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Of Counsel



July 13, 2018

Mr. Keith Haas
Water Utility, General Manager
City Hall Annex Room 227
800 Center Street
Racine, Wisconsin 53403
Keith.Haas@cityofracine.org

Re: Request to Suspend Work on Water Infrastructure for Great Lakes Diversion

Mr. Haas:

On May 25, 2018, Midwest Environmental Advocates (MEA) filed a legal action on behalf of four organizations challenging the Wisconsin Department of Natural Resources' (WDNR) April 25th approval of the City of Racine's application to divert water from the Great Lakes Basin. Milwaukee Riverkeeper, League of Women Voters of Wisconsin, River Alliance of Wisconsin, and Minnesota Center for Environmental Advocacy are challenging WDNR's approval on the basis that the proposed diversion fails to meet a core provision of the Great Lakes Compact requiring diverted water ("water so transferred") be used for public water supply purposes.

MEA has also filed a petition for judicial review in Dane County Circuit Court asking the court to review WDNR's June 13, 2018, final decision which, in part, denies a stay of the diversion approval during the challenge. A copy of the petition for judicial review is appended as Attachment 1.

In light of these ongoing legal actions, MEA and its clients request and advise the City of Racine to voluntarily suspend efforts to expand its water infrastructure in association with WDNR's April 25, 2018, approval of the City of Racine's application to divert Great Lakes water. MEA understands that the City of Racine has already awarded several contracts to improve water mains relating to this approval. By agreeing to a voluntary suspension of planning and construction activities relating to the new water infrastructure, the City of Racine will place itself in a better position to avoid and mitigate unnecessary expenditures during the pendency of the legal challenge.

The intent of MEA's clients in filing the challenge is to protect the integrity of the Great Lakes Compact, a historic agreement enacted into federal law to safeguard the critical freshwater resources of the Great Lakes. To ensure a Great Lakes Compact that is strong and sustainable, it is essential that its language and intent are complied with at every opportunity. This especially includes the

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Compact's centerpiece ban on diversions, which reflects the region's determination to prohibit the transfer of Great Lakes water outside the basin unless a diversion request meets the narrowly defined exceptions outlined in the provisions and definitions of the agreement.

In the instant case, the diversion sought by the City of Racine meets neither the terms nor the spirit of the Great Lakes Compact, as the Great Lakes water to be transferred out of basin is inarguably intended for the private purposes and benefit of primarily one private user. The challenge to the City of Racine's diversion application has regional and international significance and will set far-reaching precedent relating to future requested diversions of Great Lakes water from the Great Lakes Basin. MEA and its clients believe it imperative that the City of Racine, in particular, exercise the utmost caution with respect to any plans and expenditures on diversion-related water infrastructure in order to maintain the status quo during the pendency of the legal challenge.

MEA's clients may choose to file a lawsuit against the City of Racine for injunctive and declaratory relief should the City of Racine continue to take action on WDNR's approval and disrupt the status quo before the legal challenge is resolved. MEA firmly believes that no advance notice is required before filing an action for temporary injunctive relief against a municipality, but the following Notice of Circumstances and Notice of Claim nonetheless satisfy Wis. Stat. § 893.80(1d).

Respectfully,

MIDWEST ENVIRONMENTAL ADVOCATES

By: 

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Attorneys Milwaukee Riverkeeper, League of Women Voters of Wisconsin, River Alliance of Wisconsin, and Minnesota Center for Environmental Advocacy.

Cc: Janice Johnson-Martin, Clerk of the City of Racine
Corey Mason, Mayor of the City of Racine
Daniel Meyer, Secretary of the Wisconsin Department of Natural Resources
Cheryl Heilman, Attorney at the Wisconsin Department of Natural Resources
Judith Mills, Attorney at the Wisconsin Department of Natural Resources

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July 13, 2018

The City of Racine
c/o Janice Johnson-Martin
City Clerk
City Hall, Clerk & Treasurer's Office
730 Washington Ave, Room 103
Racine, WI 53403
Janice.Johnson-Martin@cityofracine.org

Re: Notice of Circumstances and Notice of Claim

Ms. Johnson-Martin:

The following Notice of Circumstances and Notice of Claim satisfy Wis. Stat. § 893.80(1d).

Notice of Circumstances

The City of Racine applied for a diversion of water outside of the Great Lakes Basin on behalf of the Village of Mt. Pleasant for the express purpose of supplying Lake Michigan water to the proposed Foxconn industrial complex. The Wisconsin Department of Natural Resources (WDNR) approved the City of Racine's application and permitted a diversion of 7 million gallons per day of Great Lakes water. Milwaukee Riverkeeper, League of Women Voters of Wisconsin, River Alliance of Wisconsin, and Minnesota Center for Environmental Advocacy, through their attorneys, Midwest Environmental Advocates (MEA), filed a petition for a contested case hearing, challenging WDNR's approval on the basis that the proposed diversion fails to meet a core provision of the Compact requiring diverted water ("water so transferred") be used for "public water supply purposes." On behalf of its clients, MEA intends to file an action for injunctive relief pursuant to Wis. Stat. § 813.02 and declaratory judgment under Wis. Stat. § 806.04 to preserve their interests and uphold the integrity of the Great Lakes Compact.

WDNR's approval is appended as Attachment 2. MEA's petition for a contested case hearing is appended as Attachment 3. WDNR's letter granting a contested case hearing is appended as Attachment 4.

Notice of Claim

MEA represents Milwaukee Riverkeeper, League of Women Voters of Wisconsin, River Alliance of Wisconsin, and Minnesota Center for Environmental Advocacy. They can all be reached at MEA's office address: 612

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W. Main St., Suite 302, Madison, WI, 53703. MEA's clients will seek declaratory relief with respect to status of WDNR's approval of the City of Racine's diversion application under Wis. Stat. § 281.93 such that the approval's effectiveness is stayed until the challenge's proceedings conclude. MEA's clients will also seek injunctive relief to preserve the status quo pending all proceedings with respect to the challenge to WDNR's approval. MEA's clients will seek compensatory relief in the form of attorney fees and costs, if available, which have yet to be determined.

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