

March 9, 2010

Prof. Joel Rast, Director  
UWM Center for Economic Development  
Milwaukee WI 53211

TRANSMITTED ELECTRONICALLY ONLY, jrast@uwm.edu

Dear Prof. Rast:

As civil rights and environmental organizations, we are submitting comments regarding the Socioeconomic Impact Analysis being prepared for the Water Supply Study. In making these comments, we recognize the over-arching planning authority conferred by local, state and federal authorities on SEWRPC as the region's Metropolitan Planning Organization (MPO), and inherent and intentional connections between the study and SEWRPC's master plan, the Regional Land Use Plan. Unfortunately, for decades, regional land use planning has failed to meaningfully involve low income and minority communities or to address or resolve the needs and concerns of those communities.

These omissions are also true of the Water Supply Study Advisory Committee, which was selected by SEWRPC and which did not include a single African-American and only had one person of color out of 33 members. Because the Water Supply Study Advisory Committee is the entity that decided what issues would be considered and within the scope of its work, and because of its glaring lack of diversity, it is critical that the Socioeconomic Impact Analysis address these deficiencies. Allowing any Water Supply option to continue to foment unrestrained sprawl will have the inevitable effect of perpetuating racial and economic segregation in the region.

**I. Federal Law Requires Consideration of Impacts on Low-Income Persons and Persons of Color, including Likely Social and Economic Effects.**

Numerous federal laws, regulations and orders make it clear that planners must address issues of concern to low-income and minority residents. Title VI of the Civil Rights of 1964<sup>1</sup> and its implementing regulations prohibit applicants for or recipients of federal funds from discriminating based on race, color or national origin. The regulations implementing Title VI prohibit actions that have a discriminatory effect, not just intentional discrimination. For example, under EPA regulations, no recipient may, on the grounds of race, color or national origin, "[d]eny a person or any group of persons the opportunity to participate as members of any planning or advisory body which is an integral part of the program or activity . . ."<sup>2</sup> As noted above, SEWRPC - an entity that also receives federal funds - completely excluded African-Americans, and included only one person

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<sup>1</sup>42 U.S.C. §2000d. Assuming, as has been reported, that communities seeking Lake Michigan water will seek federal assistance for infrastructure construction, Title VI would apply.

<sup>2</sup>40 C.F.R. §7.35(a)(5).

of color, on the Water Supply Study Advisory Committee - the body that determined the scope of the research that would be conducted and the options and recommendations that would be considered. To refuse to go beyond the options identified by this unrepresentative Advisory Committee is to assist SEWRPC in taking actions that have a discriminatory effect.

Further, to violate Title VI discriminatory actions do not have to be intentional. A “recipient [of federal funds] shall not use criteria or methods of administering its program or activity which have the *effect* of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the *effect* of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.”<sup>3</sup> In other words, regardless of intent, and regardless of whether persons of some races may benefit from certain decisions, actions that have a disproportionate effect on persons of a “particular” race or national origin violate federal regulations.

Federal Orders on environmental justice also must be considered. In 1994, then-President Clinton issued Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*. This Order directs all federal agencies to identify and address disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations.

Environmental Justice policies established by federal agencies, such as the EPA, mandate consideration of a broad spectrum of potential adverse effects of agency programs and activities on minority and low-income populations, including socioeconomic effects.

Adverse effect or impact is a term used to describe the entire compendium of “significant” . . . individual or cumulative human health or environmental effects or impacts which may result from a proposed project or action. Examples of adverse effects or impacts include but are not limited to: . . .

- \*Air, noise, soil, and water pollution or contamination;
- \*Destruction or disruption of man-made or natural resources;
- \**Destruction or disruption of community cohesion or a community’s economic vitality;*
- \*Destruction or disruption of the availability of public and private facilities and services; . . .
- \**Adverse employment effects;*
- \*Displacement of persons, businesses, farms, or nonprofit organizations; and

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<sup>3</sup>40 C.F.R. §7.35(b) (emphases added).

\*Increased traffic congestion, isolation, exclusion, or separation of individuals within a community or from a broader community.<sup>4</sup>

Nor are these requirements limited to the EPA. All federal agencies -from the Department of Defense, of which the Army Corps of Engineers is a part, to the Department of the Interior, Department of Transportation, and so on - are subject to Title VI and Environmental Justice requirements, and have similar regulations. Thus, regardless of the identity of the federal agency from which communities may seek financial assistance, these rules and regulations apply and must be considered.

Further, the fact that federal agencies specifically define “adverse effects” to include such issues as loss of employment or adverse effects on community economic vitality means that neither the Water Supply Study nor the Socioeconomic Impact Analysis can avoid or ignore evaluating those effects, or limit consideration to only the potential effects currently identified in the Water Supply Study. Doing so would clearly violate obligations under federal law and policy. As set forth below, it is likely that continuation of current growth and development patterns will have a disproportionate negative effect upon low income persons and persons of color in the region. Those adverse effects need to be identified, acknowledged and addressed.

## **II. The Use of Water Cannot Be Separated from Development Patterns of the Region.**

In addressing the socioeconomic impacts of supplying water to communities, it is critical to recognize the historical (as well as continuing) interrelationship between water and development in this region. Throughout most of the first half of the 1900s, the city of Milwaukee “followed the policy of not serving water outside its city boundaries with a view of discouraging flight of industry and commercial establishments to other communities who offered lower taxes.”<sup>5</sup> When in 1959 a legal challenge led Milwaukee to sell water to Wauwatosa, industrial development that might have occurred in Milwaukee occurred in this suburb instead.<sup>6</sup> It is after this time that much of the region’s suburban sprawl occurred - growth patterns that profoundly disadvantaged the disproportionately poor and minority residents of Milwaukee.<sup>7</sup>

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<sup>4</sup>“Toolkit for Assessing Potential Allegations of Environmental Injustice ,” *U.S. EPA* (Nov. 3, 2004) at p. 16 (emphases added).

<sup>5</sup>Letter of Former Milwaukee Mayor Frank P. Zeidler (on file as part of documents for City of Milwaukee Resolution 021758) (June 7, 2003).

<sup>6</sup>*Id.*

<sup>7</sup>*See, e.g.*, “An Analysis of the New Berlin Petition for the City of Milwaukee Water Services,” Milw. Dept. of City Development (March 1974) at p. 6 (significant industrial migration from Milwaukee to New Berlin occurred by 1970; “New Berlin’s future industrial growth will be

The city of Milwaukee has also long questioned the viability and desirability of extending water lines to “unplanned urban sprawl as seems to have characterized so much of the counties adjacent to Milwaukee.”<sup>8</sup> In particular, the growth of dwellings on large lots, with inadequate ground water, “produced a major ecological problem which the city of Milwaukee is now being asked to remedy.”<sup>9</sup>

“What this situation demands is a regional water policy which prevents urban sprawl, prevents industrial plant raiding by communities and which does not impoverish the central city by encour[aging] its industries and commercial establishments to leave.”<sup>10</sup> Such a regional water policy, integrating issues of segregation, job loss, and tax base reduction into a water supply plan, is not included in SEWRPC’s regional Water Supply Study. It is one that this Socioeconomic Impact Analysis must develop and incorporate.

### **III. There is a Long History of Racial and Economic Segregation in the Region.**

In addressing the “Socioeconomic Impact” of a regional water supply plan, it is critical to recognize the gross racial disparities within the region in general, and in Waukesha County - the county with communities likely to seek the largest amount of water from Milwaukee - in particular. These disparities are ones that have grown as the suburban sprawl discussed by Mayor Zeidler increased.

The U.S. Census Bureau has determined that the “Milwaukee-Waukesha” Primary Metropolitan Statistical Region - and the region is in fact defined as “Milwaukee-Waukesha” - is, overall, the most racially segregated region in the United States for African-Americans.<sup>11</sup> “Milwaukee-Waukesha” is also in the top third of large metropolitan areas for residential segregation

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determined by a number of variables, not least the availability of dependable supplies of filtered water. Extension of City of Milwaukee water to New Berlin will undoubtedly increase New Berlin’s industrial land marketing potential.”) and at p. 7 (“[P]iecemeal extension of city water services is resulting in a modified metropolitanization of this vital service without a *quid pro quo* . . . New Berlin’s minimum zoning requirements, for example, can be shown to constitute significant financial barriers against housing for low and moderate income families.”) These same issues exist today, throughout communities that may seek Lake Michigan water.

<sup>8</sup>Zeidler letter, *supra*.

<sup>9</sup>*Id.*

<sup>10</sup>*Id.*

<sup>11</sup> “Residential Segregation of Blacks or African Americans: 1980 to 2000,” U.S. Census Bureau (Dec. 2004), Ch. 5 and Fig. 5.3.

of Latinos.<sup>12</sup> Census estimates from 2008<sup>13</sup> confirm the continuing, severe racial disparities in population:

	<u>Waukesha County</u>	<u>Milwaukee County</u>
% White (Non-Hispanic)	92%	58%
% Black (Non-Hispanic)	1%	25%
% Hispanic	4%	12%

It is also clear that urban sprawl has long been linked to these racial disparities. For years, federal housing policies that tended to encourage segregation were “exacerbated by real estate steering, insurance redlining and other housing business practices in metropolitan Milwaukee intended to safeguard property values by preventing racial and ethnic mixing. Together, these practices set the pattern for and reinforced neighborhood segregation . . .”<sup>14</sup> Residential relocations caused by freeway construction compounded the problem,<sup>15</sup> while sprawl quite literally paved the way for white flight from the city of Milwaukee.

By 1972,

[t]he existing spread of costly urban sprawl ha[d] been accelerated to a large degree by the extension of the freeway system into vast amounts of formerly rural lands.<sup>16</sup> The central city has also belatedly come to realize that as a result of freeway construction, it has had to bear a number of social and economic costs such as

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<sup>12</sup>*Id.* at Ch. 6.

<sup>13</sup>American Community Survey 1-Year Estimates, ACS Demographic and Housing Estimates: 2008 for Waukesha & Milwaukee Counties.

<sup>14</sup>*Embracing Diversity: Housing in Southeast Wisconsin*, Public Policy Forum (Feb. 2002), p. 3.

<sup>15</sup>*Freeway Impact in Milwaukee, Phase I Final Report*, by Theodore K. Miller (Milwaukee Urban Observatory, March 1972), p. 14.

<sup>16</sup>SEWRPC has argued that highway expansion does not cause sprawl, *Design, Evaluation and Consideration of Freeway System Reconstruction Alternatives*, pp. 22-23, but its conclusion runs counter to EPA and other reports. See, e.g., *Plain English Guide to the Clean Air Act: Mobile Sources* (U.S. EPA Air Quality & Standards); *Freeway Task Force Report*, (Milwaukee Dept. of City Development, June 1972), p. 12. Further, regardless of whether highways cause sprawl, those sprawling development patterns clearly now exist, and are associated with regional segregation.

removal of needed housing, increased pollution, reduced tax base, and the loss of jobs.<sup>17</sup>

Areas that burgeoned as urban sprawl occurred include suburban communities seeking alternative sources of water from the city of Milwaukee, or likely to seek that water.

*A. There is a History of Segregated Housing Patterns in the Region*

The hyper-segregated housing patterns that were created - at times intentionally - were and are reinforced by suburban zoning and development ordinances which restrict or entirely preclude construction of affordable housing and therefore make it virtually impossible for many low income and minority persons to move to the suburbs. As noted above, metropolitan Milwaukee remains profoundly segregated. About 45% of the people who live in the city of Milwaukee are white, while every municipality except two in Waukesha, Ozaukee and Washington Counties is 95% or more white.<sup>18</sup> Racial isolation is particularly severe for African-Americans.<sup>19</sup>

In 1992, Waukesha County's barriers to affordable housing were evaluated in detail.<sup>20</sup> That report made it clear that the County was pervaded with local regulatory barriers that made it difficult to site affordable housing in communities within the county. Yet there is no indication of efforts to reduce or eliminate those barriers. To the contrary, continuing decisions by Waukesha County communities that may seek Lake Michigan water, including explicitly limiting the availability of multifamily housing, have a clear discriminatory effect on communities of color, as well as low income persons.

There is no question that African-Americans and Latinos, in Waukesha County and in the region as a whole, are far more likely than white persons to reside in rental housing. Within Waukesha County, for example, 50% of Hispanics and 40% of African-Americans, but only 17%

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<sup>17</sup>*Freeway Task Force Report*, p. 12.

<sup>18</sup>*Embracing Diversity*, p. 2. The two "less white" municipalities are the city of Waukesha, which is 87% white, but only 1 ½% African-American, and Mequon, which is 93% white and about 2 ½% African-American.

<sup>19</sup>In metropolitan Milwaukee, African-Americans tend to live in neighborhoods that are 69% black, while whites tend to live in neighborhoods that are 87% white. Latinos tend to live in neighborhoods that are about 31% Latino and about 52% white. *Separate and Unequal: The Neighborhood Gap for Blacks and Hispanics in Metropolitan America*, by the Lewis Mumford Center (SUNY-Albany, Oct. 15, 2002), data for Metropolitan Milwaukee PMSA.

<sup>20</sup>Schuetz, Mary Kay, and Professor Sammis B. White, "Identifying and Mitigating Local Regulatory Barriers to Affordable Housing in Waukesha County, Wisconsin," *The Community Housing Resource Board of Waukesha County, Wisconsin* (1992).

of non-Hispanic whites, are renters.<sup>21</sup> Moreover, persons of color have more difficulty in obtaining mortgages for home purchases in this region.<sup>22</sup> Yet the policies of many communities slated to receive Lake Michigan water limit or preclude the construction of affordable rental housing. Brookfield, for example, officially stated in its Smart Growth plan that it intends to “[r]etain our character as a predominately single family, owner occupied community,”<sup>23</sup> while in 2009 the city of Waukesha officially reduced its target percentage of multifamily housing from 45% (with 20% of that being “duplex” and 25% other multifamily) to a target of 35% multifamily (also including duplexes).<sup>24</sup> Such policies have had, and are likely to continue to have, a discriminatory effect.

In addition, Smart Growth planning was conducted in a manner that had a discriminatory effect. For example, to obtain community opinions on the Smart Growth plan, Waukesha County planners surveyed only homeowners within the county, not renters - who are disproportionately persons of color. There is also no indication that the County or participating jurisdictions made any effort to include or incorporate the needs of limited English proficient persons. There is no indication that the County or any participating jurisdiction addressed the permanent housing needs of homeless persons within the County, who are disproportionately persons of color.

And, despite the mandates of state law that the housing element of each community’s Smart Growth plan “identify specific policies and programs that . . . provide a range of housing choices that meet the needs of persons of all income levels and of all age groups and persons with special needs, [and] policies and programs that promote the availability of land for the development or redevelopment of low-income and moderate-income housing,”<sup>25</sup> most of the plans offer little more than vague assertions that they will provide a variety of housing, but include neither concrete plans nor available mechanisms to ensure that occurs.

A Socioeconomic Impact Analysis must also consider the existence of other aspects of residential discrimination, as there is clearly a racial, as well as an economic, aspect to segregated

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<sup>21</sup>Calculated from Census 2000 Summary File 1, Data Sets H11B,H,I, for Waukesha County and for Milwaukee-Waukesha PMSA (within the PMSA, 65% of African-Americans and 61% of Latinos, but only 25% of whites, are renters).

<sup>22</sup>See, e.g., Sunwoong Kim & Gregory Squires, “Lender Characteristics and Racial Disparities in Mortgage Lending,” *Journal of Housing Research* (1995); Gregory Squires, “Closing the Racial Gap? Mortgage Lending and Segregation in Milwaukee Suburbs,” *Fair Lending Coalition & Institute for Wisconsin's Future* (1996); “Housing, Diversity and Choices: A Metro Milwaukee Opinion Survey,” *Public Policy Forum* (Sept. 2004).

<sup>23</sup>City of Brookfield 2035 Comprehensive Plan (adopted Dec. 2009), at p. 47.

<sup>24</sup>City of Waukesha Ad Hoc Housing Mix Ctte Report, June 2008-March 2009.

<sup>25</sup>Wis. Stat. §66.1001(2)(b).

housing patterns. In the region, *high-income* African-Americans and Latinos are more likely to live in lower-income neighborhoods than are *poor* whites,<sup>26</sup> a separation that indicates barriers beyond purely economic ones. Similarly, the existence of racial disparities in lending in metropolitan Milwaukee is well known. “African Americans are less likely than whites to receive mortgage application approval *even when the applicant’s economic characteristics are controlled for.*”<sup>27</sup>”

*B. Regional Job Growth Has Excluded Many Persons of Color*

In addition to housing-related sprawl, a Socioeconomic Impact Analysis must address the very real job migration that has occurred from the potential water-selling community, Milwaukee, to communities that now seek to purchase water. As in the case of housing, the benefits of job expansion and the burdens of job loss have not been evenly distributed.

For decades, jobs have migrated from the city of Milwaukee - where regionally disproportionate numbers of low income persons and persons of color live and work - to disproportionately white suburban communities.<sup>28</sup> As Mayor Zeidler noted, extending water to Wauwatosa in 1959 led to industrial development there rather than in the city of Milwaukee. In the 1970s, 42 businesses moved from the city of Milwaukee to New Berlin’s industrial park.<sup>29</sup> By the early 2000s, “the metro Milwaukee ha[d] become increasingly polarized into two distinct labor markets: one, a robust, suburban job market where joblessness has barely increased since the end of the 1990s boom; the other, a city labor market where joblessness has surged and where, by 2002, over 42 percent of the working-age population was not employed.”<sup>30</sup>

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<sup>26</sup>In metropolitan Milwaukee, the median income of neighborhoods in which *poor* whites live was \$45,014 - higher than the median income of neighborhoods in which *affluent* blacks (\$35,111) and *affluent* Latinos (\$43,049) live. *Separate and Unequal*, Sources of Neighborhood Inequality for Metropolitan Milwaukee PMSA.

<sup>27</sup>Kim & Squires, “Lender Characteristics and Racial Disparities in Mortgage Lending” at 9 (emphasis added).

<sup>28</sup>It also should be noted that as of July, 2009, the date of its 2009-10 Affirmative Action Plan, only three of SEWRPC’s 39 professional staff members (8%) were persons of color. SEWRPC is headquartered in Pewaukee, a community whose population is 96% white non-Hispanic. (Census 2000 Summary File 3, Data Set P7 for city of Pewaukee.)

<sup>29</sup>Memorandum to Waukesha Water Utility from Atty. Barbara K. Boxer (June 10, 2004), at n. 1.

<sup>30</sup>Marc V. Levine, “After the Boom: Joblessness in Milwaukee Since 2000,” *UWM-Center for Economic Development* (April 5, 2004) at p. 10.

Transportation-related decisions and policies of suburban officials have also had the clear effect, if not the intent, of limiting the employment opportunities of low income and minority persons, especially those from Milwaukee. By 1990, “[n]early all (95 percent) of Waukesha County residents, 93 percent of Washington/Ozaukee County residents, 91 percent of northern Milwaukee County suburban residents, and 92 percent of southern Milwaukee County suburban residents used a car to commute to work. By contrast, 62 percent of central city residents used a car to travel to work, and 23 percent used the bus.”<sup>31</sup> Yet in 1997, Waukesha was deeply involved with ultimately successful efforts to torpedo a Locally Preferred Alternative for transportation construction, which would have included, among other features, significant transit expansion in Milwaukee and Waukesha counties “targeted at getting workers to jobs in the two counties.”<sup>32</sup> The expansion of public transit was crucial for minority and low income workers: at the time the MIS/DEIS was issued, the central city unemployment rate was 12%, while many jobs in Waukesha County remained unfilled.<sup>33</sup> Suburban resistance to transit has continued; for example, in 2007, Waukesha County officials eliminated a transit route that connected Milwaukee residents with jobs in Waukesha County - a proposal made within days of agreeing to help pay for a highway interchange in Oconomowoc, an almost exclusively white community.<sup>34</sup>

Limited automobile and drivers license access continues to disproportionately burden minority and low income residents. Census data from 2000 confirms that Milwaukee residents, especially those in the central city, remain far more likely to rely on public transportation than do

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<sup>31</sup>John Pawasarat and Frank Stetzer, “Removing Transportation Barriers to Employment: Assessing Driver’s License and Vehicle Ownership Patterns of Low-Income Populations,” *UWM-Employment and Training Institute* (July 1998.)

<sup>32</sup>“[Then]-Waukesha County Executive Daniel Finley opposed LRT and vetoed a 1997 Waukesha County Board resolution to study a proposal for a regional transportation authority and a \$1.76-billion transportation plan that included a \$1.32-billion reconstruction of I-94 with bus lanes from Waukesha County into downtown Milwaukee and a \$330-million LRT proposal for Milwaukee County.” “Urban Rail Transit,” *Informational Bulletin 98-6* (Wisconsin Legislative Reference Bureau, Dec. 1998); *Milwaukee East-West Corridor Transportation Study*, Major Investment Study/Draft Environmental Impact Statement, Locally Preferred Alternative (Wisc. Dept. of Transportation, Federal Highway Administration, Federal Transit Administration, May 1997), at S-1.

<sup>33</sup>*Major Impact Study/Draft Environmental Impact Statement* (Wisc. Dept. of Transportation, Federal Highway Admin., Federal Transit Admin., Oct. 1996), pp. 1-17. Other studies confirmed this mismatch, which disproportionately affected minority and low income central city residents.

<sup>34</sup>Scott Williams, “Bus route may be eliminated - Route 9 takes workers to Falls, Butler,” *Milwaukee Journal Sentinel* (Aug. 29, 2007); Amy Rinard, “Freeway deal struck for Pabst Farms mall - Oconomowoc, developer, state, county to pay for interchange,” *Milwaukee Journal Sentinel* (Sept. 3, 2007).

suburban residents,<sup>35</sup> and there are clear disparities in auto ownership and drivers licensure between the predominantly low income and minority residents of Milwaukee's central city and the predominantly white suburban residents, including residents of many communities likely to seek Lake Michigan water.<sup>36</sup> The lack of an adequate transit system, combined with increasing rates of job growth in suburban counties, means that persons of color and low income families are far less likely to be able to access even entry level jobs in any reasonable commuting time.<sup>37</sup> Therefore, many low income and minority residents of the region have failed to benefit to the same extent as white persons,<sup>38</sup> if at all, from the job growth that has occurred in and near communities that may seek water from Milwaukee.<sup>39</sup>

The failure to ensure job access has also created or exacerbated profound economic inequalities within the region. An analysis of 2000 census data showed that black households in the Milwaukee area earned an average of 49 cents for every dollar earned by whites, with Milwaukee ranking 49<sup>th</sup> among the nation's 50 largest metropolitan areas in the size of that disparity. The median income of white households was \$50,754 while it was less than half that amount - \$24,957 - for black residents in metropolitan Milwaukee (which includes Milwaukee, Waukesha, Ozaukee and Washington counties).<sup>40</sup> Similarly, city of Milwaukee residents saw only an 8.8% increase in real

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<sup>35</sup>In the city of Milwaukee - which has far greater than average percentages of minority and low income residents - 10.3% of residents rely on public transportation, while in Washington, Ozaukee and Waukesha counties fewer than 1% of residents do so.

<sup>36</sup>See, e.g., Pawasarat, John, "The Driver License Status of the Voting Age Population in Wisconsin," *UWM - Employment & Training Institute* (June 2005).

<sup>37</sup>"Transportation Equity and Access to Jobs in Metropolitan Milwaukee," *UWM-Center for Economic Development* (Sept. 2004).

<sup>38</sup>For example, of persons working in census tracts within the city of Brookfield - which borders Milwaukee County, and which is a community that might receive water from the city of Milwaukee - in 2000, 49% of Latinos and 43% of African-Americans earned less than \$20,000 while only 30% of whites did, and 23% of whites earned more than \$50,000 while only 8% of African-Americans and Latinos did. "Employer Diversity Drill Downs," *UWM - Employment & Training Institute* (Table 2, for census tracts 2007- 2012.03).

<sup>39</sup>The astoundingly high levels of joblessness for African-American males in the city of Milwaukee - a figure approaching 60% years before the current recession began - emphasizes that there has not been an equal benefit from job growth in the region. Levine, Marc, "After the Boom: Joblessness in Milwaukee Since 2000," *UWM-Center for Economic Development* (April 2004).

<sup>40</sup>Dennis Chaptman and Vikki Ortiz, "Racial gap in pay runs deep: Disparity among blacks, whites remains sharp, census shows," *Milwaukee Journal Sentinel* (Sept. 25, 2002).

income per tax filer from 1993-2000, while Waukesha County residents had a 21% increase per tax filer during that same period.<sup>41</sup>

C. *There Have Been Continuing Incidents of Discrimination in Communities Seeking Water.*

Nor can a Socioeconomic Impact Analysis ignore relatively recent intentional acts of discrimination by government officials and employees in Waukesha County. In 2006, for example, a fire chief and firefighter from Waukesha county were convicted of hate crimes after they threatened an African-American man with a gun and dog, using racist language against him.<sup>42</sup> In 2009, the U.S. Equal Employment Opportunities Commission sued Waukesha County itself for racial discrimination in hiring against the entire class of black job applicants, not just the individual whose complaint triggered the investigation.<sup>43</sup>

Other issues, such as recent efforts by the apparently all-white Waukesha School Board to close a bilingual school predominantly used by Latino students and to remove its principal over the objections of Latino families,<sup>44</sup> are actions that might have the potential to dissuade persons of color from residing in the region. In addition, there have been multiple hate crime incidents in Waukesha County in just the past decade, most recently in September 2009 by a group of Waukesha youth targeting African-Americans.<sup>45</sup> A Socioeconomic Impact Analysis must consider whether and

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<sup>41</sup>“Metropolitan Polarization in an Era of Affluence: Income Trends in Metropolitan Milwaukee Since 1990,” *UWM-Center for Economic Development* (Jan. 2002) at p. 5.

<sup>42</sup>David Doege, “Hate crime stands against firefighters - They're charged in confrontation with black man,” *Milwaukee Journal Sentinel* (Nov. 28, 2006); Darryl Enriquez, “Firefighters face hate crime charges They threatened man with gun, used slurs, police say,” *Milwaukee Journal Sentinel* (April 23, 2005).

<sup>43</sup>Laurel Walker, “Waukesha County discriminated in hiring, EEOC finds,” *Milwaukee Journal Sentinel* (Aug. 10, 2009).

<sup>44</sup>Georgia Pabst, “Parents fight to keep bilingual schools open ,” *Milwaukee Journal Sentinel* (Dec. 6, 2009) and “White Rock Elementary bilingual school principal removed from job,” *Milwaukee Journal Sentinel* (Feb. 15, 2010).

<sup>45</sup>“Waukesha Teens Charged with Hate Crimes,” (Today's TMJ4.com, Sept. 19, 2009) (teens burned KKK and a swastika on basketball court “to keep black kids from playing on the court the three boys consider theirs.”); “Regional News Watch,” *Milwaukee Journal Sentinel* (Dec. 12, 2008) (“According to court records, [the Waukesha man] asked a man who had approached him . . . whether the man was Puerto Rican. The man replied that he was Mexican, and [the Waukesha man then did the Nazi salute toward him, the criminal complaint says. When the man left the bar, [the Waukesha man] and his friends followed, and [he] punched the man at least once, court records

to what extent such incidents occur, and tend to make persons of color less likely to seek to live in the communities in which they occur.

#### **IV. The Water Supply Study Must Address Existing and Projected Inequities.**

It is clear that communities are seeking water not only to support their existing residents, but to open the way for significant expansion. The city of Waukesha, for example, could nearly double its land area.<sup>46</sup> As noted above, multiple actions and policies - including many by government officials - have led to a situation of profound racial as well as economic segregation. If water is provided to suburban communities in the large volumes requested, enough to support massive expansion and future growth, the profound disconnect between residential growth and new jobs being developed in the outlying counties and concentrations of people of color and low income families in need of employment in Milwaukee's central city will only worsen. Under those circumstances, the need for regional efforts relating to transit, housing, and land use is greatly increased, and must be addressed.

These issues must be acknowledged and evaluated in the Socioeconomic Impact Analysis. To do so, the analysis must consider not only at the options explicitly identified by the Water Supply Study Advisory Committee - a committee which, as noted above, lacked diversity - but also at other options for attempting to ensure that communities of color and low income communities do not continue to suffer disproportionate burdens from the patterns of regional development. SEWRPC has repeatedly claimed that its plans are only advisory. If that is so, there is simply no reason to fail to evaluate the potential effects of efforts to reverse the regional sprawl and its associated inequities.

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say.”); David Doege, “Man told police he hates black people, complaint says - Pistol was discharged outside Krueger's in Menomonee Falls,” *Milwaukee Journal Sentinel* (May 11, 2004) (man pointed a gun at African-Americans outside store, and later stated “(Black people) don't belong out here. I've lived here for 30 years, and they belong in the city.”); David Doege, “4 charged under hate crime law in Waukesha - Man beaten outside tavern, complaint says” *Milwaukee Journal Sentinel* (Oct. 8, 2003) (four white supremacists beat an Hispanic man and yelled racial slurs outside a Waukesha bar); “Hartford woman charged with hate crime,” *Milwaukee Journal Sentinel* (Feb. 14, 2000) (woman threatened an African-American probation officer with a racially charged message, and stated “she found out that the agent was black and she admitted that she does not like black people. . . . That was just the way she was brought up.”)

<sup>46</sup>See, e.g., Regional Water Supply Study; Don Behm, “Waukesha Might Send Lake Water Beyond its Boundaries,” *Milwaukee Journal Sentinel* (March 3, 2010).

A. *The Analysis Must Evaluate the Option of Promoting Infill Development Rather than Expansion Beyond Existing Services and Infrastructure.*

Waukesha's draft diversion application relies on a SEWRPC-drafted map that adds 17 square miles to its water supply service area - thus promoting growth farther from Waukesha's downtown, bus lines, public services, job market and relatively-affordable housing. Neither the Water Supply Study nor the current draft of the Socioeconomic Impact Analysis evaluates the possibility or potential effects of slowing or limiting growth in communities such as Waukesha (e.g., by limiting the water service area to already-built locations), rather than of simply supplying all the water the receiving community wants to support growth. Because the decision not to consider this option was made by a body from which persons of color were excluded, contrary to the Title VI regulations noted above, and because implementing this option could well minimize "adverse effects" as defined by Environmental Justice requirements and "discriminatory effects" within the meaning of Title VI, this option must be considered.

1. *The Water Supply Study Wrongly Failed to Consider the Option of Limiting Development*

The Water Supply Study - and current drafts of the Socioeconomic Impact Analysis - declined to consider an option to focus development on already-built areas based on the assertion that if communities such as the city of Waukesha do not get Lake Michigan water, they can simply grow as they wish by using shallow wells and groundwater. However, whether the proposed inter-basin transfer (or some reasonable lesser amount) of Lake Michigan water can or cannot reasonably be avoided through the efficient use and conservation of existing water supplies is one of the issues that is fundamental to the controversies over Waukesha's diversion application.<sup>47</sup> Waukesha's 2002 Future Water Supply Report identified a number of feasible water supply alternatives available to Waukesha, not simply a Lake Michigan water diversion. Similarly, SEWRPC's 2008 Preliminary Recommended Water Supply Plan for southeastern Wisconsin recognized the existence of a number of viable water supply alternatives through 2035. On the other hand, SEWRPC staff themselves have also previously suggested that using the shallow aquifer may be unsustainable.<sup>48</sup>

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<sup>47</sup>See Section 4.9, Sub. 4 of the Great Lakes Compact, permitting a diversion only if, among other requirements, "The need for all or part of the proposed [diversion] cannot be reasonably avoided through the efficient use and conservation of existing water supplies." . It is important to also recognize that the Compact requires that only reasonable quantities of water may be approved for inter-basin transfer, which calls into question efforts to expand the water service areas.

<sup>48</sup>Don Behm, "Radioactivity, salt taint groundwater as inland areas dig ever deeper." *Milwaukee Journal Sentinel* (Dec. 10, 2002)("If more wells were placed in the shallow aquifer, that could reduce the amount of groundwater flowing into surface streams, lakes and wetlands,'[Robert Biebel, chief environmental engineer for the Southeastern Wisconsin Regional Planning Commission] said.")

However, the Water Supply Study – and current drafts of the Socioeconomic Impact Analysis – declined to consider an option to focus development on already-built areas based on the assertion that if communities such as the city of Waukesha do not get Lake Michigan water, they can simply grow as they wish by using shallow wells and deeper groundwater. Whether or not Waukesha’s growth, and/or the growth of other potential receiving communities, is constrained by alternative water supply sources is something that UWM-CED acknowledged is not within its purview, nor within its expertise, to determine.<sup>49</sup> It may be that without a Lake Michigan diversion, Waukesha will nevertheless be able to continue growing in the manner projected in its diversion application. On the other hand, it may be that alternative water supplies are insufficient to support the projected growth beyond the area currently served by the Waukesha Water Utility.<sup>50</sup> Clearly, however, communities such as Waukesha cannot seek to benefit from a Socioeconomic Impact Analysis that simply accepts the assertion that growth and development will occur with or without lake water and thus excludes consideration of any resulting effects on low income and minority communities, and at the same time seek to benefit from the Compact by claiming that no other adequate water supply exists. Nor can this Analysis allow that to occur. The Analysis must consider the potential effects – including possible benefits that might accrue to low income persons and communities of color in Milwaukee i suburban growth - in Waukesha and elsewhere - Waukesha’s growth is constrained by its water supply, and if Lake Michigan water is not provided.

Since the Socioeconomic Impact Analysis consultants have not been provided with answers to these questions, it is incumbent on them to analyze these alternative scenarios or hypotheticals:

What are the socioeconomic impacts (on Waukesha, on surrounding communities, and on the potential supplying and receiving communities within the Great Lakes basin) of providing Lake Michigan water if Waukesha’s growth would otherwise be constrained by its alternative water supply sources?

What are the corresponding impacts of providing Lake Michigan water if Waukesha’s growth would not be constrained by its alternative water supply sources?

To analyze both scenarios, the Socioeconomic Impact Analysis must evaluate the difference in potential effects on Waukesha, on surrounding communities, and on the potential supplying and receiving communities within the Great Lakes basin, between Waukesha’s projected full

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<sup>49</sup>Discussion at SEWRPC Environmental Justice Task Force meeting of March 4, 2010. During that discussion, the UWM consultant also stated that Waukesha’s application at a minimum suggested Waukesha’s lack of confidence in the sustainability of alternative water supply sources.

<sup>50</sup>Questions such as whether a water diversion from Lake Michigan is necessary to support Waukesha’s continued viability as a community and the volume of such a diversion, or whether a diversion would only be needed to support Waukesha’s planned or projected growth and the volume of that option, must be answered by a complete diversion application and Environmental Impact Statement.

development of its planned expanded water supply area and what would result if Waukesha's growth was limited to the area currently served by the Waukesha Water Utility, and of any growth projected for any other communities likely to seek water from the Great Lakes Basin.

The question of what kind of growth will occur in the future also needs to be evaluated in view of the development history of the potential receiving communities, a history that has failed to comply with SEWRPC's Regional Land Use Plan. At a March 18, 2008 meeting of SEWRPC's Environmental Justice Task Force, an individual asked the main staff person for the Water Supply Study whether the Study would consider "worst case" scenarios, *i.e.*, water needs related to community non-compliance with the land use plan, and the staff member explicitly stated that the Study would not consider such scenarios and would instead be limited to assuming implementation of the land use plan.<sup>51</sup> The refusal to consider noncompliance is completely unreasonable, given that SEWRPC itself acknowledged - at the same EJTF meeting during which the above discussion occurred - that local communities have ignored its land use recommendations, including recommendations that could affect regional water supplies.<sup>52</sup> If, however, communities ignore the Land Use Plan and develop in patterns the plan does not contemplate, actions that have occurred repeatedly in the past, there may well be inadequate ground water to support all such development, especially since tapping the shallow aquifers requires adequate undeveloped land to ensure recharge.<sup>53</sup> Thus, neither the Water Supply Study nor the Socioeconomic Impact Analysis can simply accept the assertion that adequate ground water exists to support whatever development patterns occur.

2. The Analysis Must Recognize the Extent to Which Facilitating Current Growth and Development Patterns Will Lead to Continued Racial Segregation in the Region.

As noted above, the Milwaukee-Waukesha region is the most segregated region in the United States for African-Americans, and if current patterns continue it will remain profoundly segregated for African-Americans and, in many communities, also for Latinos. The data in the current drafts of the Socioeconomic Impact Analysis projects the continuing pervasive segregation of African-Americans in 2035, including a Waukesha County African-American population of less than 5%. The analysis must also consider whether there could be less population growth and/or less segregation if new development was limited only to already-developed areas or infill development.

The population projections in the draft Socioeconomic Analysis show, for example, that by 2035, the city of Brookfield will be only 2.4% African-American and 2% Latino; the city of

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<sup>51</sup>EJTF Minutes of 3/18/08, p. 6.

<sup>52</sup>*Id.*, p. 5.

<sup>53</sup>Dan Egan, "Water Pressures Divide a Great Lakes State," *Milwaukee Journal Sentinel* (Nov. 23, 2003).

Muskego will be only 0.5% African-American and 3.7% Latino; and even the purportedly more diverse city of Waukesha will be only 5.7% African American compared to 35.7% African-American in the city of Milwaukee, though it may be up to 26.6% Latino.<sup>54</sup> The analysis must address this projected continuing segregation of African-Americans in the region, and of Latinos in many communities in the region as of 2035.<sup>55</sup>

Further, the analysis must consider specific actions being taken by potential receiving communities that have other disproportionate negative effects on persons of color, actions that may result in even greater levels of residential segregation than projected in current drafts of the Analysis. For example, not only did the city of Waukesha in 2009 reduce its targets for multifamily housing, but on Feb. 24, 2010 the city of Waukesha Plan Commission rejected a developer's proposal to construct affordable multifamily housing. Because persons of color are more likely to rent than purchase homes, and more likely to have trouble getting mortgages even if they could afford to do so, such actions may well result in even greater segregation than projected in the draft Analysis, even in the city of Waukesha.

The Analysis must also address the likelihood that proposed service area expansions, including the significant proposed expansion in the city of Waukesha, is likely to lead to less diversity than projected. The city of Waukesha service area is proposed to nearly double, expanding by 17 square miles. This expanded area is far less likely than existing Waukesha neighborhoods to be used for affordable multifamily housing; to the contrary, SEWRPC has asserted that most of the development will be single family homes. As a result, the persons likely to reside in the expanded area - and likely to account for a significant percentage of any population increase in the city of Waukesha - are far less likely to be persons of color, who tend to be renters, than white persons, who tend to be homeowners. At any rate, the Socioeconomic Impact Analysis cannot ignore the impacts of the additional growth projected by Waukesha based on the mere assertion that adequate alternate water supplies exist to support whatever development patterns may occur.

3. The Analysis Must Evaluate Whether Supporting Only Infill Development, and/or Declining to Supply Lake Michigan Water Could Provide Offsetting Job Benefits to Low Income and Minority Persons.

That Lake Michigan water may well be used to support job growth in receiving communities is evidenced by local Smart Growth plans. For example, the city of Waukesha's Comprehensive Plan projects a more than doubling of the land area for industrial development between 2000 and 2035,

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<sup>54</sup>Socioeconomic Impact Analysis, preliminary draft, Chapter 2.

<sup>55</sup>It should also be noted that federal rules prohibit actions that have a discriminatory effect against individuals of a "particular" race or national origin, regardless of the effects on members of other races. *See, e.g.*, 40 C.F.R. §7.35(b). Thus, the fact that the city of Waukesha may have an increased Latino population does not remedy actions that have a discriminatory effect against African-Americans.

as well as a significant increase in commercial land area,<sup>56</sup> and is also seeking significant increases in both its average and maximum daily amounts of water for non-residential usage.<sup>57</sup> Muskego, another community targeted for potential receipt of Lake Michigan water, also plans to expand the land it devotes to industrial and commercial uses, including its two industrial parks.<sup>58</sup> The same may well be true of other communities.

In addition, the Analysis must recognize and consider the intent, and likely impact, of the recent creation of the “Sustainable Water Supply Coalition, an alliance of business organizations in southeastern Wisconsin, [which] has been formed to advocate for water policy issues, including access to Lake Michigan water for the city of Waukesha.”<sup>59</sup> The fact that groups including the Metropolitan Milwaukee Association of Commerce and the Waukesha County Chamber of Commerce are seeking this specific source of water suggests that, contrary to assertions in the Water Supply Study, businesses do intend to use that water supply to support job growth in communities such as Waukesha that receive the water.

Thus, the Socioeconomic Impact Analysis must consider the likelihood of continued job migration outside of Milwaukee, and the likely lack of access to those new jobs for Milwaukee residents who have long been excluded from them - especially if there is no significant expansion of transit service for low income and minority Milwaukee workers to access those jobs. Conversely, because all industry requires some access to water, if Lake Michigan water is not sent outside Milwaukee or outside the basin, greater benefits might accrue to Milwaukee residents by keeping scarce water resources to attract jobs and industry to Milwaukee.<sup>60</sup> This is even more likely to be the

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<sup>56</sup>City of Waukesha Comprehensive Plan, Ch. 7 (Land Use Element), at 7-10 and 7-12 (posted Sept. 2009) (copy attached).

<sup>57</sup>Waukesha seeks significant increases for commercial water use, and some increases for industrial water use, beyond projected increases for residential use. City of Waukesha Draft Great Lakes Application (Jan. 28, 2010) at Appendix K - Final Draft Technical Memorandum: Summary of Water Requirements, p. 13.

<sup>58</sup>City of Muskego 2020 Comprehensive Plan (adopted April 2009), at 151-2 and 209.

<sup>59</sup>“Coalition seeks to bring Lake Michigan water to Waukesha,” *BizTimes Daily* (Feb. 5, 2010).

<sup>60</sup>See, e.g., John Schmid, “Looking to soak up lake’s potential - Economic asset largely untapped, leaders say,” *Milwaukee Journal Sentinel* (June 25, 2006) (“Neither Waukesha nor any of the other communities outside the basin can siphon water off the Great Lakes unless they invest tens of millions of dollars for the conduits to pipe used water back to the lake. Under a worst-case scenario, *new businesses could choose to locate away from the western suburbs* if water supplies are uncertain.”) (emphasis added).

case where, as now, the city of Milwaukee is seeking to use its access to water to attract industry back to the city, including industry from other parts of the country.<sup>61</sup>

4. The Analysis Must Evaluate Whether Declining to Supply Lake Michigan Water Will Provide Better Tax Base Outcomes to Low Income and Minority Communities.

Related to residential and industrial development is the issue of tax base. As noted by Mayor Zeidler above, supplying water to support uncontrolled urban sprawl has, and may continue to, result in a loss of tax base to the disproportionately low income and minority residents of Milwaukee, while benefitting the disproportionately non-low income and white suburban residents. This potential also needs to be evaluated.

*B. The Analysis Must Evaluate the Option of Requiring Communities that Have Benefitted from Current Development Patterns to Provide Offsetting Benefits.*

As discussed above, the receipt of federal funds imposes on communities an obligation to comply with federal non-discrimination and environmental justice requirements. These obligations exist regardless of the identity of the supplier of water.

In addition, models exist to help ensure that communities that may sell water are not disproportionately burdened, and receive a fair share of the benefits of any expansion in the region. These include the city of Milwaukee's resolution that any water sales be contingent upon the receiving community "[m]inimiz[ing] residential, industrial and commercial sprawl, and the accompanying air and water pollution . . . [r]equir[ing] that any water diversion request include an analysis of the impact of such diversion on land use, transportation and economic development, and how comprehensive planning, including conservation programs can mitigate any negative effects [and r]equir[ing] that any community which seeks water from the Great Lakes adopt a water conservation plan, a "Smart Growth" comprehensive plan, as well as a comprehensive housing strategy which provides affordable housing opportunities."<sup>62</sup> Milwaukee has also sought to limit job loss by, for example, in its agreement to sell Lake Michigan water to part of New Berlin, including a term that "neither party shall take any action to solicit businesses to relocate from the City of Milwaukee to the City of New Berlin, or the City of New Berlin to the City of Milwaukee; and the City of New Berlin further agrees it shall not offer any economic incentives to any business to move from the City of Milwaukee to the City of New Berlin."<sup>63</sup> The Socioeconomic Impact Analysis

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<sup>61</sup>Joe Barrett, "Water Plan Aims to Help Jobs Flow -Milwaukee, With an Abundant Supply, Seeks to Offer Discounts to Businesses," *Wall Street Journal* (Nov. 30, 2009) .

<sup>62</sup>City of Milwaukee Resolution 040646.

<sup>63</sup>Revised Intergovernmental Cooperation Agreement Between the City of Milwaukee and the City of New Berlin (July 30, 2008). It also should be noted that New Berlin sought water only

should evaluate whether imposing such requirements - and making them enforceable against the receiving community - would provide offsetting or mitigating benefits to persons of color and low income persons.

The Analysis should also evaluate the extent to which fiscal incentives to cities with greater numbers of low income and minority residents provide adequate mitigation or offsetting benefits. For example, in the Milwaukee-New Berlin water agreement, New Berlin agreed to make a cash payment to the city of Milwaukee, although there is dispute regarding the value of the water and the adequacy of that payment and the real valuation of the water provided. There is also a city of Racine model among a number of municipalities, by which the communities “contribute a portion of their industrial and commercial property tax base to a shared pool,” including “a percentage of the increase in its commercial and industrial tax base. . . . Communities with a fiscal capacity higher than the weighted average of the participating municipalities contribute additional tax base to the pool, while communities with a lower than average fiscal capacity receive a distribution of tax base from the shared pool. . . . The intercommunity cooperation agreement is structured so that growth pays for growth, rather than having the residents of Racine shoulder the financial responsibility for suburban expansion . . . [and includes] a provision to compensate Racine for services related to the [regionally beneficial] zoo, museum, and library.<sup>64</sup>” The Socioeconomic Impact Analysis must also evaluate whether and how such fiscal arrangements could provide sufficient offsetting benefits to avoid or ameliorate any discriminatory effects.

*C. The Analysis Must Take a Hard and Critical Look at the Current Purported Benefits to Low Income and Minority Communities from Selling Water to Suburban Communities*

In addressing environmental justice and socioeconomic impacts, the study must consider purported benefits that would accrue to low income and minority persons. The primary benefit identified by the Water Supply Study appears to be that the water bills of city of Milwaukee water users might decrease if water is sold to suburban communities. The Study, however, fails to address the magnitude, or lack thereof, of this purported benefit on individual customers. If the Study is going to claim that Milwaukee customers will benefit, it needs to estimate the amount that an individual’s water bill might decrease, and whether that reduction is significant (*i.e.*, \$5 per quarter or \$150 per quarter), so that the actual benefit can reasonably be ascertained. Further, the assertion that Milwaukee customer water bills would decrease is highly doubtful, as there has been significant deferred maintenance on water infrastructure and it is likely that any savings from selling water would be used for infrastructure, not returned to customers, and other agreements have also required Milwaukee rate payers to bear at least some costs of infrastructure improvements in Milwaukee

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for a limited, already-developed geographic area, unlike the significantly expanded service area that the city of Waukesha, and perhaps other communities, seek to serve.

<sup>64</sup>James M. Fiacco & Christine A. Cramer, “A new model for fiscal regionalism: greater Racines plan for overcoming fiscal disparity,” *Government Finance Review* (Feb. 2004).

County, even when those are used to supply water to suburban communities.<sup>65</sup> The Water Supply Study also identifies the ability to use less water softener as an economic benefit. However, city of Milwaukee customers do not now need to put salt in their water; it is suburban customers who do. Therefore, this will be a greater financial benefit to the disproportionately non-low income and non-minority suburban customers, and quite possibly a greater financial benefit to them than any hypothetical water bill savings to city of Milwaukee customers.

The Water Supply Study also must evaluate any socioeconomic impacts of the planned discharge mechanisms, should suburban communities receive water. The Study asserts that treated effluent could be discharged into creeks downstream, in Milwaukee County. It does not however, adequately address the city of Waukesha's previous assertion that "SEWRPC has indicate that it would be highly unlikely that they would agree to discharging treatment plant effluent to any of the streams or rivers in the Great Lakes Basin. Areas in and around Underwood Creek, the Root River, and other streams are already at or near capacity and additional flow would exacerbate the problem."<sup>66</sup> Further, the Analysis fails to recognize the import of this issue: suburban communities are seeking a Water Supply, likely from the city of Milwaukee, to continue current development patterns which exclude many Milwaukee residents - yet are also seeking to save their own tax dollars by dumping their waste into bodies of water that will ultimately cross through the city of Milwaukee, from Underwood Creek into the Menomonee River. The Analysis also must address the extent to which low income and minority communities in Milwaukee could be negatively affected by this discharge, while the communities dumping the waste are disproportionately benefitted by saving the cost of constructing pipelines to Lake Michigan.

## CONCLUSION

For the reasons discussed in this report, we believe the Socioeconomic Impact Analysis must consider the likely effect of implementation of Water Supply Study recommendations on industrial and economic development, job growth, and residential and segregation patterns, in potential selling and receiving communities, and in the region as a whole. It must evaluate potential methods to reduce or eliminate such disparities, including at a minimum the potential effects of limiting growth and the potential effects of requiring receiving communities to provide enforceable offsetting benefits.

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<sup>65</sup>*See, e.g.*, First Amendment to Agreement Between the City of Milwaukee and the City of New Berlin for the Purchase of Water at Wholesale (July 2008) at p. 6 ("Milwaukee acknowledges that New Berlin is not responsible for any capital costs for water system improvements within Milwaukee County necessary to allow New Berlin to reach the maximum flow rate . . .")

<sup>66</sup>CH2M Hill and Ruckert-Mielke, "Future Water Supply," Report Prepared for Waukesha Water Utility (March 2002) at p. 4-47.

Submitted By:

Dennis Grzezinski, Senior Staff Counsel  
Jodi Habush Sinykin, Of Counsel  
Midwest Environmental Advocates  
312 E Wisconsin Ave # 210  
Milwaukee, WI 53202

Karyn L. Rotker  
Senior Staff Attorney  
ACLU of Wisconsin  
207 E. Buffalo St., #325  
Milwaukee WI 53202

Sustainable Story Hill  
315 N. Pinecrest St.  
Milwaukee, WI 53208

Jerry Ann Hamilton  
President  
Milwaukee Branch NAACP  
2745 N. Dr Martin L King # 202  
Milwaukee WI 53212

Karen M. Schapiro, JD  
Executive Director  
Milwaukee Riverkeeper  
1845 N. Farwell, Suite 100  
Milwaukee, WI 53202

electronic copy:

Catherine Madison, UWM-CED  
Kenneth Yunker, Executive Director, SEWRPC