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## Testimony on 2021 Senate Bill 488

Senator Robert Cowles

Senate Committee on Utilities, Technology and Telecommunications

August 26th, 2021

Thank you, Chairman Bradley and Committee Members, for holding a hearing and allowing me to testify on 2021 Senate Bill 488. This bill reduces the number of utilities required to get approval on a water supply service area plan and removes certain requirements on the creation of these plans.

Under current law, water utilities serving a population of 10,000 residents or more must prepare a water supply service area plan and have that plan approved by the Department of Natural Resources (DNR) no later than December 31, 2025. Following approval of the plan, if a public water utility then seeks to perform construction activities that the DNR deems are not in conformance with the applicable water supply service area plan, the DNR is required to disapprove of the water utility's construction plan.

The water supply planning process was created from introduction to signing into law in less than a month – a hasty yet necessary process to join the Great Lakes Compact in 2008 – to try to mimic requirements on wastewater utilities. **However, this new water supply service area planning process was not a requirement of the Great Lakes Compact, nor was the provision limited only to areas using or seeking to use Great Lakes' water.** Further, the DNR has confirmed, in the process of bill drafting, that these changes will not impact compliance with the Great Lakes Compact.

Additionally, wastewater and water utility regulations are not comparable in how these entities are regulated by the state. Wastewater utilities are generally solely regulated by the DNR, while water utilities are regulated by the DNR for technical compliance and the Public Service Commission of Wisconsin (PSC) for the cost-effectiveness of their service and for ratepayer protection. The water supply service area planning process would place the DNR in the role of regulating cost, which could lead to conflicting regulatory decisions or orders between the DNR and PSC and definitely would create more unnecessary regulatory hoops.

Senate Bill 488 relaxes the red tape on local water utilities by limiting the water supply service area plan approval requirement to only certain utilities within the Great Lakes basin, retains consistency with PSC oversight by not creating an additional approval step, and provides additional flexibilities to the water utilities that must submit a plan. More detailed, this legislation makes the following changes to the water supply service area planning requirements:

1. Instead of all water utilities, the bill only requires the approval of plans by the DNR and the cost-effectiveness analysis for water supply alternatives in a utility's plans that involve new or increased diversions or withdrawals of water from the Great Lakes basin.
2. Instead of requiring the identification of measures for implementing and enforcing the plan and a stated commitment to those measures, the bill eliminates that requirement and states that a plan must identify procedures for implementing and updating the plan.

3. Senate Bill 488 eliminates the law's required responsibilities on a regional water quality planning agency in this process, but retains their current law authority for the agency to provide regional water needs assessments and other regional water supply planning information.
4. Instead of requiring approval by all governing bodies impacted by the water supply service area plan, the bill only requires that a plan is submitted to those local governmental bodies.
5. The bill eliminates the criteria that the plan may not be approved by the DNR unless it is consistent with any applicable approved area water quality management plan.
6. Finally, Senate Bill 488 provides that a plan does not create an obligation for any water utility to provide service to the area delineated in the plan and prohibits the PSC from requiring a utility to extend or provide service to an area on the basis of the provisions of a plan.

This bill still maintains the requirement that water utilities serving a population of greater than 10,000 must create a water supply service area plan, ensuring the forethought that comes with drafting a plan. However, as stated above, those plans will not have to be submitted for approval unless there is an increased or new diversion or withdrawal of Great Lakes water. For those limited utilities that will need to submit a plan as a result of an increased or new diversion or withdrawal, this closer look by the state will help to ensure our continued compliance with the Great Lakes Compact, but the additional flexibilities provided in the changes to the statutes as described above will help to ease the burden of the planning process and requirements. But since most water utilities will not be seeking new or increased diversions or withdrawals, including utilities outside of the basin and straddling areas that are not authorized to seek to use Great Lakes water, Senate Bill 488 ensures these utilities do not have the unnecessary burden of seeking approval on their water supply service area plan.

In short, Senate Bill 488 makes common-sense changes to water supply service area regulations that provide for advance planning while removing some regulatory hurdles. According to the DNR, up to 90 utilities serve at least 10,000 residents, and only three have submitted a plan thus far, with each plan taking up to 100 hours for DNR staff to review and approve. The time to pass this bill is now before the regulatory burdens and conflicting orders set in for Wisconsin's water utilities starting in 2025.

Attached to my testimony I've included text from an email from Brian Larson at Legislative Council confirming that **passing this legislation will not impact Wisconsin's compliance with or ability to enforce the Great Lakes Compact.** I believe the DNR will also be testifying today and may speak to this further.

**From:** Larson, Brian <Brian.Larson@legis.wisconsin.gov>  
**Sent:** Wednesday, August 25, 2021 11:20 AM  
**To:** Miller, Evan <Evan.Miller@legis.wisconsin.gov>  
**Subject:** FW: Water Supply Service Area Planning

Hi Evan – I am writing to follow up on our conversation this week, regarding [SB 488](#) and its potential impact on compliance with the [Great Lakes Compact](#).

As background, the state implements the Great Lakes Compact through provisions in [ch. 281, Stats.](#) Among other requirements, the Department of Natural Resources (DNR) must comply with certain procedures relating to any “diversion” or “withdrawal” from the Great Lakes basin. These procedures require DNR to utilize information in “water supply service area plans” in applicable cases. [[see s. 281.346 \(4\)-\(4g\), Stats.](#)] State law provides that a person who operates a public water supply system that serves a population of 10,000 or more and withdraws water from the state water supply must prepare a water supply service area plan, which must be approved by the Department of Natural Resources (DNR) by December 31, 2025. [[s. 281.348, Stats.](#)]

Under [SB 488](#), anyone who operates a public water supply system that meets the criteria described above must prepare a water supply service area plan as currently required. But in contrast to current law, there would be no general requirement that all plans must be approved by the DNR. Also the bill removes one of the required components of the plan, relating to a cost-effectiveness analysis. However, under the bill, any plan that involves a new or increased diversion or withdrawal from the Great Lakes basin must continue to be approved by the DNR. Also these plans must include the cost-effectiveness analysis that is required of all plans under current law.

Turning to the question at hand—you asked whether [SB 488](#) would interfere with compliance with the Great Lakes Compact. The answer is no. This is because the Compact does not specifically require the creation of water supply service area plans for all public water supply systems. Instead, the Compact requires that certain steps be taken when there is a new or increased diversion or withdrawal of water from the Great Lakes basin. Currently [ch. 281, Stats.](#), contemplates that DNR will utilize information in water supply service area plans to comply with the steps for a diversion or withdrawal. [SB 488](#) will not inference with compliance, because it preserves the requirement of DNR approval and cost-effectiveness component for any plan that involves a diversion or withdrawal.

I hope this information is helpful. Please let me know if I can be of further assistance.



**Brian Larson**

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# JOHN SPIROS

State Representative • 86th Assembly District

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***Senate Bill 488***  
**August 26, 2021**  
**Testimony from Rep. Spiros**

Hello, and thank you Chairman Bradley and members of the Senate Committee on Utilities, Technology, and Telecommunications for allowing me to have the opportunity to testify on Senate Bill 488, which makes common-sense changes to water supply service area regulations.

In the 2007-08 Legislative Session, Wisconsin passed legislation to join the Great Lakes Compact and create a new water supply planning process. The framework used to create this new process followed the requirements for wastewater utilities, however it was overlooked that wastewater utilities and water utilities are regulated differently. The act set in place the requirement that water utilities serving populations of 10,000 or more must prepare a water supply service area plan and have it approved by the Department of Natural Resources (DNR) by December 31, 2025. Also, as Sen. Cowles already mentioned, the new water supply service area planning process was not a requirement of the Compact. Our bill looks to correct the unnecessary regulatory hurdles for water utility companies to comply by the timeline set in place.

Wastewater utilities are regulated by the DNR, but water utilities are regulated by the DNR and Public Service Commission (PSC). The DNR monitors for technical compliance, while PSC regulates cost-effectiveness and ratepayer protection. Based on the language from the 2008 legislation, the DNR would also assume the role of regulating cost, as this is a section in the plan which must be submitted. In the end this can lead to differing orders from the DNR and PSC and cause confusion for the utility. Senate Bill 488 will remedy this issue by eliminating the need for the DNR to review and approve all water supply plans at the planning stage, and only make approval at this stage required for plans that involve withdrawals or diversions of water from the Great Lakes basin.

Senate Bill 488 makes additional changes to the water supply service area planning requirements to allow for a more streamlined process for water utilities. The bill does all of the following:

1. Requires a plan to identify procedures for implementing and updating a plan.
2. Keeps a regional water quality planning agency's authority to provide regional needs assessments and planning information, but eliminates their requirement to designate the proposed water supply service areas in the plan.
3. Requires a plan to be submitted to local governmental bodies impacted and removes the requirement for their approval.
4. Eliminates the criteria that the plan may not be approved by the DNR unless it is consistent with any applicable approved area water quality management plan.
5. Prohibits the PSC from requiring a utility to extend or provide service to an area on the basis of the provisions of a plan.

Overall, this bill removes some of the regulatory burdens for our water utilities, while making sure that they still follow the necessary regulations to ensure that Wisconsin is in compliance with the Great Lakes Compact.

Thank you again for allowing me the opportunity to share testimony in support of this bill.



## Senate Committee on Utilities, Technology and Telecommunications

### *2021 Senate Bill 488*

### *Water Supply Service Area Plans for Public Water Systems*

*August 26, 2021*

Good afternoon Chair Bradley and members of the Committee. My name is Adam Freihoefer, and I am the Section Chief of the Water Use Section for the Wisconsin Department of Natural Resources. Thank you for the opportunity to testify, for informational purposes, on Senate Bill 488 (SB 488), related to Water Supply Service Area Planning requirements.

Under s. 281.348, Wis. Stats., created by 2007 Wisconsin Act 227, public water supply systems serving a population of 10,000 or more are required to prepare a water supply service area plan by December 31, 2025. SB 488 makes several changes to the required water supply service area plan elements in s. 281.348, Wis. Stats., including when plans would require DNR approval. Though 2007 Wisconsin Act 227 was Wisconsin's Great Lakes Compact implementation legislation, water supply service area planning requirements are Wisconsin-specific and the DNR notes these potential changes are not contrary to, nor do they revise any component of, the Great Lakes Agreement or Compact.

SB 488 still requires all communities serving a population of 10,000 persons or more to complete a water supply service area plan, however it changes when water supply plans need approval from the DNR. Under SB 488 only communities applying for a new or increased diversion of Great Lakes water or communities that would need a new or increased withdrawal from the Great Lakes basin would be required to have a water supply service area plan approved by the DNR. Communities outside of those criteria are still required to complete a plan, but the plan has fewer elements and would not require DNR approval.

SB 488 also removes the requirement that a water supply service area be consistent with an areawide water quality management plan. Current law requires consistency between a proposed diversion area, a water supply service area and an areawide water quality management plan (sewer service area). The DNR has found the linkage of all these areas problematic to implement when reviewing diversion requests under the Compact.

On behalf of the Department of Natural Resources, we thank you for your time today. I am happy to answer any questions you may have.



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To: Senate Committee on Utilities, Technology and Telecommunications  
From: Toni Herkert, Government Affairs Director, League of Wisconsin Municipalities  
Date: August 26, 2021  
RE: SB 488 – Amending Water Supply Service Area Plan Requirements

Chairman Bradley, Vice Chair Roth, and members of the Utilities, Technology and Telecommunications Committee,

My name is Toni Herkert, and I am the new Government Affairs Director for the League of Wisconsin Municipalities, representing nearly 600 municipalities, both large and small. I appreciate the opportunity to testify before you in support of SB 488. The League worked on this bill as a member of a water utility coalition with MEG Drinking Water Division. The League would also like to thank the authors Senator Cowles and Representative Spiros for introducing this common sense legislation which streamlines the preparation of water supply service area plans thus avoiding duplicate requirements by the DNR and PSC over water utility construction projects.

There are 611 municipal community water systems owned by cities, villages, towns, and sanitary districts. While the League and our municipal water systems support concrete, comprehensive water supply planning there is a major difference between wastewater utilities and water utilities. Wastewater is not a “public utility” and therefore not regulated by the Public Service Commission but by DNR rules. Water utilities are public, thus regulated by the PSC.

Currently water utility projects are reviewed by both the DNR and the PSC. The DNR reviews projects under Wis. Stat. 281.41, for technical compliance and the PSC regulates projects for cost-effectiveness and the impacts to ratepayers.

For purposes of SB 488, it is important to note that 2007 Wisconsin Act 227, the law that adopted and implemented the Great Lakes Compact and created the water supply planning requirement, based the process on a planning process for wastewater utilities solely under DNR authority. In addition, the new planning and review requirement not only applied to communities using or seeking to use Great Lakes water where a more detailed DNR review may be necessary, it applied to all communities even though it was not a requirement of the Great Lakes Compact.

SB 488 removes the duplicate review of the water supply service area plans for utilities not using or seeking to use Great Lakes water. The bill limits the DNR review to those water supply plan reviews where the Great Lakes compact would apply. The DNR would still complete the current law technical review of all water utility supply service area plans but they would not enter into the role of regulating cost for most water utilities. Retaining the PSC’s authority to review these plans, as they do for all water utility projects, removes the possibility of conflicting regulatory decisions, conditions, or requirements between the DNR and PSC.

The League supports this legislation and asks committee members to vote in favor. Thank you for your consideration. I would be happy to answer any questions you may have.

*YOUR VOICE. YOUR WISCONSIN.*



Municipal Environmental Group

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**TO:** Senate Committee on Utilities, Technology and Telecommunications  
**FROM:** Municipal Environmental Group - Water Division (MEG-Water)  
**DATE:** August 26, 2021  
**RE:** Support for SB 488 - Amending Water Supply Service Area Plan Requirements

MEG - Water, an association of 68 municipal water systems, strongly supports SB 488 which would streamline the preparation of water supply service area plans, eliminate the need for DNR approval of most plans, and avoid conflicting DNR and PSC requirements over water utility construction projects. MEG - Water sought these changes and appreciates the introduction of SB 488.

Under current law (Wis. Stat. § 281.348), public water systems that serve 10,000 or more must prepare a water supply service area plan and have that plan approved by the DNR by no later than December 31, 2025. Wisconsin Statute § 281.41(1)(c) then provides that the DNR is to disapprove of a water utility's construction plans if they are "not in conformance with" the applicable approved plan. A list of the systems impacted by Wis. Stat. § 281.348 is attached to this memo.

This water supply planning requirement was first established in 2008 as part of the state legislation adopting and implementing the Great Lakes Compact (2007 Wisconsin Act 227). This requirement was based on a comparable requirement applicable to wastewater planning. This new requirement, however, was not required by the Compact and was not limited to areas using or seeking to use Great Lakes water.

When Wis. Stat. § 281.348 was adopted, an important difference between water utilities and wastewater utilities was not taken into account. Water utilities are "public utilities" regulated by the PSC under Wis. Stat. Ch. 196, while wastewater utilities are not "public utilities" regulated by the PSC. Water utility construction projects are currently reviewed by the DNR for technical compliance (§ 281.41) and by the PSC for cost-effectiveness and impact on ratepayers. (§ 196.49; Wis. Admin. Code Ch. PSC 184.)

MEG - Water supports good water supply planning as a tool for communities and their water utilities. But this planning tool should not need DNR approval unless the plan is based on a withdrawal or diversion that would need approval under the Great Lakes Compact. A water utility is already required to obtain DNR and PSC review and approval before constructing a water project. Requiring the DNR to review and approve a water supply plan at the planning stage is unnecessary, time-consuming and may intrude on the PSC's construction review authority. The PSC and the DNR would both be separately reviewing a utility project's alternatives and cost-effectiveness and there would be a risk of contradictory evaluations and conclusions. SB 488 eliminates this risk.

SB 488 also includes provisions to simplify and streamline the preparation of water supply service area plans. MEG - Water is supportive of these changes as they eliminate unnecessary hurdles in the preparation and use of these plans.

MEG - Water asks you to support SB 488.

For further information, please contact MEG - Water's Legal Counsel, Lawrie Kobza at [lkobza@boardmanclark.com](mailto:lkobza@boardmanclark.com) or 608-283-1788.



**COMMUNITIES WITH OVER 10,000-ORGANIZED BY COUNTY**

<u>Name</u>	<u>County</u>	<u>Non-transient Population</u>	<u>DOA Population Projection</u>
ASHLAND WATER UTILITY	Ashland	9,115	8,047
GREEN BAY WATERWORKS	Brown	104,057	105,693
DE PERE WATER DEPARTMENT	Brown	23,920	24,742
HOWARD WATERWORKS	Brown	18,900	19,680
ASHWAUBENON WATERWORKS	Brown	17,730	16,880
BELLEVUE WATERWORKS	Brown	15,365	15,556
ALLOUEZ WATERWORKS	Brown	13,932	13,793
CHIPPEWA FALLS WATERWORKS	Chippewa	13,375	14,168
PORTAGE WATERWORKS	Columbia	10,300	10,186
MADISON WATER UTILITY	Dane	235,000	233,209
SUN PRAIRIE UTILITIES	Dane	33,966	34,926
FITCHBURG UTILITY DIST 1	Dane	24,500	29,177
MIDDLETON WATERWORKS	Dane	17,903	20,713
WAUNAKEE WATERWORKS	Dane	13,322	13,855
STOUGHTON WATERWORKS	Dane	12,698	12,911
VERONA WATERWORKS	Dane	10,619	12,442
OREGON WATERWORKS	Dane	10,078	10,170
DEFOREST WATERWORKS	Dane	9,400	10,347
BEAVER DAM WATER UTILITY	Dodge	16,200	16,928
STURGEON BAY WATERWORKS	Door	9,500	9,467
SUPERIOR WATER LIGHT & POWER COMPANY	Douglas	29,571	27,217
MENOMONIE WATERWORKS	Dunn	15,950	16,330
EAU CLAIRE WATERWORKS	Eau Claire	66,060	68,057
FOND DU LAC WATERWORKS	Fond du Lac	42,000	44,303
PLATTEVILLE WATERWORKS	Grant	12,268	12,569
MONROE WATERWORKS	Green	10,780	10,710
WATERTOWN WATERWORKS	Jefferson	23,945	23,952
FORT ATKINSON WATERWORKS	Jefferson	12,390	12,437
KENOSHA WATER UTILITY	Kenosha	99,218	99,841
PLEASANT PRAIRIE WATER UTILITY	Kenosha	10,754	21,599
LA CROSSE WATERWORKS	La Crosse	53,000	52,917
ONALASKA WATERWORKS	La Crosse	18,000	18,988
HOLMEN WATERWORKS	La Crosse	10,147	10,204
MERRILL WATERWORKS	Lincoln	9,661	9,724
MANITOWOC WATERWORKS	Manitowoc	34,500	33,772
TWO RIVERS WATERWORKS	Manitowoc	11,232	11,446
WAUSAU WATERWORKS	Marathon	39,106	39,090
WESTON MUNICIPAL UTILITIES	Marathon	15,045	15,467
MARINETTE WATERWORKS	Marinette	10,968	10,782
MILWAUKEE WATERWORKS	Milwaukee	647,290	590,547
WEST ALLIS WATERWORKS	Milwaukee	63,240	59,780
WAUWATOSA WATERWORKS	Milwaukee	49,064	48,314
NORTH SHORE WATER COMMISSION	Milwaukee	35,598	
OAK CREEK WATERWORKS	Milwaukee	32,104	35,830
FRANKLIN WATER UTILITY	Milwaukee	22,500	35,996
SOUTH MILWAUKEE WATERWORKS	Milwaukee	21,340	20,725
CUDAHY WATERWORKS	Milwaukee	18,659	18,071

**COMMUNITIES WITH OVER 10,000-ORGANIZED BY COUNTY**

<u>Name</u>	<u>County</u>	<u>Non-transient Population</u>	<u>DOA Population Projection</u>
WHITEFISH BAY WATERWORKS	Milwaukee	14,272	14,050
GREENDALE WATERWORKS	Milwaukee	14,046	14,366
SHOREWOOD WATERWORKS	Milwaukee	13,189	13,479
GLENDALE WATERWORKS	Milwaukee	12,883	12,483
BROWN DEER WATERWORKS	Milwaukee	12,741	12,246
MILWAUKEE COUNTY GROUNDS	Milwaukee	9,936	
SPARTA WATERWORKS	Monroe	9,522	10,066
TOMAH WATERWORKS	Monroe	9,192	9,416
APPLETON WATERWORKS	Outagamie	72,000	74,739
GRAND CHUTE TN SAN DIST 1	Outagamie	21,583	23,302
KAUKAUNA UTILITIES	Outagamie	13,430	16,278
DARBOY SANITARY DIST 1 (Village of Harrison)	Outagamie	12,000	13,000
LITTLE CHUTE WATERWORKS	Outagamie	11,040	11,729
CEDARBURG L & W COMMISSION	Ozaukee	11,900	11,919
PORT WASHINGTON WATERWORKS	Ozaukee	11,762	11,876
GRAFTON WATERWORKS	Ozaukee	11,745	11,959
MEQUON WATER UTILITY	Ozaukee	11,152	24,396
RIVER FALLS WATERWORKS	Pierce	15,229	15,835
STEVENS POINT WATERWORKS	Portage	24,551	26,490
PLOVER WATERWORKS	Portage	12,420	13,298
RACINE WATERWORKS	Racine	105,100	77,447
CALEDONIA WATER UTILITY - VILLAGE OF	Racine	21,819	25,203
CALEDONIA EAST WATER UTILITY DISTRICT	Racine	12,191	25,203
BURLINGTON WATERWORKS	Racine	9,958	10,925
JANESVILLE WATER UTILITY	Rock	62,720	63,433
BELOIT CITY OF	Rock	37,110	36,548
HUDSON WATERWORKS	Saint Croix	17,635	14,094
BARABOO WATERWORKS	Sauk	12,048	12,023
REEDSBURG WATERWORKS	Sauk	9,548	9,639
SHEBOYGAN WATER UTILITIES	Sheboygan	49,288	48,697
WHITEWATER WATERWORKS	Walworth	14,000	14,923
WEST BEND WATERWORKS	Washington	31,500	32,122
GERMANTOWN WATER UTILITY	Washington	20,027	20,590
HARTFORD WATERWORKS	Washington	15,384	15,578
WAUKESHA WATER UTILITY	Waukesha	70,718	72,042
BROOKFIELD WATER UTILITY	Waukesha	29,070	39,951
NEW BERLIN WATER UTILITY	Waukesha	27,899	40,596
MENOMONEE FALLS WW - SURFACE WATER	Waukesha	23,867	37,873
OCONOMOWOC WATERWORKS	Waukesha	15,805	17,212
SUSSEX VILLAGE HALL & WATER UTILITY	Waukesha	10,573	11,273
HARTLAND WATERWORKS	Waukesha	9,212	9,286
OSHKOSH WATERWORKS	Winnebago	63,000	67,201
NEENAH WATERWORKS	Winnebago	25,892	26,436
MENASHA ELEC & WATER UTIL	Winnebago	14,728	17,510
WIS RAPIDS WATER WORKS & LIGHTING COMM	Wood	20,000	18,708
MARSHFIELD UTILITIES	Wood	18,708	19,316