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

March 21, 2018

Re: City of Racine Water Diversion Application

The Wisconsin Department of Natural Resources (“DNR”) should reject the City of Racine’s diversion application because it does not meet the requirements of section 4.9 of the *Great Lakes – St. Lawrence River Basin Water Resources Compact* (the “Compact”). There are two primary reasons why the diversion application should be rejected:

- 1- The diverted water would not serve a primarily residential group of customers and would instead only be used for industrial and commercial purposes, and
- 2- Neither the City of Racine, nor the beneficiary of the diversion, Foxconn Technology Group (“Foxconn”), has demonstrated how it will ensure that the return flow does not contaminate Lake Michigan.

A. Background on the Canadian Environmental Law Association

The Canadian Environmental Law Association (“CELA”) is an Ontario legal aid clinic with a long history of working on Great Lakes water quality and quantity issues. CELA was a member of the Annex Advisory Panel and provided input to the Ontario government both before and after the signing of the *Great Lakes- St. Lawrence River Basin Sustainable Water Resources Agreement*.

B. Analysis

1. *Racine’s application does not meet the requirements of the Compact*

All new and increased diversions of Great Lakes water are prohibited by section 4.8 of the Compact unless the strict requirements of section 4.9 are met.

In this case, the City of Racine seeks to divert water to the Village of Mount Pleasant. The exception to the prohibition on diversions requires that the diverted water transferred to a straddling community be used largely for residential customers. Subsection 4.9(1) provides:

A proposal to transfer Water to an area within a Straddling Community but outside the Basin or outside the source Great Lake Watershed shall be excepted from the prohibition against Diversions and be managed and regulated by the Originating Party provided that, regardless of the volume of Water transferred, all water so transferred shall be used solely for Public Water Supply Purposes within the Straddling Community...[emphasis added]

Public water supply purposes is defined in section 1.2 of the Compact as water distributed to the public through a physically connected system of treatment, storage and distribution facilities serving a group of largely residential customers that may also serve industrial, commercial and other institutional operators.

It is clear that this diversion application does not fulfill the requirements of the Compact merely because the City of Racine's water supply system as a whole serves largely residential customers. The Compact requires the diverted water itself, "all water so transferred" to the straddling community, to meet that standard.

On page 17 of the City of Racine's application, Racine acknowledges that the requested diversion volume of 7 million gallons per day will be used for only industrial and commercial purposes. 5.8 million gallons per day is to be used by Foxconn and 1.2 million gallons per day is to be used for other commercial and industrial purposes. There is no intention to use any of the diverted water for residential purposes.

2. There is no evidence to demonstrate that the return flow will be adequately treated

Section 1.3 of the Compact recognizes that future diversions have the potential to significantly impact the Great Lakes. CELA is very concerned about the environmental implications of this diversion proposal, in particular the quality of the return flow to Lake Michigan after its use by Foxconn. Despite Foxconn's poor environmental record, the City of Racine's application provides little information about how it will ensure that the return flow is adequately treated so that Lake Michigan is not contaminated by chemical and toxic substances used in Foxconn's manufacturing process. Without significantly more evidence about water treatment processes and potential pre-treatment by Foxconn, Wisconsin DNR does not have sufficient information to ensure that the approval of this proposal would not cause significant environmental harm.

3. The diversion application should be rejected

The International Joint Commission observed that the Compact will provide a solid foundation for managing diversions of Great Lakes water, but only if it is "fully and rigorously implemented".¹ Wisconsin DNR should reject this diversion application because it raises serious environmental concerns and does not meet the Exception Standard in section 4.9 of the Compact.

¹ International Joint Commission, *Protection of the Waters of the Great Lakes, 2015 Review of the Recommendations from the February 2000 Report*, December, 2015, p 6

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

A handwritten signature in blue ink that reads "Jacqueline Wilson". The signature is written in a cursive, flowing style.

Jacqueline Wilson
Counsel