

LEAGUE OF WOMEN VOTERS OF WISCONSIN
612 W. Main St, Suite 200
Madison, WI 53703;

MILWAUKEE RIVERKEEPER
1845 N Farwell Avenue, Suite 100
Milwaukee, WI 53202;

Case No. _____

MINNESOTA CENTER FOR ENVIRONMENTAL
ADVOCACY
1919 University Ave W, Suite 515
Saint Paul, MN 55104; and

Case Code:
30607 (Admin. Agency Review)

RIVER ALLIANCE OF WISCONSIN
147 S Butler St, Suite 2
Madison, WI 53703;

Petitioners,

v.

WISCONSIN DEPARTMENT OF NATURAL
RESOURCES,
101 South Webster Street
P.O. Box 7921
Madison, WI 53707-7921;

Respondent.

PETITION FOR JUDICIAL REVIEW

On May 25, 2018, the above-named Petitioners filed a petition for a contested-case hearing challenging Wisconsin Department of Natural Resources' ("WDNR") April 25, 2018 approval authorizing the City of Racine to divert Great Lakes water out of the Great Lakes basin ("WDNR's Approval"). Petitioners attach WDNR's approval of the City of Racine's diversion as

Exhibit A, and Petitioners' petition for a contested-case hearing as Exhibit B. Petitioners' based their administrative challenge on the proposed diversion's failure to satisfy a core provision of the Great Lakes Compact (the "Compact") and Wisconsin's implementing legislation. The Compact is a legally-binding interstate compact among the eight Great Lakes states that establishes a framework for joint management and protection of the Great Lakes. The Compact requires that any water diverted out of the Great Lakes Basin must be used solely for "Public Water Supply Purposes." The City of Racine's proposed diversion meets neither the terms nor the spirit of the Compact, as the specified quantity of Great Lakes water to be transferred out of basin is inarguably intended for the private purposes and benefit of primarily one private user.

Petitioners request this Court resolve an issue of great importance to the success of the administrative process: whether WDNR's Approval of the City of Racine's diversion application is stayed during the pendency of the administrative challenge. Petitioners alleged in their petition for a contested-case hearing that, pursuant to Wis. Stat. §§ 281.93(1)-(2), Petitioners have a right to a stay of WDNR's Approval. In its June 13, 2018 decision responding to the contested-case hearing petition, WDNR determined that there is not a stay of the approval in place during the pendency of the challenge. WDNR's letter is attached as Exhibit C.

Accordingly, Petitioners, by and through their attorneys Midwest Environmental Advocates, hereby petition this Court pursuant to Wis. Stat. § 227.52, *et seq.*, for review of the WDNR's June 13, 2018, final decision which, in part, denies a stay of WDNR's Approval authorizing the City of Racine to begin a diversion of Great Lakes water.

PARTIES

1. Petitioner League of Women Voters of Wisconsin ("Wisconsin League") is located at 612 West Main Street, Ste. 200, Madison, WI 53703. The League of Women Voters is

a nonpartisan, grassroots, political organization established in 1920 that advocates for informed and active participation in government. Its members are women and men who work to improve our systems of government and impact public policies through education and advocacy. The League operates at the local, state, and national levels with local Leagues joining together around particular concerns as an interleague organization. Since the 1960s the League has been at the forefront of efforts to protect air, land, and water resources and understands that environmental protection must be a seamless web. As a member of the multi-state League of Women Voters of the Lake Michigan Region, the Wisconsin League advocates for the preservation and enhancement of the environmental integrity and quality of the Great Lakes–St. Lawrence River Ecosystem. In this role, the Wisconsin League submitted comments to WDNR on the City of Racine’s diversion application and is one of the parties challenging WDNR’s Approval.

2. Petitioner Milwaukee Riverkeeper is located at 1845 North Farwell Avenue, Ste. 100, Milwaukee, WI 53202. Milwaukee Riverkeeper is a science-based licensed 501(c)(3) non-profit advocacy organization working for swimmable, fishable rivers throughout the Milwaukee River Basin. Milwaukee Riverkeeper is a licensed member of the Waterkeeper Alliance, an international coalition ensuring clean water and strong communities. Milwaukee Riverkeeper is also a member of the Compact Implementation Coalition, which works to ensure a thorough legal, economic, environmental, and public review of new applications for out-of-basin diversions of Great Lakes waters under the Compact. In this capacity, Milwaukee Riverkeeper submitted comments to WDNR regarding the City of Racine’s diversion application and is one of the parties challenging WDNR’s Approval.

3. Petitioner Minnesota Center for Environmental Advocacy (“MCEA”), located at 1919 University Avenue West, Ste. 515, Saint Paul, MN 55105, is a Minnesota non-profit

organization whose mission is to use law, science, and research to preserve and protect Minnesota's natural resources, wildlife, and the health of its people. For over forty years, MCEA has worked with citizens and government decision-makers to protect and improve the quality of Minnesota's natural resources, including Lake Superior. MCEA was an early advocate for, and pivotal partner in the formation of, the Compact. Since that time, MCEA has diligently worked with other Great Lakes entities to defend the Compact and ensure compliance with its terms, including the active role MCEA played in the City of Waukesha's diversion application. With respect to the City of Racine's application, MCEA submitted comments to WDNR in its capacity as an advocate for clean water and the viability of the Compact and is one of the parties challenging WDNR's Approval.

4. Petitioner River Alliance of Wisconsin ("River Alliance") is located at 147 South Butler Street, Ste. 2, Madison, WI 53703. River Alliance is a 501(c)(3) non-profit organization and represents more than 2,000 individuals and businesses as well as over 80 local watershed groups in its mission to empower people for the protection and restoration of water. River Alliance was a member of the Compact Implementation Coalition, an organization working to ensure a thorough legal, economic, environmental, and public review of new applications for out-of-basin diversions of Great Lakes waters under the Compact, and actively participated in the City of Waukesha's diversion application by submitting comments and providing testimony. In its capacity as an advocate for clean water, River Alliance submitted comments to WDNR regarding the City of Racine's diversion application and is one of the parties challenging WDNR's Approval.

5. Respondent Wisconsin Department of Natural Resources is an agency of the State of Wisconsin, located at 101 South Webster Street, Madison, WI 53707. WDNR is responsible

for the administration Wis. Stat., subch. III, ch. 281, relating to the regulation of water quality and quantity in Wisconsin. Under this subchapter, WDNR has a limited authority to approve diversions of Great Lakes water and to hear appeals of such approvals brought by approval holders and other members of the public.

JURISDICTION AND VENUE

6. WDNR's June 13, 2018, decision is a final agency decision reviewable by this Court pursuant to Wis. Stat. § 227.52.

7. Venue is appropriate in this Court pursuant to Wis. Stat. §§ 227.52, 227.53(1)(a)(3) because two of four petitioners reside and have their principal places of business in Dane County.

BACKGROUND

8. On April 25, 2018, DNR approved the City of Racine's application to begin a diversion of up to 7 million gallons of water per day (mgd) from Lake Michigan to an area outside of the Great Lakes Basin.

9. WDNR's Approval violates and undermines key components of the Compact and Wisconsin state law implementing the Compact.

10. Namely, WDNR's Approval violates the prohibition on diversions of Great Lakes water to areas outside of the Great Lakes Basin, unless, among other things, "*all the water so transferred shall be used solely for Public Water Supply Purposes.*" Compact § 4.9.1 (emphasis added); *see also* Wis. Stat. § 281.346(4)(c).

11. The Compact and Wisconsin's implementing legislation define "Public Water Supply Purposes" as "water distributed to the public through a physically connected system . . .

serving a group of largely residential customers.” Compact § 1.2.28; *see also* Wis. Stat. § 281.346(1)(pm).

12. In direct contrast to this requirement, the purpose of the City of Racine’s diversion is to supply water exclusively to industrial and commercial customers in a newly-designated electronics and information technology manufacturing zone in the Village of Mt. Pleasant.

13. A vast majority of the water, 5.8 mgd, will be used by a single industrial customer, Foxconn Technology Group (“Foxconn”), at a proposed manufacturing campus in the Village of Mt. Pleasant. The remaining 1.2 mgd of diverted water will supply ancillary industrial and commercial customers surrounding the Foxconn facilities.

14. The City of Racine’s application admitted that no amount (0 gallons) of transferred water that will be used to supply residential customers in the designated electronics and information technology manufacturing zone or any other out-of-basin area subject to the diversion request.

15. On May 25, 2018, Petitioners initiated an appeal of WDNR’s Approval by properly filing a petition for a contested-case hearing with WDNR pursuant to Wis. Stat. § 281.93.

16. Petitioners alleged in their contested-case hearing petition that, pursuant to Wis. Stat. §§ 281.93(1)-(2), WDNR’s Approval is stayed and therefore not effective during the pendency of Petitioners’ challenge to WDNR’s Approval.

17. Petitioners have a statutorily guaranteed right to a stay of WDNR’s Approval while their challenge is being heard.

18. Pursuant to Wis. Stat. § 281.93(1), if an approval holder appeals the approval, WDNR's approval is stayed. Wisconsin Statute § 281.93(2) authorizes "other persons," like the Petitioners in the instant case, to seek review of an approval under sub. (1). By placing "other persons" in the same shoes as approval holders, Petitioners are thereby afforded the same rights and remedies as are afforded to any approval holder under sub. (1), which encompasses a stay of the approval.

19. On June 13, 2018, WDNR issued a decision responding to the petition for a contested-case hearing.

20. WDNR's June 13, 2018 decision denies that there is a stay of WDNR's Approval during an ongoing challenge.

21. WDNR's denial of the stay, in effect, allows the City of Racine to begin diverting up to 7 mgd of Great Lakes water while Petitioners' challenge is being heard.

22. Petitioners and their members have a legally protected interest in the use and enjoyment of the public trust waters of Lake Michigan under the Compact, Wisconsin state law, and Wis. Const., art. IX, § 1. WDNR's June 13, 2018, decision harms those legally protected interests by authorizing the City of Racine to proceed with the diversion during the pendency of Petitioners' challenge.

23. WDNR's June 13, 2018, decision further causes injury to Petitioners and their members by depriving Petitioners of their right to a stay of WDNR's Approval during the pendency of Petitioners' challenge.

ISSUE FOR REVIEW

24. The allegations in the foregoing paragraphs are realleged and incorporated herein by reference.

25. WDNR erroneously interpreted and applied Wis. Stat. §§ 281.93(1)-(2) and exceeded its statutory authority in its June 13, 2018 decision by denying Petitioners their statutory right to a stay of WDNR's Approval authorizing the City of Racine to begin a diversion of Great Lakes water.

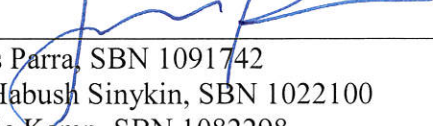
RELIEF REQUESTED

WHEREFORE, Petitioners request that the Court grant the following relief pursuant to Wis. Stat. § 227.57:

- A. Set aside or reverse that aspect of WDNR's June 13, 2018 decision in which WDNR denied Petitioners a stay of WDNR's Approval during the pendency of Petitioners' challenge.
- B. Direct WDNR to stay its Approval to the City of Racine pending resolution of Petitioners' challenge.
- C. Declare that Petitioners have a statutory right to a stay of WDNR's Approval while their challenge is being heard.
- D. Provide such other relief as may be appropriate under Wis. Stat. § 227.57.

Respectfully submitted this 13th day of July, 2018.

MIDWEST ENVIRONMENTAL ADVOCATES
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