

BEFORE THE STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL MANAGEMENT DIVISION

FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND DIVERSION APPROVAL

The Wisconsin Department of Natural Resources (DNR) has the authority under Wis. Stat. §§ 281.343(4n)(a) and 281.346(4)(c), to approve a diversion of Great Lakes water to an area within a straddling community but outside of the Great Lakes basin if certain conditions are met. DNR has reviewed an application for a proposed diversion from the Village of Somers and issues the following Findings of Fact, Conclusions of Law and Diversion Approval.

FINDINGS OF FACT

The Department of Natural Resources (DNR) finds that:

- 1) The Village of Somers (applicant) applied to DNR for a diversion of Great Lakes water under Wis. Stat § 281.346(4)(b) on February 17, 2021.
- 2) The application and supplemental materials included the following: The Village of Somers Application (application) for a Water Diversion; The Village of Somers Water Supply Service Area Plan; The Village of Somers Water Conservation and Efficiency Plan; A letter of support from the Kenosha Water Utility, dated October 7, 2020; Responses to the Department of Natural Resources request for additional information (Baxter and Woodman), dated July 26, 2021, September 17, 2021, and January 13, 2022; and a revised Diversion Application, Water Supply Service Area Plan and revised Water Conservation and Efficiency Plan dated September 27, 2021.
- 3) The applicant owns and operates a public water supply system which provides Lake Michigan water for public water supply purposes to the Village of Somers.
- 4) The Somers Water Utility is a public water system as defined by Wis. Admin. Code § NR 810.02(56), specifically meeting the definition of a community water system, and is a public water utility under Wis. Stat. § 196.01(5), subject to the Public Service Commission of Wisconsin (PSC) regulation.
- 5) The Somers Water Utility distributes water to the public through a physically connected system of treatment, storage and distribution facilities serving a group of largely residential customers and also serves industrial, commercial and other institutional customers.
- 6) In 2020 the Village of Somers Water Utility served water to 1,224 customers including 1,010 single family residential customers, 114 multifamily residential customers, 76 commercial customers, two industrial customers, and 22 public authority customers. (see Village of Somers letter, response to 12-15-21 questions, dated January 13, 2022) Ninety-two percent of the Village of Somers existing water utility customers are residential customers.

- 7) The diversion application proposes to expand Somers Water Utility service to portions of the Village of Somers within the Mississippi River basin. The areas outside the Great Lakes basin to which the Somers Water Utility proposes to extend Lake Michigan water are currently served by private wells. The proposed diversion area includes industrial, commercial, residential, and public authority customers. See Attachment A.
- 8) Portions of the Town of Somers were located in the Mississippi River Basin and in the Lake Michigan Basin on December 8, 2008, the Compact's effective date.
- 9) Portions of the Town of Somers incorporated as the Village of Somers in 2015. The Village of Somers annexed portions of the Town located in the Mississippi River Basin in 2016.
- 10) In 2021, the Village of Somers attached a portion of the Town of Paris, pursuant to a 2017 cooperative plan and intergovernmental agreement. The area that was attached to the Village of Somers is within the Mississippi River Basin.
- 11) Portions of the Town of Paris were located in the Mississippi River Basin and in the Lake Michigan Basin on December 8, 2008, the Compact's effective date.
- 12) The applicant requests to divert up to an annual average of 1,200,000 gallons of water per day to the area within the Village of Somers that lies outside the Great Lakes basin in the Mississippi River Basin.
- 13) The Kenosha Water Utility has a water use permit, dated Dec. 8, 2011, issued pursuant to Wis. Stat. § 281.346(5)(c), with an approved water withdrawal amount of 35,680,000 gallons a day, as determined under Wis. Stat. § 281.346(4g), and established as the baseline per Wis. Stat. §§ 281.343(4t)(b) and 281.346(4e). The Kenosha Water Utility reported to the DNR that it withdrew an average of 14,477,765 gallons per day in 2020. The Kenosha Water Utility has sufficient capacity to supply the proposed diversion within Kenosha's baseline withdrawal amount.
- 14) The application indicates that consumptive use is expected to be 10 percent of the water diverted based on the USGS report *Consumptive Water-use Coefficients for the Great Lakes Basin and Climatically Similar Areas*.
- 15) The proposed diversion will result in a new water loss from consumptive use of up to 120,000 gallons per day. This consumptive use level is under the 5,000,000 gallons per day threshold that would require regional review by the regional body, under Wis. Stat. §§ 281.343(4n)(a)3. and 281.346(4)(c)4, Compact Section 4.9.1.c. and Agreement Article 201 1.c.
- 16) The applicant proposes to return all the diverted water, less an amount of consumptive use, to the basin through the Kenosha wastewater treatment plant. The Kenosha wastewater treatment plant discharges to Lake Michigan. The discharge is regulated by a Wisconsin Pollutant Discharge Elimination System (WPDES) permit, issued pursuant to Wis. Stat. § 283.31.
- 17) The Kenosha wastewater treatment plant combines water from inside and outside the Great Lakes Basin.
- 18) The wastewater will be treated to prevent non-native and invasive species from being introduced to the Great Lakes Basin
- 19) Return flow of Lake Michigan water will be maximized and Mississippi River Basin water will be minimal. The only Mississippi River Basin water that will be included in the return flow will be through infiltration and inflow. Infiltration and inflow of Mississippi River water will be limited because of the new infrastructure for wastewater within the Village of Somers diversion area.

- 20) The Village of Somers Water Conservation and Efficiency plan includes the required elements identified in Admin. Code NR 852, including meeting Tier 3 requirements.
- 21) The DNR held a virtual public hearing on November 10, 2021, to give interested persons an opportunity to comment on the diversion application. Prior to the public comment portion of the hearing, the DNR held an informational meeting and question and answer session.
- 22) The DNR issued a summary of the comments and a response to comments on February 23, 2022 which includes additional information.
- 23) The DNR approved the water supply service area plan on February 23, 2022.

#### CONCLUSIONS OF LAW

DNR concludes that:

- 1) The Village of Somers's diversion application complies with the requirements of Wis. Stat. § 281.346(4)(b).
- 2) The Somers Water Utility operates a public water supply system, as defined by Wis. Admin. Code § NR 810.02(56), that would receive water from the proposed diversion.
- 3) The Village of Somers is a "straddling community," as defined in Wis. Stat. § 281.346(1)(t).
- 4) The Town of Paris is a "straddling community," as defined in Wis. Stat. § 281.346(1)(t).
- 5) The diversion proposal is governed by the requirements of Wis. Stat. § 281.346(4)(c) because the proposal is to provide a public water supply within a single "straddling community."
- 6) The proposed diversion is for "public water supply" purposes, as defined in Wis. Stat. § 281.346(1)(pm) (see also Wis. Stat. § 281.343(1)(pm)) and in compliance with Wis. Stat. § 281.346(4)(c)(intro.), because the Somers Water Utility currently serves and will continue to serve a group of largely residential customers. The Utility will also serve industrial, commercial, and other institutional customers within the Village.
- 7) The Village of Somers's diversion application complies with the requirements of Wis. Stat. § 281.346(4)(c)1., because an amount of water equal to the amount of water withdrawn from the Great Lakes basin, less an allowance for consumptive use, will be returned to Lake Michigan.
- 8) The Village of Somers's diversion application complies with the requirements of Wis. Stat. § 281.346(4)(c)2., because the water will be treated to meet applicable state and federal water quality discharge standards and returned to Lake Michigan through the Kenosha wastewater treatment plant. The proposal maximizes the amount of diverted water that will be returned and minimizes the amount of Mississippi River Basin water that will be returned to Lake Michigan. The returned water will be required to meet applicable water quality discharge standards under Wis. Stat. § 283.31 and to prevent the introduction of invasive species into the Great Lakes basin.
- 9) The Village of Somers's submitted Water Conservation and Efficiency Plan meets the requirements of Wis. Admin. Code § NR 852.07, promulgated pursuant to Wis. Stat. § 281.346(8).
- 10) The Village of Somers's proposed diversion is consistent with the water supply service area plan that is approved by the DNR as required by Wis. Stat. § 281.346(4)(c)2m.

- 11) The requirements of Wis. Stat. § 281.346(4)(c)3. do not apply because the proposal will not result in a new withdrawal or an increase in a withdrawal that would average 100,000 gallons or more per day in any 90-day period.
- 12) The requirements of Wis. Stat. § 281.346(4)(c)4. do not apply because the proposal will not result in a new water loss or an increase in water loss from consumptive use that would average 5,000,000 gallons or more per day in any 90-day period.
- 13) DNR complied with the public notice and comment and public hearing procedures set forth in Wis. Stat. § 281.346(9).

### APPROVAL

The Wisconsin Department of Natural Resources (DNR), pursuant to its authority in Wis. Stat. § 281.346(4) hereby approves the Village of Somers's proposal to divert Lake Michigan water to an area outside of the Great Lakes basin and approves the water conservation plan, dated September 27, 2021. This approval supersedes and voids any other previous diversion approvals to the Town of Somers or the Village of Somers. This approval is subject to the terms and conditions described in this approval.

#### 1. Approved Diversion Area

The approved diversion area includes part or all sections of 0602N22E, 0502N22E, 0702N22E, 0802N22E, 1802N22E, 1702N22E, 1902N22E, 2002N22E, 3002N22E, and 1302N21E in Kenosha County. Attachment B entitled "Approved Village of Somers Diversion Area" shows the approved diversion area and is included herein for reference.

The subcontinental divide boundary between the Lake Michigan basin and the Mississippi River basin is identified as the watershed boundary between Hydrological Unit Code 04 and Hydrological Unit Code 07 identified in the National Hydrography Dataset available from the United States Geological Survey.

#### 2. Approved Diversion Amount

Lake Michigan water diverted pursuant to this approval shall be used solely for "public water supply" purposes, as defined in Wis. Stat. § 281.346(1)(pm), in the approved diversion area. The DNR approves a maximum diversion amount of 1,200,000 gallons per day averaged over a calendar year.

#### 3. Conservation and Efficiency Plan

The Village must implement the Village's approved Water Conservation and efficiency plan. The Village shall implement conservation and efficiency measures (CEMs) as required in Table 1 and Table 2 of NR 852 and implement additional CEMs identified in the Water Conservation and Efficiency plan. The Village shall update the Water Conservation and Efficiency Plan every 10 years or sooner as needed to remain in compliance with NR 852.

#### 4. Monitoring

The approved diversion amount shall be monitored by the Village of Somers by measuring water sales or usage by customers of Somers's Water Utility. The Village of Somers shall accurately report to DNR the amount of water diverted to the Mississippi River Basin, as specified in section 6 below.

The Village shall use the boundary between the Hydrological Unit Code 04 and Hydrological Unit Code 07 identified in the National Hydrography Dataset available from the United States Geological Survey to determine the boundary between the Great Lakes basin and the Mississippi River Basin.

As customers are added to the Village's water utility, the Village shall update its database of water utility customers to assign each customer of the utility to either the Lake Michigan basin or the Mississippi River basin. Where the basin line passes through a single parcel, the Village shall assign the water customer or customers that occupy that parcel to the basin in which the junction of the water main and the service line to the parcel is located. Any alternative method of assigning water customers to either the Lake Michigan basin or the Mississippi River basin must be approved by the DNR.

The Village shall assign each water utility customer within the approved diversion area to one of the Public Service Commission (PSC) categories of water user.

The Village shall maintain records of quarterly or monthly, if available, sales to each water customer within the approved diversion area. The Village shall read all meters within two weeks of the close of each quarter or month. The Village may reassign a customer to another category to reflect water user changes.

Each new customer the Village adds outside of the Great Lakes Basin will be identified as such in the Village's records to monitor and record all sales or delivery of water to the diversion area.

## 5. Return Flow

All water diverted, less an allowance for consumptive use, shall be returned to the Lake Michigan basin. Discharge from the Kenosha Wastewater Treatment Plant to Lake Michigan is required to meet all applicable WPDES permit requirements under Wis. Stat. § 281.31 and to prevent the introduction of invasive species into the Lake Michigan basin. Any industrial discharger within the diversion area will be required to meet federal, state and local requirements under the Kenosha Wastewater Utility's pretreatment program. All water returned from the diversion area to the Lake Michigan basin will be routed through and treated by the Kenosha Wastewater Utility.

The Somers Water Utility shall monitor return flow from the diversion area. Return flow from within the approved diversion area shall be monitored and reported separately from return flow from areas outside of the diversion area. The Utility is required to obtain approval from DNR for the methods for monitoring and estimation of sanitary sewerage system return flow and the methods shall be consistent with best engineering practices.

All new water supply customers in the diversion area must simultaneously connect to sewer service<sup>1</sup> with return to the Kenosha Wastewater Treatment Facility.

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<sup>1</sup> On October 23, 2018, the DNR approved a request to amend the regional water quality management plan as detailed in the SERWPC Community Assistance Planning Report No. 147 (2<sup>nd</sup> Edition) *Sanitary Sewer Service Area for the City of Racine and Environs, Racine and Kenosha Counties, Wisconsin*, which was formally adopted by the Regional Planning Commission on September 12, 2018.

6. Reporting

On or before March 1<sup>st</sup>, on an annual basis, the Village of Somers shall report to DNR the following information for the prior calendar year:


1. The total amount of water diverted monthly within the approved diversion area.
2. The total amount of water sold quarterly (or sold monthly if monthly data is available) to each category of customer within the approved diversion area.
3. The total monthly sewerage flow to the City of Kenosha Wastewater Plant from the diversion area.
4. The total consumptive use as specified by the DNR.
5. A summary of the impact of the implemented Conservation and Efficiency Measures (CEMs) required under Wis. Admin. Code §§ NR 852.04 and NR 852.05, including quantifiable impacts to water use intensity, as defined in Wis. Admin. Code § NR 852.03(29).
6. A description of any additional CEMs implemented.

7. Non-Compliance

Failure to comply with the terms of this approval is subject to the penalty provisions in Wis. Stat. § 281.346(14).

8. Revisions


If the Village of Somers wishes to revise the approved diversion amount or the approved diversion area, the Village shall apply to DNR for approval, in accordance with the requirements in Wis. Stat. § 281.346(4) and any administrative rules promulgated by the DNR to implement this statute.

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James Zellmer, Deputy Division Administrator  
Division of Environmental Management

Date

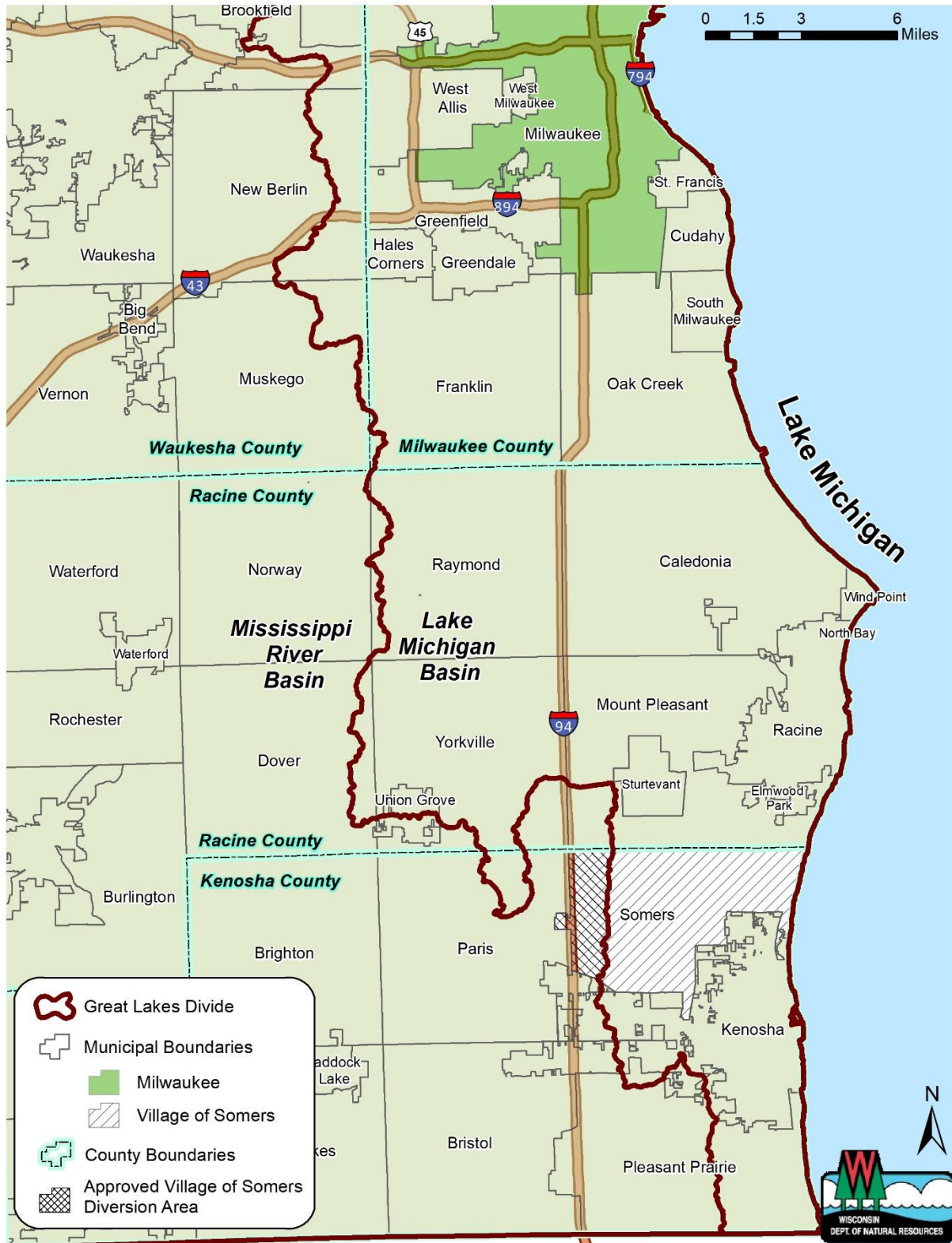
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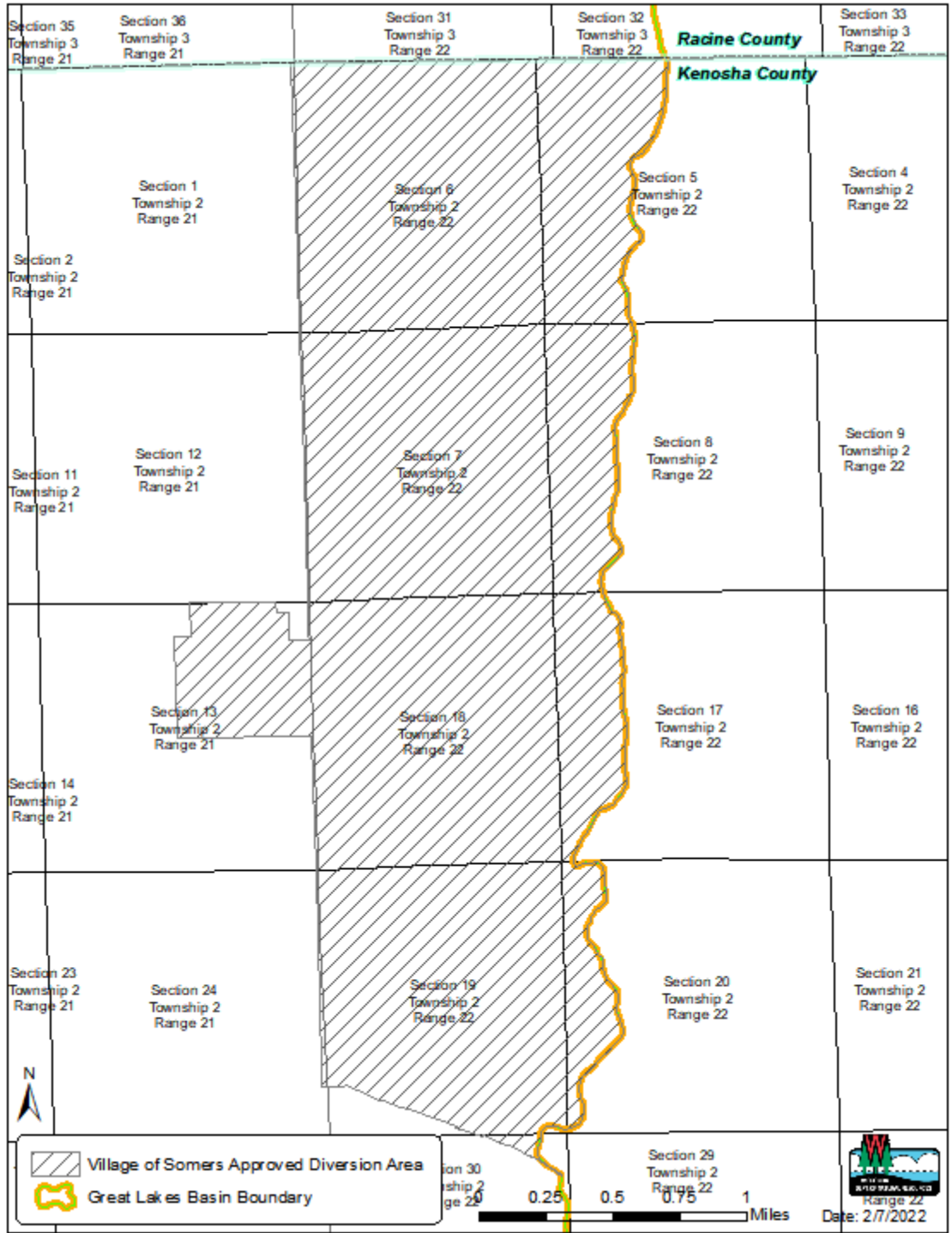
Adam Freihoefer, Chief  
Water Use Section  
Bureau of Drinking Water & Groundwater

Date

Attachment A - Diversion Area within Southeast Wisconsin



Attachment B – Diversion Area Map (Village of Somers, Sections)





## Appeal Rights

If you believe that you have a right to challenge this decision, you should know that Wisconsin Statutes and Administrative Rules establish time periods within which requests to review Department decisions must be filed. For judicial review of a decision pursuant to Sections 227.52 and 227.53 of the State Statutes, you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review must name the Department of Natural Resources as the Respondent.

To request a contested case hearing pursuant to Section 227.42 of the State Statutes, you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources. The filing of a request for a contested case hearing is not a prerequisite for judicial review and does not extend the 30-day period for filing a petition for judicial review.

All requests for contested case hearings must be made in accordance with section 227.42, Wis. Stats., and section NR 2.05(5), Wisconsin Administrative Code, and served on the Secretary in accordance with section NR 2.03, Wisconsin Administrative Code. Pursuant to Section NR 2.05(5), Wisconsin Administrative Code, and Section 227.42, Wis. Stats., the Petitioner is required to include specific information demonstrating the following:

1. The substantial interest of the Petitioner which is injured in fact or threatened with injury by Department action or inaction;
2. That there is no evidence of legislative intent that this interest is not to be protected;
3. That the injury to the Petitioner is different in kind or degree from the injury to the general public caused by the Department action or inaction; and
4. That there is a dispute of material fact (you must specify the disputed fact(s)).