

March 13, 2009

Robert Biebel  
Southeastern Wisconsin Regional Planning Commission  
P.O. Box 1607  
Waukesha, WI 53187-1607

ALSO SUBMITTED VIA FAX, 262-547-1103

RE: *Comments on Water Supply Study and Environmental Justice*

Dear Mr. Biebel:

We are submitting these comments to express our concern that SEWRPC's Water Supply Study violates federal civil rights regulations and environmental justice requirements. As you know, this study was completed by an almost entirely all-white advisory committee, with no representation from organizations representing communities of color and low income communities. Further, the scope of the study - as well as its content - was itself defined by these unrepresentative entities.

We are requesting that you ensure that the Water Supply Study *not* be finalized at this time. Instead, the Water Supply Study must remain pending until there has been meaningful outreach to, meaningful involvement of, and meaningful consideration of the potential effects, and meaningful mitigation of potential adverse effects, of various water proposals on, communities of color and low income communities throughout the region. As set forth below, SEWRPC's own prior commitments, as well as federal civil rights requirements, make it clear that specific evaluation of the effects of the Water Supply Study on low income and minority communities is required before the plan can be finalized.

### **COMPLIANCE WITH EJTF REQUESTS**

The draft Water Supply Study has not complied with recommendations of SEWRPC's Environmental Justice Task Force (EJTF). A failure to do so before the plan is finalized will evidence an intentional violation of civil rights and environmental justice requirements.

On Nov 27, 2007, SEWRPC Executive Director Philip Evenson specifically informed the Environmental Justice Task Force that SEWRPC was looking to the EJTF for guidance "with respect to analyses that should be conducted to consider the impacts of the [Water

Supply Study] alternatives on minority and low income populations.” (EJTF minutes of 11/27/07, p. 5).

On March 18, 2008, SEWRPC’s then-Assistant Director Kenneth Yunker reiterated that the EJTF “has been asked to help define any of the environmental justice considerations to be used in the plan evaluations.” (EJTF minutes of 3/18/08, pp. 7-8).

On Oct. 14, 2008, the Environmental Justice Task Force provided this guidance. The EJTF overwhelmingly recommended, with only a single “no” vote, that “**every SEWRPC plan, i.e.** housing, land use, transportation, **water**, etc. will **incorporate a socio-economic impact analysis by a reputable, independent source** other than SEWRPC before the plan may be adopted to meet the guidelines and specific purposes of the Environmental Justice Task force [sic] as outlined by SEWRPC.” (emphases added). (EJTF minutes of 10/14/08, pp. 8-9). This analysis needs to occur - and any recommendations from it meaningfully evaluated and implemented - before the Water Supply Study is finalized.

#### **UNREASONABLE FAILURE TO ADDRESS EFFECTS OF NONCOMPLIANCE WITH REGIONAL PLANS**

SEWRPC’s failure to meaningfully evaluate civil rights and environmental concerns is compounded by its unreasonable refusal to discuss the possibility, if not the likelihood, that communities seeking water will not be in compliance with the regional land use plan.

At a March 18, 2008 meeting of the EJTF, you were asked by an EJTF member whether the Water Supply Study would consider “worst case” scenarios, *i.e.*, water needs related to community non-compliance with the land use plan. You stated that the Study would not consider such scenarios and would instead be limited to assuming implementation of the land use plan. (EJTF Minutes of 3/18/08, p. 6.)

Whether or not SEWRPC in all situations must evaluate “worst case scenarios,” it is completely unreasonable for SEWRPC to ignore the likelihood of non-compliance where, as here, such non-compliance has routinely occurred in the past. 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. (EJTF Minutes of 3/18/08, p. 5.)

The refusal to evaluate the potential effects of non-compliance with regional land use plans raises serious environmental justice concerns. Pabst Farms, for example, which was developed despite land use plan recommendations that such development not occur, has few

residents of color or low income residents.<sup>1</sup> Other developments that have occurred counter to land use plan recommendations may well be the same. Development of these communities also exacerbates segregated residential patterns - and Milwaukee/Waukesha is, overall, the most racially segregated region for African-Americans in the entire United States<sup>2</sup> - and if these or other localities use an increased water supply to facilitate or accelerate sprawl development, segregated residential patterns may worsen. At a minimum this potential problem needs to be investigated and evaluated as part of the Water Supply Study, not ignored.

Conversely, if water supply recommendations are structured in a way that disadvantages non-compliant development, low income and minority communities in urban centers may well benefit. Again, this is an issue that the Water Supply Study must address, and the failure to do so violates civil rights and environmental justice requirements.

### **FAILURE TO EVALUATE ADDITIONAL ENVIRONMENTAL JUSTICE RECOMMENDATIONS**

Finally, the Water Supply Study has failed to address issues raised by organizations representing low income and minority communities other than the EJTF, and has failed to evaluate identified methods of ensuring that low income and minority communities are not unfairly burdened by the potential sale of water to suburban communities.

For example, in a letter sent to SEWRPC on Sept. 7, 2007, multiple community organizations articulated civil rights deficiencies in the Water Supply Study process. A copy of that letter is attached.

Unfortunately, SEWRPC's draft Water Supply Study has not addressed those deficiencies. The Water Supply Study never collected data on the racially segregated residential and employment demographic patterns in the region, nor evaluated whether supplying Lake Michigan water to additional communities could exacerbate those patterns. The Water Supply Study never evaluated whether shifting to multifamily affordable housing

---

<sup>1</sup>There have also been concerns expressed - but not evaluated in the Water Supply Study - that Pabst Farms may have exacerbated the severity of flooding in the region. *See, e.g.,* Scott Williams, "Summit officials may set up special tax district for flood cleanup," *Milwaukee Journal Sentinel* (Posted Feb. 3, 2009).

<sup>2</sup>*See*, "Residential Segregation of Blacks or African Americans: 1980 to 2000," U.S. Census Bureau (Dec. 2004), Ch. 5 and Fig. 5.3

could facilitate water conservation (a suggestion raised by the EPA and mentioned in that letter), and, concurrently, reduce some of those disparities. The Water Supply Study failed to investigate reverse effects, that is, whether declining to supply Lake Michigan water to communities that do not now receive it could assist in reversing some of the segregated residential and employment patterns in the region.

In addition, as SEWRPC is also aware, several years ago the City of Milwaukee Common Council unanimously voted that any water diversion request must “minimize residential, industrial and commercial sprawl, and the accompanying air and water pollution;” “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]equire 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.” City of Milwaukee Resolution 040646. Moreover, on March 18, 2008, SEWRPC Executive Director Evenson stated that the Water Supply Plan could be used as a basis for requiring assurances from communities receiving water to address such issues as housing, transportation and economic development. (EJTF minutes of 3/18/08, p. 5). Yet nothing in the Water Supply Study discusses these issues, and there is no mention of such potential solutions in the recommendations section (or anywhere) in the study. The Study also fails to evaluate the potential benefits to low income and minority communities that could occur if such assurances were required.

Again, well before the Water Supply Study was completed, SEWRPC was specifically requested to consider these issues. Its failure to address *any*, much less all, these concerns is further evidence of its intentional disregard of environmental justice and civil rights requirements.

Submitted by:

Dennis Grzezinski  
Environmental Attorney  
Former Commissioner,  
Milwaukee Metropolitan Sewerage District  
312 E Wisconsin Ave. # 210  
Milwaukee WI 53202

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

Robert Theine Pledl  
Disability Law Attorney  
1110 N. Old World Third St. # 215  
Milwaukee WI 53203

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

Karen Schapiro  
Executive Director  
Midwest Environmental Advocates  
551 W. Main Street, Suite 200  
Madison WI 53703

Gretchen Schuldt  
Co-Chair  
Citizens Allied for Sane Highways  
P.O. Box 080215  
Milwaukee WI 53208

cc: Kenneth Yunker, Executive Director, SEWRPC  
Todd Ambs, Wisconsin Dept. of Natural Resources  
Alan Walts, Environmental Justice Program Manager, US EPA - Region 5  
Charles Lee, Acting Director - EPA Office of Environmental Justice