political subdivision and reliant on the town it lies in for services does still have governance rights of its own in certain respects. We do not propose to define these terms for the Regional Body or Council but simply note them as exemplary of entities that could meet the definition of “equivalent thereof.” Narrowing the definition to appropriately apply only a community, municipality or political subdivision, in need would set the correct precedent without affecting the rights of a New York State hamlet or village in need to apply. The Council should deny the Application because a water service area does not comport with the intent of the term community under the compact.

In closing, we appreciate the commitment of the Council to the health of the Great Lakes as well as your consideration of these comments. It is the duty of the Compact Council to uphold the terms of the compact and set the right precedent. **Waukesha's application should be denied until Waukesha meets the terms of the compact by applying for**



water solely for the community in need, in this case the City of Waukesha and not neighboring towns sharing, and has adequately demonstrated that it has exhausted all other efforts and cannot meet its water demand through other measures, including conservation. If you have questions about these comments, please contact Jill Jedlicka, jedlicka@bnriverkeeper.org, at Buffalo Niagara Riverkeeper.

Sincerely,



Jill Jedlicka
Executive Director
Buffalo Niagara RIVERKEEPER

