

August 28, 2015

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RE: Water Diversion to Waukesha

Dear Ms. Hoekstra:

The undersigned individuals and organizations are all based in the Milwaukee metropolitan region and have long been concerned with and involved in ensuring racial and environmental justice. We submit these comments regarding the Draft Environmental Impact Statement (DEIS) and Draft Technical Review on the city of Waukesha's request for a diversion of Lake Michigan water under the Great Lakes Compact and Wisconsin's implementation statutes. That request is predicated on the underlying assumption that Waukesha can, should and will develop as much as it wishes, and should be able to obtain a diversion of water to do so. Moreover, the diversion application seeks Lake Michigan water for a city of Waukesha water service area that has been expanded by 17 square miles to include communities outside the city of Waukesha that do not even need the water and whose development also poses serious concerns. Particularly because there is an alternative that would adequately serve existing users without the need to divert Lake Michigan water, these underlying facts and assumptions must be reevaluated.¹

Moreover, environmental review procedures require consideration of not only strictly

¹ The City of Waukesha asserts that its need for Lake Michigan water is the result of a health issue – concentrations of radium in its drinking water supply that occasionally exceed health limits. These comments demonstrate that it is not, in fact, health, but rather Waukesha's desire for unrestrained growth and expansion that drive and underlie the water diversion request.

Moreover, high radium levels largely coincide with periods of high water usage, typically during periods of dry weather and extensive watering of lawns. While the City has instituted restrictions on daytime watering of lawns, it has not instituted programs or incentives, much less any requirements to reduce the prevalence of extensive lawns of non-native, drought sensitive grasses. Nor has it taken steps to encourage or require their replacement with deep-rooted native plants that are drought tolerant and do not require frequent, if any, watering. Waukesha also has failed to take other steps to reduce its need for the diversion by maximizing the capture, retention, and use of rainwater by its residents and businesses for lawn and garden irrigation, and minimizing the amount of rainwater lost through storm sewer discharges to the Fox River. And, as discussed below, it clearly has failed to take any steps to resolve its concerns by limiting or constraining development.

environmental issues, but also interrelated social and economic effects. This is particularly true because Waukesha officials have made clear that construction of this project is predicated on receiving federal grants.² Therefore, the project must comply with Title VI of the Civil Rights Act, 42 U.S.C. § 2000d, which prohibits not only intentional discrimination, but actions that have a discriminatory effect.

The DEIS and Technical Review, however, utterly fail to address, much less resolve, the needs and concerns of communities of color. Allowing a Lake Michigan water diversion to enable continued unrestrained sprawl and job migration will have the inevitable effect of perpetuating racial and economic segregation in the region, to the clear disadvantage of persons of color, especially African-Americans. If water is provided to Waukesha in the large volumes requested, sufficient to support massive expansion and future growth, the overwhelming disconnect between new jobs being developed in the outlying suburbs and concentrations of people of color – especially African-Americans, but also Latinos - with low incomes and in need of employment in Milwaukee, the Region’s largest city, and only majority minority city, will only worsen.

Under such circumstances, any environmental review must consider the option of limiting unrestrained plans for development in the city of Waukesha and rejecting the proposed, greatly expanded, water service area, and must evaluate the extent to which doing so could actually benefit historically (and currently) disadvantaged communities in the region.

I. Federal Law Requires Consideration of Impacts on Persons of Color.

Federal laws, regulations and orders make it clear that planners must address issues of concern to communities of color, as well as low-income residents. Title VI of the Civil Rights of 1964³ prohibits 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’s Title VI regulations, a “recipient 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.” 40 C.F.R. § 7.35(b) (emphases added). In other words, regardless of intent, and regardless of whether some persons of color may benefit from certain decisions, actions that have a *disproportionate effect* on persons of a “particular” race or national origin violate federal law.⁴ Nor are these Title VI requirements limited to the EPA. All federal

² See, e.g., Don Behm, “Waukesha renews push for federal dollars to help pay for Great Lakes diversion,” Milwaukee Journal-Sentinel (March 4, 2013) (viewed 8/17/15 at <http://www.jsonline.com/blogs/news/195014751.html>)

³ Assuming, as has been reported, that communities seeking Lake Michigan water will seek federal assistance for infrastructure construction, Title VI would indisputably apply.

⁴ The language regarding a “particular” race means that the fact that some minority

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 have similar regulations prohibiting actions that have a discriminatory *effect*. *See, e.g.*, 32 C.F.R. Pt. 195; 43 C.F.R. Pt. 17, Subpt. A; 49 C.F.R. Pt. 21. Thus, regardless of the identity of the federal agency from which communities may seek financial assistance, these rules and regulations apply.

In addition, federal environmental justice policies – including policies adopted by 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
- **Increased traffic congestion, isolation, exclusion, or separation of individuals within a community or from a broader community.*

“Toolkit for Assessing Potential Allegations of Environmental Injustice,” U.S. EPA (Nov. 3, 2004) at 16 (emphases added) (viewed 8/17/15 at <http://www.epa.gov/environmentaljustice/resources/policy/ej-toolkit.pdf>). “Agencies should recognize ‘the interrelated cultural, social, occupational, historical, or economic factors that may amplify the natural and physical environmental effects of a proposed action.’” *Id.* at 25.

II. History and Data Show Pervasive Segregation and Discrimination in the Region.

The “interrelated cultural, social, occupational, historical, or economic factors” at issue here – which the DEIS fails to address - include a long legacy of racial segregation and discrimination against persons of color, especially African-Americans, in the region. As an attorney for the Waukesha Water Utility wrote in a 2004 memorandum, diverting Lake Michigan water to another Waukesha County community potentially “would encourage urban sprawl and affect the overall water supply. Lake Michigan’s water supply should not be the remedy to

groups, such as Asians or Latinos, may be somewhat less segregated is no defense to the exclusion and segregation of African-Americans.

problems that New Berlin's urban sprawl plans would create.”⁵ That is no less true of a diversion to Waukesha and the communities surrounding it.

A. The Use of Water Cannot Be Separated from Regional Development Patterns.

It is critical to recognize the historical (as well as continuing) interrelationship between water and development in this region. Until 1959, 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.”⁶ When in 1959 a legal challenge led the city of Milwaukee to sell water to Wauwatosa, industrial development that might have occurred in Milwaukee occurred in this suburb instead.⁷

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. Proposals to provide Lake Michigan water to New Berlin in the 1970s raised similar concerns.⁸ 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.”⁹ 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.”¹⁰

Nor has this sprawl ended. Although the Southeastern Wisconsin Regional Planning Commission has claimed that the expanded service area would not facilitate significant new development, city of Waukesha officials and staff talk openly of growth to the west, southwest, and south, as well as of annexation of Town of Waukesha lands.¹¹ For example, the city of

⁵ Memorandum to Waukesha Water Utility from Atty. Barbara K. Boxer (June 10, 2004), at n. 1 (Ex. A). The Waukesha Water Utility apparently tried to “bury” this memorandum, which was only revealed by open records requests. “Hot Potato Found in Waukesha Water Files,” (viewed 8/19/15 at <http://wisopinion.com/blogs/2006/10/hot-potato-found-in-waukesha-water.html>).

⁶ Letter of Former Milwaukee Mayor Frank P. Zeidler (on file with City of Milwaukee Resolution 021758) (June 7, 2003) (Ex. B).

⁷ *Id.*

⁸ “An Analysis of the New Berlin Petition for City of Milwaukee Water Services,” Milwaukee Dept. of City Development (March 1974) (Ex. C)

⁹ *Id.*

¹⁰ *Id.*

¹¹ The town of Waukesha lands likely to be annexed to facilitate this development are included in the expanded water service area. Water diversion advocates apparently know that seeking water for an expanded service area is a problem: the Greater Milwaukee Association of Realtors, for example, specifically told its members to advocate for the diversion, but to “refrain

Waukesha's recently-retired community development director confirmed that "I see us continuing to grow to the west. There are 1,500 acres still in our water and sewer service area, much of which is relatively vacant. It would require annexation (from the Town of Waukesha) for sewer and water service, of course, but it's a logical extension."¹² The former city planner, now community development director, advocated for creation of an industrial district to the south, where staff expect city limits to expand.¹³ Officials also want to move the fire station farther from the city center, due to land annexations related to the expansion of the city to the southwest.¹⁴

Further, there is current, significant industrial water use in Waukesha, by industries that rely on high capacity wells. DEIS, Sec. 3.14. It is also clear that Waukesha County and its businesses want water not just to sustain existing uses, but for economic development.¹⁵ And the city of Waukesha admitted (after the completion of the Water Supply Study) that the "small number of industries served by the City of Waukesha"¹⁶ used 13% of the City's water supply, that existing industrial customers were considering increasing production, that at least one new industry was already investigating developing in Waukesha and that 8 to 10 new industrial users could reasonably be expected to develop or redevelop in the city, and that the water use of these customers could not be adequately forecast but that expansion could lead to a "material" increase

from comments that relate to more water for growth or expansion of businesses or land development." GMAR Call to Action (Aug. 18, 2015) (Ex. D).

¹² Sarah Pryor, "Q&A with Waukesha Community Development Director Steve Crandall - Talking past successes, present projects, future developments," *Waukesha Freeman* (July 17, 2013) (Ex. E).

¹³ Sarah Pryor, "Woodman's rezoning gets express treatment - Alderwoman concerned about competition, loss of manufacturing," *Waukesha Freeman* (Oct. 15, 2011) (Ex. E).

¹⁴ Christopher Kuhagen, "Waukesha alderman wants improved fire department response times," *Waukesha Freeman* (July 2, 2013) (Ex. E).

¹⁵ See, e.g., Sean Ryan, "Waukesha businesses wait for water answers," *Daily Reporter* (Apr. 2, 2010) ("Local business associations - including the Waukesha County Chamber of Commerce and Sustainable Water Supply Coalition - are backing the Lake Michigan plan, which offers the guaranteed, long-term water source businesses want, said Mary Baer, membership development liaison for the chamber. 'Water is probably the oil of this century,' she said. 'And we believe, *the Waukesha County chamber believes, that water is an economic development issue.*'")(emphasis added) (viewed 8/17/15 at <http://dailyreporter.com/2010/04/02/waukesha-businesses-wait-for-water-answers/>); see also "Coalition seeks to bring Lake Michigan water to Waukesha," *BizTimes Daily* (Feb. 5, 2010) ("Sustainable Water Supply Coalition, an alliance of business organizations in southeastern Wisconsin, has been formed to advocate for water policy issues, including access to Lake Michigan water for the city of Waukesha") (viewed 8/17/15 at <http://www.biztimes.com/article/20100205/ENEWSLETTERS02/302059997/>).

¹⁶ Apparently this is in addition to Waukesha industries drawing water from high-capacity wells.

in its water needs.¹⁷ It is also clear that the Waukesha Water Utility is seeking water not just for existing needs, but to support significant “buildout.” *Id.* at 1.¹⁸ Thus, Waukesha clearly intends for industries and businesses to use diverted water for expansion, not just to serve existing needs.¹⁹

“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.”²⁰ That regional policy does not exist. To the contrary, decades of unrestrained sprawl, untethered from provision of regionwide affordable housing, regional transit, and non-discriminatory job access, have exacerbated the problems of communities of color, especially African-Americans, in the region.

B. There is Profound Discrimination and Segregation in the Region.

Wisconsin and Milwaukee’s black and Hispanic communities manifest deep and enduring socioeconomic effects of historic discrimination across a wide range of areas. Along a daunting array of dimensions . . . the state and its largest metropolitan center display overwhelming patterns of racial inequality, racial disparities, and racially based socioeconomic distress: most segregated metropolitan area in the nation, widest racial income gap, second highest black poverty rate, among the highest levels of concentrated poverty in neighborhoods and schools, second lowest rate of black male employment, third lowest rate of female [e]mployment, second widest racial gap in school test scores third lowest rate of minority business ownership, worst racial disparities in incarceration rates. Minority communities in Wisconsin and metro Milwaukee (where 80 percent of the state’s black population lives and 45 percent of the state’s Latino population resides) clearly bear the socioeconomic effects of racial inequities. . . .

¹⁷ “Technical Memorandum – Water Demand Projections: Response to DNR,” Richard Hope (Feb. 19, 2014) (Ex. F) at 2, 4-6.

¹⁸ Waukesha’s application confirms this. Its Water Supply Service Area Plan projects a doubling of industrial land use in the Water Supply Service Area between 2000 and 2035 (from 3% to 6%), an increase in residential land use of more than two-thirds (from 28% to 47%), and an almost total conversion of agricultural and open lands to developed uses (with open land declining from 30% of the total area in the WSSA to only 4%). *See*, Application, Vol II, Ex. 2-6, pp. 2-7.

¹⁹ Industrial water sales in the City of Waukesha declined by more than 50% between 1999 and 2013. Draft Technical Review, p. 60. In contrast, Waukesha’s application projects a future need for dramatically more water for industrial use, even though the higher cost of water in the future should lead to significantly greater conservation and efficiency by industrial users. The necessary implication of this is that Waukesha is planning for a huge increase in industrial activity to make use of the large volume of Lake Michigan water that it has allocated for industrial use.

²⁰ *Zeidler* letter.

Levine, Dr. Marc V., “Racial Disparities, Socioeconomic Status and Racialized Politics in Milwaukee and Wisconsin: An Analysis of Senate Factors Five and Six of the Voting Rights Act” (Oct. 18, 2013) (“Levine report”) at 22 and *generally* 5-23 (Ex. G).²¹

The Milwaukee metropolitan statistical area (MSA) is the most racially segregated region in the United States for African-Americans and among the most segregated for Latinos. *Id.*; “A Regional Housing Plan for Southeastern Wisconsin: 2035,” (“Housing Plan”), SEWRPC (March 2013) at 127 (viewed 8/17/15 at <http://www.sewrpc.org/SEWRPCFiles/Publications/pr/pr-054-regional-housing-plan-2035.pdf>).

At the heart of metropolitan Milwaukee’s hypersegregation is this fact: Milwaukee has the lowest rate of black suburbanization of any large metropolitan area in the country. . . . The Hispanic level of suburbanization in Milwaukee, though much higher than the black rate, still lags significantly behind [even] other highly segregated metropolises. In short, to a greater extent than any large region in the country, Milwaukee’s minorities are concentrated in the urban core, in neighborhoods . . . marked by concentrated poverty, joblessness, and other measures of socioeconomic distress.

Levine report at 8-9.

While the DEIS, Sec. 3.13.3, tries to hide the extent of these problems by mentioning that the “non-white” population of the city and county of Waukesha has increased and is purportedly projected to increase, it entirely fails to disaggregate this data by race. This omission has the effect (if not the intent) of avoiding discussion of the extent of regional segregation, especially for African-Americans and to a lesser, but still significant, extent for Latinos. As of 2010, only 1.3% of Waukesha County’s entire population – about 4900 people - was African-American, while almost *52 times as many African-Americans* – about 253,800 - lived in Milwaukee County.²² “The Population of Southeastern Wisconsin,” SEWRPC (April 2013) at 17 (viewed 8/17/15 at <http://www.sewrpc.org/SEWRPCFiles/Publications/TechRep/tr-011-5th-ed-population-se-wisc.pdf>). Waukesha County’s Latino population is somewhat larger but still constitutes only 4% of its total population, and almost *eight times* as many Latinos live in Milwaukee County as in Waukesha County. *Id.* at 18. Nor can these disparities be blamed on Milwaukee’s larger overall population: only about *1½ times* as many non-Hispanic whites live in Milwaukee County as in Waukesha County. *Id.* at 19.

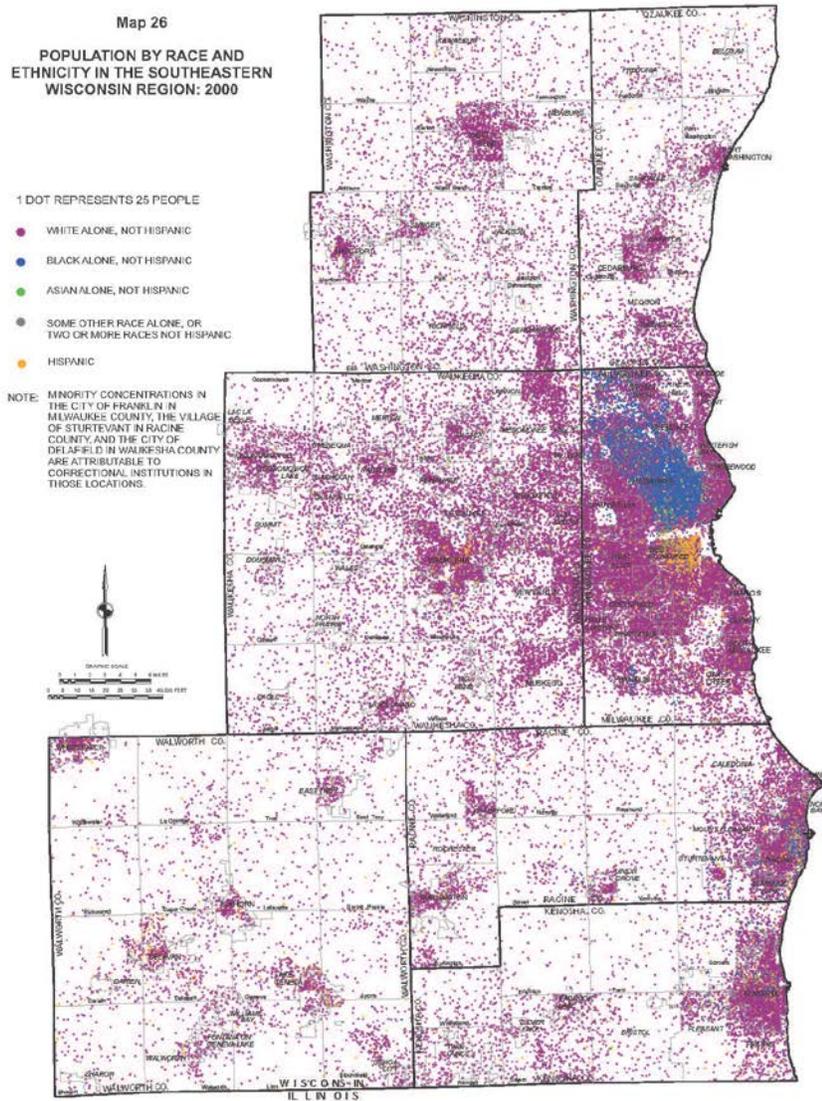
The city of Waukesha fares little better: as of 2010, only 1.9% of its population was African-American. Calculated from “Hispanic or Latino origin of householder by race of householder,” (2010 Census Table H7) (Ex. H). Although its Latino population is larger, the city

²¹ This expert report, prepared for and submitted in the 2013 federal voting rights trial of *Frank v. Walker*, confirms the profound segregation and racially-based inequality in the region.

²² In fact, just the *increase* in the Waukesha County’s non-Hispanic white population from 2000 to 2010 – more than 13,000 people – is more than 2½ times the *total* African-American population in the entire county. *Id.* at 17, 19 (calculated from Tables 11, 14).

remains more than 86% non-Hispanic white. *Id.* Moreover, the communities included in the 17 square mile expansion of the service area are even more profoundly segregated: the town of Genesee is 98% non-Hispanic white, the town of Delafield is 97% non-Hispanic white, the town of Waukesha is 96% non-Hispanic white, and the city of Pewaukee is 95% non-Hispanic white, and none of these outlying communities is more than 1% African American or more than 2.3% Latino. *Id.*

The following map, created by SEWRPC, starkly depicts the extent of the region's segregation.

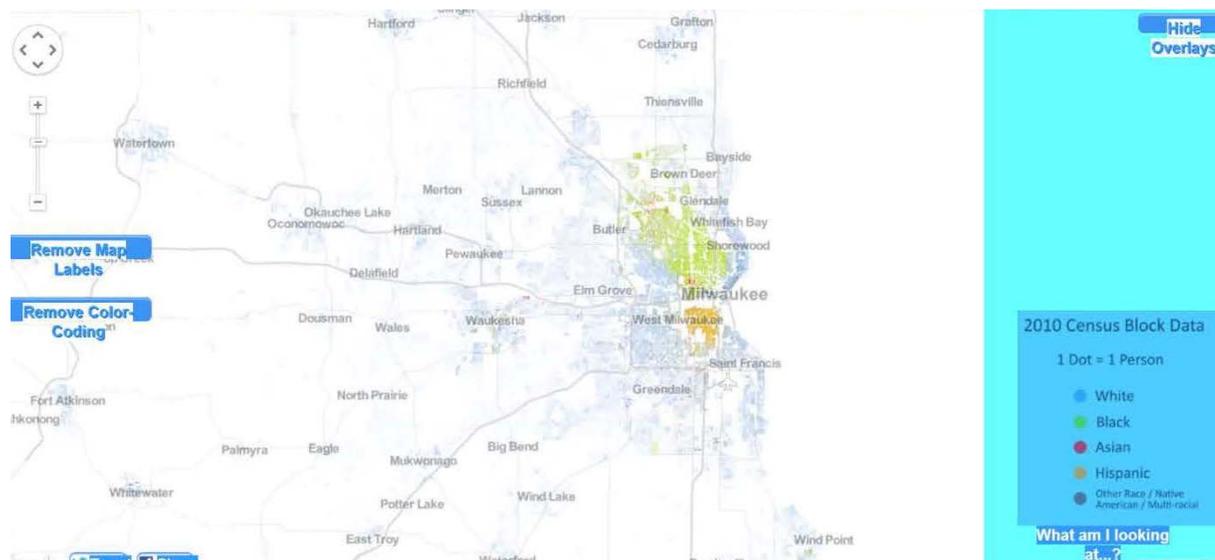


Housing Plan at 125. SEWRPC’s map was based on 2000 data, but the 2010 census showed no improvement. Rather, a subsequent “ranking reaffirms Milwaukee’s place as the overall most segregated metropolitan area in the United States.”²³ Lecci & Maternowski, “New Ranking: Milwaukee still country’s most segregated area,” WUWM (Nov. 27, 2013) (viewed 8/17/15 at <http://wuwm.com/post/new-ranking-milwaukee-still-countrys-most-segregated-metro-area>).

C. Suburban Housing Policy Exacerbated Segregation.

Historically, 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”²⁴ “[T]he political climate of Milwaukee’s suburbs has also played a role in maintaining this entrenched pattern of racial segregation. The historical legacy of housing discrimination and resistance to desegregation in Milwaukee and its environs has been well established in the

²³ See also, e.g., “The Racial Dot Map: One Dot Per Person for the Entire United States,” Created by Dustin Cable (July 2013) (for metropolitan Milwaukee area) (viewed 8/17/15 at <http://demographics.coopercenter.org/DotMap/index.html>)



²⁴ “Embracing Diversity: Housing in Southeast Wisconsin,” Public Policy Forum (2002) at 3 (viewed 8/18/15 at <http://publicpolicyforum.org/sites/default/files/housing.pdf>). African-Americans and Latinos did not unilaterally choose to concentrate in the central city but were encouraged or forced to do so by numerous forces – including explicit governmental actions and public (as well as private) discrimination that has continued until recent years. See also Levine report at 10-11, 30-34; Housing Plan at Ch. VI.

literature.” Levine report at 10.²⁵ “White flight” to the suburbs exacerbated – and continues to exacerbate – segregation. *See, e.g., Embracing Diversity* at 10 (as neighborhoods approached 30% minority residents, whites “moved out in a state approaching panic,”); “Turning Points in Wisconsin History: Desegregation and Civil Rights,” Wisconsin Historical Society (“Suburbanization also contributed to segregated housing as whites increasingly moved out of Milwaukee, leaving the inner city to African Americans - a trend that persists to this day.”) (viewed 8/17/15 at http://www.wisconsinhistory.org/turningpoints/tp-049/?action=more_essay); SEWRPC Population at 19 (Milwaukee County had a 12% decline in its non-Hispanic white population from 2000-2010 at the same time that its minority population was increasing by 21%.)

“While overtly racist policies are now illegal, their legacy persists.”²⁶ *Embracing Diversity* at 11. One way this occurs is by fierce suburban opposition to affordable housing, upon which persons of color are more likely to depend.²⁷ “Efforts to increase moderate income

²⁵ Citing Patrick D. Jones, *The Selma of the North: Civil Rights Insurgency in Milwaukee* (Cambridge, MA: Harvard University Press, 2009); James W. Loewen, *Sundown Towns: A Hidden Dimension of American Racism* (New York: Touchstone Books, 2005); Frank Aukofer, *City with a Chance* (Milwaukee: Bruce, 1968); and Henry J. Schmandt, John C. Goldbach, and Donald B. Vogel, *Milwaukee: A Contemporary Urban Profile* (New York: Praeger, 1971).

²⁶ Not only the legacy, but current racism, also persists in Waukesha County. In 2009, for example, the federal EEOC sued the county for race discrimination in hiring. Laurel Walker, “Waukesha County discriminated in hiring, EEOC finds,” *Milwaukee Journal-Sentinel* (Aug. 10, 2009) (viewed 8/18/15 at <http://www.jsonline.com/news/waukesha/52922652.html>). In 2006, a Waukesha County fire chief and firefighter were convicted of hate crimes after they used a gun and dog, and racist language, to threaten an African-American man. David Doege, “Hate crime stands against firefighters - They're charged in confrontation with black man,” *Milwaukee Journal Sentinel* (Nov. 28, 2006) (<http://www.jsonline.com/news/waukesha/29241679.html>).

Overtly racist incidents have also occurred in the city of Waukesha. *See, e.g.,* Heather Shannon, “Waukesha Teens Charged with Hate Crimes,” 620WTMJ (2009) (teens burned KKK and a swastika on basketball court “to keep black kids from playing on the court the three boys consider theirs.”) (Ex. I); Jacqui Seibel, “Assault case called hate crime at hearing,” *Milwaukee Journal Sentinel* (Apr. 8, 2008) (Waukesha youth made Nazi salute at a man who identified himself as Mexican, and then beat him up in parking lot) (viewed 8/18/15 at <http://www.jsonline.com/news/waukesha/29527634.html>); 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) (Ex. J).

²⁷ In 2011, for example, “the U.S. Department of Justice (DOJ) sued New Berlin [in Waukesha County] for violations of the federal Fair Housing Act, arguing that the suburban community killed the affordable housing project ‘because of race and because of community opposition that city officials understood to be based on the race and on racial stereotypes of the prospective tenants of affordable housing.’ The DOJ suit described the political climate in New

affordable housing and especially low-income ‘fair share’ housing in suburban communities are continually rejected by residents who contend that these types of housing will be a drain on their tax base and will lower their property values.” *Embracing Diversity* at 11.

There is no question that persons of color in the region – especially African-Americans and Latinos – are far more likely to depend on affordable and multifamily rental housing than whites. *See, e.g.*, Housing Plan at 451 (“About 30 percent of households with White/Non Hispanic householders rent their homes. About 68 percent of households with African American householders and about 58 percent of households with Hispanic householders rent their homes;” “Households with minority householders are more likely to be extremely low- or very low-income households than those with non-minority householders. About 41 percent of households with minority householders are extremely/very low-income households compared to about 20 percent of households with non-minority householders.”) “Given the relatively higher unemployment rates and lower incomes of African Americans and Hispanics in the Milwaukee area, the need for more affordable housing for these populations is clear.” *Id.* at 356. Rather than seek to resolve this situation, Waukesha has taken steps that perpetuate segregation.

For example, in 1992, Waukesha County’s barriers to affordable housing were evaluated in detail.²⁸ That report made it clear that the County was pervaded with local regulatory barriers that made it difficult to site multifamily and affordable housing in its municipalities. Yet in more than two decades since that report, there has been little indication of efforts to reduce or eliminate this legacy of discrimination. Instead, continuing decisions by Waukesha County communities that may seek Lake Michigan water, including explicitly limiting the availability of multifamily housing, also perpetuate segregation. The city of Waukesha, for example, in 2009 formally reduced its target percentage of multifamily rental housing from 45% (with 20% of that

Berlin this way:

Some of the opposition was based in part on fear that prospective tenants would be African American or minority. The Mayor, Aldermen, Plan Commissioners and staff at DCD were aware that community opposition was based in part on race. The communications they received over several weeks contained express and implied racial terms that were derogatory and based on stereotypes of African American residents. These communications reference ‘niggers,’ ‘white flight,’ ‘crime,’ ‘drugs,’ ‘gangs,’ ‘families with 10 or 15 kids,’ of ‘slums,’ of not wanting New Berlin to turn into ‘Milwaukee,’ of moving to New Berlin ‘to get away from the poor people...’”

Levine report at 10-11.

²⁸Schuetz, Mary Kay, and Prof. 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) (viewed 8/17/15 at <http://www.huduser.org/rbc/docs/milwaukee071102.pdf>).

being “duplex” and 25% other multifamily) to 35% multifamily (also including duplexes).²⁹ In 2010, the city of Waukesha rejected proposals from two developers to construct affordable multifamily housing.³⁰ The communities that are part of the expanded water service area fare even worse: the town of Genesee and the city of Pewaukee have no affordable tax credit housing at all, while the towns of Delafield and Waukesha have no affordable *family* housing – which is the critical need to reduce segregation in the region.³¹ And in 2014 the Waukesha County board rejected and amended multiple elements of SEWRPC’s Housing Plan that were intended to ensure fair and affordable housing throughout the region.³²

D. Suburban Transportation Decisions Have Been Discriminatory.

Transportation-related decisions and policies of suburban officials, not unrelated to housing policy, have also had the clear discriminatory effect, if not the intent, of limiting the employment opportunities of persons of color, especially those from Milwaukee. For more than

²⁹City of Waukesha Ad Hoc Housing Mix Committee Report, June 2008-March 2009 (viewed 8/18/15 at http://www.ci.waukesha.wi.us/c/document_library/get_file?folderId=42002&name=DLFE-5632.pdf)

³⁰ See “Housing Discrimination Complaint: Metropolitan Milwaukee Fair Housing Council v. Waukesha County, Wisconsin” (March 15, 2011) at 25 (viewed 8/18/15 <http://www.fairhousingwisconsin.com/PDF/Waukesha%20HUD%20Complaint%203-15-11%20FINAL.pdf>) After the same developer who prevailed in the fair housing litigation against New Berlin, *supra* n. 24, proposed affordable housing in Waukesha – and then reduced the number of affordable units in its proposal - Waukesha ultimately agreed to allow some of this housing to be constructed. *See, e.g.*, Laurel Walker, “Developer revises affordable housing proposal,” *WaukeshaNow.com* (Jan. 9, 2012) and “Rezoning advances housing proposal in Waukesha,” *WaukeshaNow.com* (Feb. 8, 2012) (viewed 8/25/15 at <http://www.waukeshanow.com/communitywatch/136963688.html> and <http://www.waukeshanow.com/news/cnnews/rezoning-advances-housing-proposal-in-waukesha-fp44bsj-138948499.html>).

³¹ WHEDA – Low Income Housing Tax Credit Projects Allocated or Awarded (viewed 8/18/15 at http://www.wheda.com/uploadedFiles/Website/Business_Partners/Property_Managers/Other_Reports/allocations_historic.pdf); Housing Plan at 325.

³² *See, e.g.*, “Chair of Economic Development Committee in Milwaukee County Criticizes Outer Suburbs’ Rejection of the Regional Housing Plan Created by SEWRPC - Jursik Says Suburbs Engage in ‘Subtle Signs of Racism’” (Sept. 2, 2014) (viewed 8/17/15 at http://www.thewheelerreport.com/wheeler_docs/files/0902jursik.pdf); Kori Schneider-Peragine, “[S]ide by side comparison of the SEWRPC Housing Study recommendations with the recommendations adopted by Waukesha County,” (Oct. 2014) (Ex. K).

half a century, transportation planning in metropolitan Milwaukee has emphasized freeway construction and automobile travel. Freeway construction destroyed urban neighborhoods and facilitated suburban sprawl – which was overlaid with, and related to, racial segregation in housing. Residential relocations caused by freeway construction compounded the problem,³³ while sprawl quite literally paved the way for white flight from the city. By 1972:

the over-emphasis on the auto and the efforts to serve the public demands for eliminating congestion [had] produced some serious detrimental side effects. Contrary to the former claims of the planners that transportation facilities only serve planned land uses, there are strong indications that there exists an important feedback whereby the freeway is an important determinant of land use. The existing spread of costly urban sprawl has been accelerated to a large degree by the extension of the freeway system into vast amounts of formerly rural lands. 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 removal of needed housing, increased pollution, reduced tax base, and the loss of jobs.³⁴

These effects, of course, adversely and disproportionately affected the disproportionately minority residents consigned to living in the city.

During the 1990s, it appeared that the transportation planning process finally had begun to meaningfully consider the needs of communities of color. In 1997, a Locally Preferred Alternative (LPA) was selected. It included, among other components, light rail transit in Milwaukee County and a 21% expansion of bus service in Milwaukee and Waukesha counties “targeted at getting workers to jobs in the two counties.”³⁵ The expansion of public transit was crucial: at the time the MIS/DEIS was issued, the central city unemployment rate was 12%, while many jobs in Waukesha County remained unfilled.³⁶

³³“Various relocation studies, done primarily in relation to urban renewal projects, have found that white households, on the average, migrate longer distances than black households of similar economic circumstances. Presumably, this is due to residential segregation, imposed or self-imposed.” Theodore K. Miller, *Freeway Impact in Milwaukee, Phase I Final Report*, (Milwaukee Urban Observatory, March 1972) (Ex. L) at 14.

³⁴*Freeway Task Force Report* (Milwaukee Dept. of City Development, June 1972) (Ex. M) at 12.

³⁵*Milwaukee East-West Corridor Transportation Study*, Major Investment Study/Draft Environmental Impact Statement, Locally Preferred Alternative (WisDOT, FHWA, FTA, May 1997) at S-1. (Apparently not available online, and thus not available to submit with these comments.)

³⁶*Major Impact Study/Draft Environmental Impact Statement* (WisDOT, FHWA, FTA, Oct. 1996) at 1-17. (Apparently not available online, and thus not available to submit with these comments.) Numerous other studies and reports confirmed this mismatch, which clearly and disproportionately affected minority and low income residents of the central city. *See also*, Ex. N (Sustainable Milwaukee Complaint at 27-31).

But actual implementation of the LPA never occurred. In late 1997, the WisDOT Secretary and Governor refused to allocate funding for any portion of the Preliminary Engineering/Final Environmental Impact Study dealing with light rail. Ex. N (Sustainable Milwaukee Complaint at 25-26.) And there were racial overtones to these decisions.

Increasingly. . . racialized politics in the state and region took a more coded form. An example was the policy issue of whether to build a light rail transit system in the Milwaukee region. Favored by urban leaders such as the mayors of Milwaukee in the 1990s and 2000s, and pursued, in one form or another, in almost every other large metropolitan area in the country, opposition to light rail as a “taxpayer’s nightmare” and “billion dollar boondoggle” became a mantra for politicians in Milwaukee’s overwhelmingly white, hypersegregated suburban and exurban communities As [Milwaukee’s] pro-light rail Mayor John Norquist put it: “The right-wing talk radio guys would always promote it to their listeners that somebody from the city would come out to the suburbs and steal their TV set. . . I think the Republicans from the suburbs around Milwaukee found light rail to be an issue that excited their base at election time, so they ended up running against it. Suburban politicians such as Brookfield’s Scott Jensen, Waukesha’s Dan Finley, and Wauwatosa’s Scott Walker all incorporated opposition to light rail into their campaigns. And George Watts, an Ozaukee County resident, downtown Milwaukee merchant, and candidate for mayor of Milwaukee in 2000, based his campaign largely on opposition to light rail; earlier he had explicitly raised the largely suburban fears that “urban criminals could use the trains to prey on suburbanites” by saying that “light rail brings strangers who are not only a threat to your property, but to your children.” Transit advocates described these references as “code words for race,” and in Milwaukee several black politicians decried Watt’s remark about “strangers” as a racial reference.³⁷

Levine report at 34-35 (internal footnotes omitted). Such attitudes led to filing of race discrimination complaints – which state officials agreed to settle by using their best efforts to expand transit. Ex. N. That agreement, however, has been honored primarily in the breach. Even though the regional long-range transportation plan recommended significant increases in transit service and did so, specifically, as a matter of racial equity, transit has moved backwards.³⁸ *See also*, Housing Plan at 932 (socioeconomic (environmental justice) analysis

³⁷ “Crime” and similar references have been used in this region for decades, as coded references to persons of color, especially African-Americans. *See, e.g.*, Levine report at 31 (in 1970s, Nazi party candidate for mayor in Milwaukee stating, *inter alia*, “Are you fed up with runaway crime and unsafe streets?”); *id.* at 30-36.

³⁸ “The public transit recommendations of the regional transportation plan would, in particular, serve minority and low-income populations within Southeastern Wisconsin. The transit element of the regional transportation plan would in particular connect minority and low-income populations with jobs. Also, the public transit recommendations of the regional transportation plan are directed towards improving transit service in central Milwaukee County

“found a need for *regionwide* cooperation on effective workforce development, access to educational opportunities, and an *effective transit system to fully address the problems caused by the concentration and isolation of environmental justice populations. The analysis determined that full implementation of the public transit element of the year 2035 regional transportation system plan, as recommended by the regional housing plan, should be a priority.*”) (emphases added.) Thus – despite the explicit provisions of the regional (including Waukesha) 2035 Plan that transit expansion was necessary to serve minority communities and the reiteration in the regional (including Waukesha) Housing Plan that this was a priority to reduce the concentration and isolation of these communities, transit has declined while highway capacity expansion proceeded apace.

And Waukesha actions have contributed to this decline. As noted above, its leaders have objected to transit on grounds demonstrating implicit, if not explicit, bias. In recent years, the County has also rolled back public transit, including transit to connect Milwaukee residents to the kinds of jobs the water diversion would serve. For example, in 2004 Waukesha County declined to continue contributing to a route to connect Milwaukee to jobs in New Berlin, as well as West Allis.³⁹ In 2007, Waukesha County officials eliminated a transit route that connected Milwaukee residents with jobs in Waukesha County - within days of agreeing to help pay for a highway interchange in Oconomowoc, an almost exclusively white community.⁴⁰ It eliminated

and those areas with minority and low-income populations. “A Regional Transportation System Plan for Southeastern Wisconsin: 2035” (2035 Plan), SEWRPC (June 2006) at 576 (viewed 8/17/15 at http://www.sewrpc.org/SEWRPCFiles/Publications/pr/pr-049_regional_transportation_system_plan_for_se_wi_2035.pdf). Thus the plan was intended to “provide better connectivity between central Milwaukee County residents, including minority and low-income populations, and employment and other opportunities in the outlying communities within the Region.” *Id.* All these recommendations were made in the context of ensuring that communities of color received a fair share of benefits of transportation system investments, and were included in the chapter evaluating the environmental justice compliance of the 2035 Plan. But instead, financial support and transit services have been eroded – something that SEWRPC explicitly recognized would have a discriminatory effect. *Id.* at 366, 592. By 2014, an estimated 30,000 fewer jobs in the region were served by transit than if the service that existed in 2001 had been in place. “Public Transit and Access to Jobs in the Milwaukee Metropolitan Area, 2001-2014” (UWM- Center for Economic Development, 2014) at 10 (viewed 8/18/15 at http://www4.uwm.edu/ced/publications/Transit2015_FINAL-1.pdf); *also see generally*, Sean Ryan, “Locked out: Suburbs slow on affordable housing,” Milwaukee Business Journal (May 9, 2014) (viewed 8/25/15 at <http://www.bizjournals.com/milwaukee/print-edition/2014/05/09/locked-out-suburbs-slow-on-affordable-housing.html>).

³⁹ Bruce Murphy, “The disconnected city,” Urban Milwaukee (Dec. 19, 2013) (viewed 8/17/15 at <http://urbanmilwaukee.com/2013/12/19/murphys-law-the-disconnected-city/>)

⁴⁰ Scott Williams, “Bus route may be eliminated - Route 9 takes workers to Falls, Butler,” *Milwaukee Journal Sentinel* (Aug. 29, 2007) (viewed 8/17/15 at <http://www.jsonline.com/news/waukesha/29307379.html>); Amy Rinard, “Freeway deal struck

a route that connected the New Berlin Industrial Park to Brookfield Square (a location reachable by Milwaukee County transit) in 2010.⁴¹ It cut a route between Waukesha and Milwaukee County in 2011.⁴² And although it received a grant to purchase vans to set up a van pool, it not only failed to implement such a plan, but apparently did not even consider using the vans to help Milwaukee workers access jobs in Waukesha, which presumably would have been allowed under rules requiring a trip to begin or end in Waukesha County.⁴³ Waukesha has also made clear its staunch opposition to the regional transit that is critical to achieve racial equity. For example, in 2010, the county board unanimously passed a resolution opposing creation of a Regional Transit Authority. Ex. O. Then in 2014, the Waukesha County board rejected elements of SEWRPC's Housing Plan that were intended to ensure full implementation of the public transit provisions of the regional transportation plan – provisions which were also deemed crucial to addressing racial inequity in the region. *See, e.g., Ex. K.*

E. Job Migration Has a Discriminatory Effect.

The benefits of suburban job expansion and the burdens of urban job loss have not been evenly distributed. For decades, jobs have migrated from the city of Milwaukee - where disproportionate numbers of persons of color live and work - to disproportionately white suburban communities that have excluded them. 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.⁴⁴

Nor is this problem only in the past. While persons of color, especially African-Americans and Latinos, are concentrated in the central city, parts of the region with substantial

for Pabst Farms mall - Oconomowoc, developer, state, *county* to pay for interchange,” *Milwaukee Journal Sentinel* (Sept. 3, 2007) (emphasis added) (viewed 8/17/15 at <http://www.jsonline.com/news/waukesha/29256919.html>)

⁴¹ *See, e.g.,* Laurel Walker, “Elimination of bus route on Waukesha County committee agenda,” *NewBerlinNow.com* (Oct. 19, 2010) (viewed 8/18/15 at <http://www.newberlinnow.com/news/105277428.html>). That location - the New Berlin Industrial Park - is now reachable only due to a route funded with proceeds from the Zoo Interchange litigation settlement – not because of any action by Waukesha.

⁴² *See, e.g.,* Laurel Walker, “Cuts planned to Waukesha-Milwaukee bus routes,” *Milwaukee Journal Sentinel* (Nov. 22, 2011) (viewed 8/18/15 at <http://www.jsonline.com/news/waukesha/cuts-planned-to-waukeshamilwaukee-bus-route-j9350fm-134264443.html>).

⁴³ *See, e.g.,* Laurel Walker, “Waukesha transit pool program stalls,” *Milwaukee Journal Sentinel* (Oct. 4, 2011) (viewed 8/18/15 at <http://www.jsonline.com/news/waukesha/waukesha-transit-pool-program-stalls-131115603.html>).

⁴⁴ *See, e.g.,* Memorandum to Waukesha Water Utility at n. 1; “Analysis of the New Berlin Petition.”

employment opportunities – and a lack of affordable housing – “are located outside areas with the greatest concentrations of minority populations.” Housing Plan at 515. The failure to ensure equitable job access has created and exacerbated profound economic inequalities within the region. “On average black and Hispanic households earn significantly less per year than white households. Black/Non-Hispanic households in the four-County Milwaukee metropolitan area earned 45 cents for every dollar earned by whites, and Hispanic households earned 61 cents for every dollar earned by whites, based on median household incomes reported in the 2005-2009 ACS.” Housing Plan at 356.

Diverting water to Waukesha will exacerbate the problem. Waukesha’s major business organizations have advocated for water diversion for “economic development.” But Waukesha’s industrial areas are not readily (or at all) accessible to city of Milwaukee job seekers, especially the large and disproportionate number of persons of color – especially African-Americans - who depend on transit to access such jobs.

As also noted above, many industries in Waukesha rely on high-capacity wells, others use the Waukesha Water Utility, and as many as 8 to 10 new or expanding industrial users are anticipated. Because Waukesha refused to disclose the identity of those potential new industries who might use its water, Technical Memorandum at 5, it cannot be ascertained whether, as in the case of the New Berlin Industrial Park, it will lure even more industries (and their jobs) away from the city of Milwaukee and its workers who need those jobs.

This is not just a theoretical concern. In addition to the history of job out-migration, the city of Waukesha’s Comprehensive Plan projects a more than doubling of the land area for industrial development (from 921 to 1943 acres) between 2000 and 2035, as well as a significant increase in commercial and residential development.⁴⁵ With respect to communities included in the expanded service area, the town of Genesee plans to expand the area for industrial usage nearly tenfold, the town of Waukesha to nearly quadruple the area for industrial usage, and the city of Pewaukee to more than double the land area for industrial usage, during that period.⁴⁶ Providing diverted water to those communities will inevitably facilitate such development.

As the 2004 memo to the Waukesha Water Utility stated regarding a diversion to another Waukesha County city, the “sale of water to New Berlin will create competition for industrial development between Milwaukee and New Berlin that may result in a loss of industry and

⁴⁵City of Waukesha Comprehensive Plan, Ch. 7 (Land Use Element), at 7-10 to 7-11 (projecting 24% increase in land for commercial development and 76% increase for residential development) (viewed 8/19/15 at http://www.ci.waukesha.wi.us/c/document_library/get_file?uuid=a3fc4b11-e352-4ae4-bcf1-31b69553cde8&groupId=10113)

⁴⁶Waukesha County Comprehensive Plan, Ch. 7 (Land Use Element), at 7-20 and 7-30 (calculated from comparisons of 2000 and 2035 land for industrial purposes) (viewed 8/19/15 at https://www.waukeshacounty.gov/uploadedFiles/Media/PDF/Parks_and_Land_Use/Land_Information/Development_Plan/Chapter%207%20Land%20Use%20print%20ready.pdf)

related property tax revenues to Milwaukee.” Memorandum to Waukesha Water Utility at 1. That is equally – if not even more – true with respect to a water diversion to the City of Waukesha and its surrounding communities.

III. In Light of Pervasive Segregation and Discrimination – and in Light of a Reasonable Alternative that Serves Existing Users - the DEIS Must Evaluate Reasonable Alternatives to Constrain Sprawl.

It is one thing for a water diversion application to seek to serve an existing community that has no other alternative. It is quite another for a community to seek to divert water not only to meet its current needs, but to support and undergird industrial, commercial and residential expansion – especially when the benefits of that expansion exclude communities of color, especially African-Americans, in the region.

And the requested diversion is not needed to serve an existing “community” in need of water, as the Great Lakes Compact requires. As comments and studies submitted by others, such as the Compact Implementation Coalition, make clear, the city of Waukesha *could* meet its water needs without diverting Lake Michigan water. That it *wants* more water to support future growth and expansion in the city itself, and to serve a vastly expanded service area, does not justify the diversion. Thus, the environmental review process must consider the reasonable alternative of limiting growth and development in Waukesha, and of excluding the expanded service area, in evaluating the feasibility of other water supply alternatives.

Moreover, as discussed above, Title VI and environmental justice require consideration of the effects on communities of color, especially African-Americans, of diverting Lake Michigan water to Waukesha. The diversion application relies on a SEWRPC-drafted map that adds 17 square miles to its water supply service area - thus promoting growth not only in Waukesha, but also farther from Waukesha’s downtown, bus lines, public services, job market and somewhat affordable housing, into less-accessible parts of the city and into communities even more segregated than the city of Waukesha itself.⁴⁷ It is clear that communities of color in

⁴⁷ Waukesha may claim that its diversion will not have these adverse and segregative effects. The application, however, fails to address those issues, much less do so based on adequate, current information. Although Waukesha’s diversion application is based in significant part on SEWRPC’s Regional Water Supply Plan, and although that plan claims that population growth, racial and ethnic residential patterns and job growth would not be significantly affected by the diversion, *see*, “A Regional Water Supply Plan for Southeastern Wisconsin,” SEWRPC (Dec. 2010), Vol. 1 at 700 (viewed 8/26/15 at <http://www.sewrpc.org/SEWRPCFiles/Publications/pr/pr-052-regional-water-supply-plan-vol1.pdf>), those current patterns *already* perpetuate segregation and discrimination. In fact, the underlying “Socio-Economic Impact Analysis of the Regional Water Supply Plan for Southeastern Wisconsin,” Univ. of WI –Milwaukee Center for Economic Development (July 2010) at Ch. 7, pp 2-4 (viewed 8/26/15 at http://www4.uwm.edu/ced/publications/seianalysis_2010a.pdf) confirmed the serious socioeconomic disparities that exist between the urban communities, such as Milwaukee, and the

the region – and especially African-Americans - will derive few (if any) benefits from diverting Lake Michigan water to these suburban communities, while the increase of suburban sprawl development will profoundly burden them. By failing to evaluate the possibility or potential effects of slowing or limiting growth in communities such as the City of 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 its ambitious goals for substantial future growth and annexation, the DEIS and Technical Review not only ignore critical environmental laws, including the Great Lakes Compact itself, but they ignore the interrelated social and economic effects of those decisions and the racially discriminatory effects of doing so.⁴⁸

At the same time, an adequate analysis that appropriately addresses civil rights issues must also consider the potential benefits that may accrue to communities of color in the region if

suburban communities who want to obtain diverted water from Lake Michigan. As the report explicitly stated, “[t]he data indicate that over the past 50 years, there has been an outward migration of population and jobs from the large lakeshore manufacturing cities to the outlying counties, suburbs, and exurbs. The loss of a manufacturing-based economy and the movement of economic and development activity inland created a negative impact on jobs and income in the historic central city areas. . . Racial and ethnic minority and low-income populations have been disproportionately affected, and these populations have become increasingly concentrated in the cities of Kenosha, Milwaukee, and Racine.” *Id.* at 185-6.

Moreover, the Analysis was based on the understanding that development in Waukesha would be primarily infill and incremental growth. *Id.* at 187. As discussed *supra* Secs. II.A,E, however, it is clear that much more expansive growth is planned, growth that will inevitably further disadvantage communities of color in the region.

Finally, this Analysis recognized that these profound disparities could be addressed and alleviated by intergovernmental cooperation agreements between the suburban communities seeking water and the urban communities profoundly burdened by regional residential and job segregation, and explicitly stated that “[t]hese issues need to be addressed *prior to an evaluation* of each of the six recommendations under the RWSP.” *Id.* at 187 (emphasis added). That clearly did not occur.

⁴⁸As others, such as the Compact Implementation Coalition, have separately noted, the expansion of the City of Waukesha’s water service supply area to include communities which have no current or demonstrable future need for Lake Michigan water, and which have neither implemented water conservation programs nor adopted plans to do so in the future, makes the diversion application inconsistent with the Compact’s requirements. This is particularly true because SEWRPC’s conclusions regarding the lack of adverse effects of a diversion were expressly predicated upon technical and scientific information concluding that existing groundwater sources in southeastern Wisconsin, if properly managed, are of sufficient quantity and quality to support projected growth through the year 2035, and thus that there are reasonable alternatives to the supply of Lake Michigan water to other communities until at least 2035. Regional Water Supply Plan (Vol. 1) at 386.

diverted water is not provided to Waukesha and communities around it and growth is thereby limited. For example, because all industry requires some access to water, if Lake Michigan water is not sent outside Milwaukee or outside the basin, greater benefits are likely to accrue to the African-American residents largely excluded from Waukesha, by keeping water resources that attract and retain jobs and industry in Milwaukee. This is even more likely to be the 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.⁴⁹ It also would be far more likely to provide jobs accessible by public transit in Milwaukee, reducing disparities in access to employment. Facilitating growth in Milwaukee, while limiting exurban expansion, might also reduce, or at least constrain, the substantial and increasing segregation in the region. Clearly, those would be benefits within the meaning of Title VI and environmental justice requirements. They certainly cannot be ignored.

The failure of Waukesha's application, and of the DEIS and Technical Review, to address these issues is reason enough to deny the Application.

⁴⁹Joe 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) (viewed 8/19/15 at <http://www.wsj.com/articles/SB125955035029769013>).

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