

December 28, 2010

Comments Submitted Via E-mail & U.S. Mail

Mr. Constantine Tsoris Constantine.Tsoris@wisconsin.gov
Wisconsin Department of Natural Resources
Bureau of Drinking Water and Groundwater
P.O. Box 7921
Madison, WI 53707

RE: Comments on Proposed NR 854 - Water Supply Service Area Plans

Dear Mr. Tsoris:

These comments are filed on behalf of the Municipal Environmental Group - Water Division (MEG-Water). MEG-Water is an association of 54 municipal water utilities who have joined together to provide input on proposed laws and regulations that affect municipal water utilities.

MEG-Water appreciates the work the Department and the Drinking Water and Groundwater staff have put into these water supply service area planning rules. However, MEG-Water is concerned about the current draft of the proposed rules. Major concerns include, but are not limited to, the following:

- The proposed rules would extend a public utility's planning obligation over areas that it may be unwilling to serve.
- The proposed rules do not sufficiently recognize the existing relationship between wholesale water suppliers and wholesale water customers, and the planning requirements included in the proposed rule are not placed on the proper governmental entity.
- The proposed rules go beyond what is necessary or reasonable for a planning process. For example, the proposed rules require the "selection" of a water supply alternative even though Wis. Stat. § 281.348 does not contain this requirement, and even though the selection of a water supply alternative would have no practical effect since plan approval does not constitute final approval of the selected alternative.
- The proposed rules also go beyond what is required by the statute by requiring an assessment of environmental impacts for each water supply alternative considered. Section 281.348(3)(c)5, Wis. Stats., only requires an assessment of the environmental and economic impacts of carrying out "specific significant recommendations of the plan." This requirement adds unwarranted costs and complexity to the planning process.

In this letter, MEG-Water offers suggested revised language to specific sections of the proposed regulation in order to address its concerns. While some of the proposed language changes may initially seem unimportant, they are important to retain the distinctions necessary to ensure that planning requirements are placed on the proper governmental entity and that a utility's legal obligation is not inappropriately extended by rule. Other proposed changes are offered in order to make the proposed rule more workable as a planning tool for public water systems. MEG-Water offers these comments and proposed changes with the hope that this will assist the Department in creating a better rule.

NR 854.01. Purpose.

- a. Replace the term "water supply plans" in the first sentence with the term "water supply service area plans" in order to maintain the use of consistent definitions.

NR 854.02. Definitions.

- a. Add a definition of "contract supply." This term is used to define a consecutive system's source of supply. MEG-Water suggests the following definition.

(XX) "Contract supply " means water supply provided pursuant to a contract between a public water supply system and a consecutive system.

- b. Add a definition of "contract supply obligation." This term is used to define the amount of water a consecutive system is entitled to receive from its contract supply. A public water supply system's projected water demand would need to include this contract supply obligation. A public water supply system, however, would not need to plan for a consecutive system's projected demand if that demand exceeds the contract supply obligation. A consecutive system would be responsible for planning for its projected demand which exceeds its contract supply. MEG-Water suggests the following definition for "contract supply obligation".

(XX) "Contract supply obligation" means the amount of water a public water supply system is obligated to provide to a consecutive water system pursuant to a contract between the public water supply system and consecutive system .

- c. Revise the definition of "existing service area." A public water supply system's agreement to provide wholesale water to a consecutive system does not constitute the provision of water "to the public" under public utility law and this is a very important concept which must be maintained. Therefore, a public water supply system's "existing service area" should not include the service area of a consecutive system. A consecutive system is its own public water supply system, and it has its own existing service area. In order to promote holistic planning, a public water supply system's projected water demands should include water to supply its own areas, plus its contract supply obligation to its consecutive systems. This will be discussed more below. MEG-Water suggests the following revised definition of "existing service area."

(8) "Existing service area" means the area in which the public water supply system provides water to the public or has accepted an obligation to provide water to the public. The existing service area of a consecutive system is not part of the existing service area of the public water supply system that provides water to the consecutive system.

d. Revise the definition of "projected growth area." A public water supply system's projected growth area should be limited to the area the public water supply system anticipates providing retail water to within the 20-year planning period. It should not include the projected growth area of a consecutive system. A consecutive system is its own public water supply system, and it will have its own projected growth area. The projected growth area should also not be defined by the areawide water quality planning agency. In order to promote holistic planning, a public water supply system's projected water demands should include water to supply its own areas (existing service area and projected growth area), plus its contract supply obligation to its consecutive systems. If a consecutive system needs more water for its existing service area and projected growth area than it has contracted for, then its water supply service area plan must include a plan on how the consecutive system will handle this. A public water supply system that provides a contract supply to a consecutive system would not be required to plan to provide water supply that exceeds its contractual obligation to the consecutive system. MEG-Water suggests the following revised definition of "projected growth area."

(19) "Projected growth area" means the area in which the public water supply system ~~is~~ anticipates~~d~~ to provide water to the public during the 20-year period covered by the water supply service area plan. The projected growth area of a consecutive system is not part of the projected growth area of the public water supply system that provides water to the consecutive system.

e. Add a definition for "projected water demand." This is a key term that is used throughout the rule. For example, see the headings of NR 854.06(5), (6) and (7). This term can be used to make a distinction between a public water supply system's "service area" (which should be limited to the system's retail areas), and a system's water supply obligations (which may be greater than the system's retail areas if there are consecutive systems). This term can also be used to limit a public water supply system's obligation to plan for water supply to those areas it is or may serve, and not to extend that obligation to a public water supply system's entire "water supply service area" as that term is defined by this rule. MEG-Water strongly believes that a public water supply system should not be required to plan for areas that it is not willing to serve. Under the proposed definition of "projected water demand," a public water system would be required to plan for its existing and projected service areas, and for the amount of water it has contracted to provide to consecutive systems. It would not be required to plan for areas that it will not serve. MEG-Water suggests the following definition of "projected water demand."

(XX) "Projected water demand" means the water demand forecasted in the public water system's existing service area and projected growth area over the 20-year planning period, plus the public water supply system's contract supply obligations to consecutive water systems.

f. Delete the definition of "regionalization." This term is not used in the rule.

g. Revise the definition of "water supply service area." MEG-Water would prefer that the term "water supply service area" be defined solely by the public water supply system as this would avoid problems with differences between what may be delineated by the areawide water quality planning agency and what the system is willing to serve. However, since the reference to the areawide water quality planning agency is included in the statute, MEG-Water

understands that the DNR cannot eliminate the reference to the areawide water quality planning agency. MEG-Water's suggested revision to the term "water supply service area" recognizes that the delineated "water supply service area" may cover an area larger than what the public water supply system is willing to serve. However, MEG-Water strongly believes that a public water supply system should not be required to plan for areas that it is not willing to serve. In order to make that clear, MEG-Water proposes that a public water supply system's plan be based upon meeting its "projected water demand." As discussed above, a system's "projected water demand" is the water demand forecasted in the public water system's existing service area and projected growth area over the 20-year planning period, plus the public water supply system's contract supply obligations to consecutive water systems. It is not the water demand in the larger water supply service area. This distinction is critical. It would not be reasonable to require a public water supply system to plan for areas that it will not serve. With these understandings, MEG-Water suggests the term "water supply service area" be revised as follows:

(31) "Water supply service area" means a delineated area in which the public water supply system provides water or ~~may anticipate providing~~ providing water to the public ~~or to a consecutive system~~ during the 20-year period covered by the water supply service area plan. A water supply service area shall at a minimum include existing service areas and projected growth areas of the public water system and its consecutive systems. ~~The water supply service area may be limited as provided by s. 66.0813(3)(a), Stats.~~

The last sentence of this definition is deleted because this is already covered by the revised definitions of existing service area and projected growth area, and the language in NR 854.06(1)(c).

NR 854.04(5). Plan Submittal Timelines.

a. In Subsection (5), replace the term "public water supply service area plan" with the term "water supply service area plan" in order to maintain the use of consistent definitions.

NR 854.05(2). Responsible Parties.

a. Clarify the second sentence of Subsection (2). MEG-Water suggests that this sentence be revised to provide as follows:

An owner of a consecutive water system shall include in its~~the content of a~~ water supply service area plan the contents specified in s. NR 854.06, with the exception of s. NR 854.06(10) and (11), ~~if the public water supply system's plan proposes a consecutive water supply source.~~

NR 854.06(1). Content of a Water Supply Service Area Plan -- Delineation Of The Water Supply Service Area.

a. Revise the first sentence of Subsection (1). A revision is needed to clarify that a public water supply system may be the entity withdrawing the water that is provided within the areas, but it may not actually be the water service provider in the delineated area. See also the discussion above applicable to the definition of "water supply service area." MEG-Water suggests that this sentence be revised to provide as follows:

The water supply service area plan shall include a delineation of the water supply service area, which shall include all areas to which water from the public water supply system may be provided ~~water~~ over the 20-year planning period, including the water supply service areas of consecutive water systems.

b. Revise the first sentence of Subsection (1)(c). The proposed revision clarifies the different areas referred to in this rule. The largest area is the water supply service area delineated in this subsection. Within that area is the public water supply system's existing service area and projected growth area. Also within the water supply service area is the consecutive system's existing service area and projected area. All these areas should be shown on the map. MEG-Water suggests the following revision to the first sentence of Subsection (1)(c).

A water supply service area plan shall include a map showing the delineated water supply service area, the public water supply system's existing ~~water supply~~ service area and, projected growth area, and the ~~existing service areas and projected growth areas for the water supply service area including~~ consecutive water systems served.

NR 854.06(2). Content of a Water Supply Service Area Plan -- Description of Public Water Supply System.

a. Revise the heading of Subsection (2) to be "DESCRIPTION OF PUBLIC WATER SUPPLY SYSTEM." The term "Water Supply System" does not include distribution facilities. Since the information requested by this subsection includes information on distribution facilities, the broader term "Public Water Supply System" should be used.

b. Revise the beginning of Subsection (2) to clarify the respective obligations of the public water supply system and the consecutive system. The public water supply system is to provide information on the public water supply system it uses to provide retail water to customers. Likewise, a consecutive system should be required to provide information on the public water supply system that it uses to provide retail water to its customers. A wholesale supplier should not be required to provide information on its wholesale customer's public water supply system. While a wholesale supplier will have the information about the withdrawal and treatment facilities, it will not have the type of information requested by Subsection (2)(a) for a consecutive system. MEG-Water suggests the beginning of Subsection (2) be revised as follows:

A water supply service area plan shall include a description of the complete public water supply system using schematics as appropriate. The description of the public water

supply system of a consecutive system shall be included in the water supply service area plan of the consecutive water system.

c. In Subsection (2)(a), replace the clause "water supply storage and distribution facilities" with the term "water storage and distribution facilities." The use of term "water supply" may be in conflict with the defined term "water supply system," and in order to avoid any conflict, MEG-Water asks that the term "supply" be eliminated.

NR 854.06(3). Content of a Water Supply Service Area Plan -- Description of Water Sources and Withdrawals.

a. In Subsection (3)(a), clarify that the information requested is to be provided by the public water supply system withdrawing water, and that the consecutive system is not required to provide this information. MEG-Water suggests the following language be added at the beginning of Subsection (3)(a).

(a) For public water supply systems withdrawing water, an inventory of the sources and quantities of the existing water supply described and presented in a table that includes all of the following:

b. Add a subsection on the water source information to be required from consecutive systems. This information would show the consecutive system's water sources, and any limitations on those sources. The new definition "contract supply" is used in this addition. MEG-Water suggests the following language be added as a new Subsection (3)(b).

For consecutive systems with a contract supply, an inventory of the sources and quantities of the consecutive system's existing water supply described and presented in a table that includes all of the following:

1. A description of the consecutive system's contracts or other arrangements for water supply, including any limits on the amount of supply to which it is contractually entitled.

2. The consecutive water system's average daily water supply obtained from each water supplier for each of the last ten years.

3. Limitations on the maximum water supply from each water supplier.

c. Revise Subsection (3)(b) to clarify the information requested to be provided by the public water supply system withdrawing water, and the information requested to be provided by the consecutive system. This revision would also result in needed information about the consecutive system's loss amounts, diversion amounts, and return flow amounts. MEG-Water suggests that Subsection (3)(b) be revised as follows.

(b) A table showing the public water supply system's existing total water withdrawal rates and amounts, system loss amounts, diversion amounts, and return flow amounts, if applicable, including a list of approved or permitted withdrawals, water losses, and diversions. A consecutive system shall include a table showing the consecutive system's existing total water use rates and amounts, system loss amounts, diversion amounts,

and return flow amounts, if applicable, including a list of approved or permitted withdrawals, water losses, and diversions.

d. Revise Subsection (3)(c) to reflect the revisions suggested to Subsection (3)(b). MEG-Water suggests that Subsection (3)(c) be revised as follows.

(c) A description of the methods used to measure and report the withdrawal rates and the amounts of withdrawal, the use rates and amount of use, system loss, and diversion and return flow as identified under par. (b).

e. In Subsection (3)(f), delete the word "potential." Given that Subsection (3) is dealing with existing water sources, the contamination sources to be identified should be limited to those that are significant known or documented sources of contamination.

NR 854.06(4). Content of a Water Supply Service Area Plan -- Description of Water Use by Customers.

a. Revise the first sentence of Subsection (4) to clarify that a public water supply system is required to only provide water use information about its retail customers. A consecutive system would be required to provide the water use information about its customers. A wholesale supplier would not typically have information about its wholesale customer's customers. MEG-Water suggests that the first sentence of Subsection (4) be revised as follows:

A water supply service area plan shall describe the water use of ~~its~~ existing customers within the existing service area, and shall include all of the following:

NR 854.06(5). Content of a Water Supply Service Area Plan -- Projected Water Demand.

a. Revise this Subsection to limit a public water supply system's projected water demand to the water demands in the system's existing service area and its projected growth area, plus all its contract obligations to consecutive systems. MEG-Water feels very strongly that a system's projected water demands should not include water demands for other areas that a public water supply system is unwilling to serve even if those areas are within a delineated water supply service area. A public water system should not be required to plan to supply water in areas it does not anticipate servicing - and water demands for these areas should not trigger requirements under NR 854.06(6). With these considerations in mind, MEG-Water suggests this Subsection (5) be revised as described below.

b. Revise the first sentence of Subsection (5) as follows:

The water supply service area plan shall project water demands for the 20-year planning period to include forecasted water demands for ~~in~~ the existing service area and proposed growth ~~water supply service area of the public water supply system, and the contract supply obligations to consecutive systems served by the public water supply system.~~

c. Revise the first sentence of Subsection (5)(a) as follows:

Forecasts of the expected population in the existing service area and projected growth~~water supply service~~ area during the 20-year planning period based on population projections for the existing service area and projected growth area~~water supply service area~~ and municipally planned population densities.

d. Revise Subsection (5)(b) to use the defined term "projected water demand" and to address the concerns raised in a. above. This Subsection is also revised to explicitly state that a public water system is not required to supply more than its contract supply obligation to a consecutive system. MEG-Water suggests the following:

~~The projected~~A water demand ~~forecast in the water supply service area~~ over the 20-year planning period. The projected water demand~~forecast~~ shall be divided into 5-year increments. The plan must address the water supply sources needed to meet the projected~~forecasted~~ water demand~~use~~ for the 20- year planning period. ~~The forecast shall be reflective of any future water supply needs or proposed water supply alternatives.~~The plan forecast shall include all of the following:

1. A table showing the projection of total annual daily average and total peak daily water needs, including total pumpage, for the existing service area and projected growth area of the public water supply system, ~~and~~ categorized by residential, commercial, industrial, and public authority uses.

2. An estimate of the water loss from consumptive use over the planning period. Water loss or consumptive use calculations shall follow the procedures set forth in ch. NR 142.

3. A table and summary of contract supply obligations and projected sales of water to consecutive water systems consistent with the consecutive water systems plans and the names of the systems to which the water is sold, if applicable. A public water system is not required to supply more than its contract supply obligation to a consecutive system.

e. Revise Subsection (5)(c) to use the defined term "projected water demand" and to address the concerns raised in a. above. In addition, eliminate the reference to "water conservation alternatives." While the public water supply system's water conservation plan must be adopted, other water conservation alternatives which may be available to reduce projected water demand should be evaluated using the cost effectiveness analyses under NR 854.07. MEG-Water suggests the following revision to Subsection (5)(c):

The projected water demand ~~forecast in the water supply service area~~, as determined under par. (b), shall be estimated assuming the implementation of the public water system's ~~water conservation alternatives and, if applicable, implementation of the~~ water conservation plan adopted under ch. NR 852, if applicable.

NR 854.06(6). Content of a Water Supply Service Area Plan -- Plan to Meet Projected Water Demand with New or Enlarged Water Supply Facilities.

a. Revise the beginning of Subsection (6) to use the defined term "projected water demand" and to address the concerns raised above regarding limiting a public water supply system's planning requirement to the areas that it anticipates serving or to which it has contracted to provide water. MEG-Water suggests the beginning of Subsection (6) be revised as follows:

(6) PLAN TO MEET PROJECTED WATER DEMAND WITH NEW OR ENLARGED WATER SUPPLY FACILITIES. The water supply service area plan shall determine the public water supply system's capacity to meet the projected water demand for the 20-year planning period. A public water supply system unable to meet the ~~projected~~forecasted water ~~demand~~use for the 20-year planning period using existing water supply system facilities and available water supply shall include all of the following in the plan, as applicable:

b. Revise the last sentence of Subsection (6)(b) to provide for a description of the "anticipated" final disposition of wastewater sludge. As Subsection (6) deals with prospective facilities, it is unlikely there are would be any final determinations about this issue. MEG-Water suggests the last sentence of Subsection (6)(b) be revised as follows:

The description shall also indicate the anticipated final disposition of the wastewater and sludge from the treatment processes.

c. Revise Subsection (6)(f) to ensure the defined term "water supply system" is not used in a way that is inconsistent with its definition. MEG-Water suggests Subsection (6)(f) be revised as follows:

(f) A demonstration that the plan will effectively utilize the existing water supply system, ~~including—water~~ storage, treatment, and transmission facilities and wastewater infrastructure, to the extent practicable.

d. Add Subsection (6)(i) to require a consecutive system to provide a description on its ability to contract for increased water supply. For a consecutive system, a contract supply -- and not new facilities -- will likely be its water source. MEG-Water suggests Subsection (6)(i) be revised as follows:

(i) For consecutive systems, a description of the consecutive system's ability to contract for increased water supply.

NR 854.06(7). Content of a Water Supply Service Area Plan -- Plan to Meet Projected Water Demand with Existing Water Supply Facilities.

a. Revise the beginning of Subsection (7) to use the defined term "projected water demand," and to ensure the defined term "water supply system" is not used in a way that is inconsistent with its definition. MEG-Water suggests Subsection (7) be revised as follows:

(7) PLAN TO MEET PROJECTED WATER DEMAND WITH EXISTING WATER SUPPLY FACILITIES. The water supply service area plan shall provide a description of the public water supply system's ability to meet the ~~projected~~~~forecasted~~ water demand for the 20- year planning period using existing water supply system ~~storage and distribution~~ facilities, wastewater infrastructure and available water supply. A public water supply system proposing to meet the ~~projected~~~~forecasted~~ water demand over the 20-year planning period using solely existing water supply facilities and available water supply as described in subs. (2) and (3) shall include all of the following as applicable:

b. Subsection (7)(a)1. includes the term "aquifer storage." MEG-Water asks that this term be defined for the rule.

NR 854.06(10). Content of a Water Supply Service Area Plan -- Cost-Effectiveness Analyses of Water Supply Alternatives.

a. Revise Subsection (10) to use the defined term "projected water demand," and to clarify that the cost-effectiveness analysis shall described a selected water supply alternative only if one is selected. MEG-Water suggests Subsection (10) be revised as follows:

(10) COST-EFFECTIVENESS ANALYSES OF WATER SUPPLY ALTERNATIVES. If a public water supply system will be unable to meet the ~~projected~~~~forecasted~~ water ~~demand~~~~use~~ for the 20-year planning period using existing water supply system facilities, the water supply service area plan shall include a cost-effectiveness analysis of water supply alternatives, specified in s. NR 854.07 and a description of ~~any~~~~the~~ selected water supply alternative.

NR 854.06(11). Content of a Water Supply Service Area Plan -- Assessment of Environmental Impacts of Water Supply Alternatives.

a. Revise Subsection (11) to use the defined term "projected water demand," and to clarify that the assessment of environmental impacts need only be conducted for a water supply alternative selected under NR 854.08. (See Wis. Stat. § 281.348(3)(c)5.) MEG-Water suggests the following revision:

(11) ASSESSMENT OF ENVIRONMENTAL IMPACTS OF WATER SUPPLY ALTERNATIVES. If a public water supply system will be unable to meet the ~~projected~~~~forecasted~~ water ~~demand~~~~use~~ for the 20-year planning period using existing water supply system facilities, the water supply service area plan shall include an assessment of the environmental impacts of implementing ~~any selected~~~~the~~ water supply alternatives as specified in s. NR 854.08.

NR 854.06(12). Content of a Water Supply Service Area Plan -- Intergovernmental Agreements and Approvals.

a. Revise the beginning of Subsection (12) to eliminate confusion and unnecessary language. Given the specific language in Subsection (12)(a)-(e), the descriptive language at the beginning of Subsection (12) is unnecessary. MEG-Water suggests the following revision to the beginning of Subsection (12).

(12) INTERGOVERNMENTAL AGREEMENTS AND APPROVALS. The water supply service area plan shall ~~reflect intergovernmental cooperation and contain applicable intergovernmental agreements and approvals with supporting documentation and shall~~ include all of the following:

b. Revise Subsection(12)(a) to provide a more realistic requirement on governmental approval. Approval is only required from the governmental entities located within a public water supply system's existing service area and projected growth area. Approval is not required from the owner of a consecutive system. The owner of the consecutive system will be preparing its own plan. If a governmental entity refuses to grant approval, the public water supply system can still submit the application, but it must provide documentation of the governmental entity's refusal to grant approval. MEG-Water suggests the following revision to Subsection (12)(a).

(a) Approvals of the plan by the governing body of each city, village, and town ~~whose public water supply is located in the public water supply system's existing service area and projected growth area. A governing body's approval only covers those portions of the plan specifically applicable to that governing body's city, village or town. If a governing body does not grant approval, documentation of that governing body's refusal or inaction shall be included with the water supply service area plan addressed by the plan as it applies to its jurisdictional boundaries.~~

c. Revise Subsection (12)(c) to provide more precise language regarding how a wholesale agreement is addressed by the rule. MEG-Water suggests the following revision to Subsection (12)(c).

(c) Existing wholesale or retail sales agreements between the owner of the public water supply system and any city, village and town included within ~~addressed by~~ the water supply service area ~~plan~~.

NR 854.07. Cost-effectiveness Analyses of Water Supply Alternatives.

a. MEG-Water believes this Section needs to be substantially revised and reorganized. Each Subsection will be discussed separately below.

b. MEG-Water suggests NR 854.07(1) be revised in several ways. First, it should be revised to use the defined term "projected water demand" and to address the concerns raised above regarding limiting a public water supply system's planning requirement to the areas that it anticipates serving or to which it has contracted to provide water. Second, it should require the public water supply system to identify the water supply alternatives it will be analyzing. Third, it should require an analysis of the alternatives. Fourth, the statutory requirement that the alternatives identified be generally eligible for approval under other applicable statutes and rules could also be included here. As the plan and plan approval does not actually result in an approval to implement any particular alternative, a more detailed analysis of applicable statutes and rules should not be required at this stage. MEG-Water suggests NR 854.07(1) provide as follows:

NR 854.07 Cost-effectiveness Analyses of Water Supply Alternatives. (1) If a public water supply system will be unable to meet the projected water demand for the 20-year planning period using existing water supply facilities and available water supply, the water supply service area plan shall identify and include an analysis of alternatives for meeting the projected water demand for the planning period. The alternatives identified must be generally eligible for approval under other applicable statutes and rules.

c. MEG-Water suggests NR 854.07(2) specifically address the public water supply system's identification of alternatives for supplying water to meet the projected water demand for the planning period. The actual process of identifying alternatives is not clearly addressed in the current proposed rule. MEG-Water suggests NR 854.07(2) provide as follows:

(2) The public water supply system shall identify in the water supply service area plan practicable alternatives for supplying water to meet the projected water demand for the planning period including:

(a) Water conservation alternatives, including at a minimum, the water conservation and efficiency measures specified in ss. NR 852.04(2) and NR 852.05(2).

(b) Individual water supply alternatives which may include additions to the public water supply system's existing water supply facilities.

(c) Joint efforts with neighboring communities to develop or obtain water supplies, to the extent practicable.

(d) Purchase of contract supply.

(e) Other alternatives identified by the public water supply system.

d. MEG-Water suggests NR 854.07(3) address the information the public water supply system must gather regarding each alternative for purposes of conducting the cost-effectiveness analysis. As this is a planning process, the goal should be to encourage a public water supply system to consider the different factors relevant to its water supply planning. Most of these factors are included in the DNR's proposed rule in some form. While a broad review of these factors is appropriate, a more detailed analysis is not required by MEG-Water's proposed language at this stage because the plan and plan approval will not result in final approval being granted for any particular alternative. MEG-Water suggests NR 854.07(3) provide as follows:

(3) A water supply service area plan shall include a description of the following for each identified water supply alternative:

(a) for the water conservation alternatives, an estimate of the water demand reduction and cost savings from implementing each water conservation alternative;

(b) the dependability of each identified water supply alternative;

(c) the water treatment needs of each identified water supply alternative due to the quality of the water supply source;

- (d) the estimated cost of implementing the alternative, including estimated costs for construction, operation, maintenance, treatment and disposal related to each water supply alternative;
- (e) the environmental impacts associated with each water supply alternative;
- (f) the estimated cost of mitigating environmental impacts from each water supply alternative;
- (g) physical, legal or institutional constraints;
- (h) compliance with other regulatory requirements;
- (i) consistency with the existing plans identified in s. NR 854.06(8).

e. MEG-Water proposes NR 854.07(4) address the cost-effectiveness analysis required of the identified alternatives. A close review of the statute discloses that no specific method is required for conducting the cost-effectiveness analysis. MEG-Water proposes allowing the public water supply system to determine how to conduct the cost-effectiveness analysis, provided the analysis is based upon the information gathered under NR 854.07(3) and is documented in the plan. From this analysis, the public water supply system is required to identify those alternatives determined to be cost-effective. This is consistent with Wis. Stat. § 281.348(3)(c)4 which refers to cost-effective "options". MEG-Water's proposal does not require a more detailed, or prescriptive, analysis. If DNR staff believes the public water supply system's analysis is incomplete or inadequate, the Department can require the submission of additional information. MEG-Water suggests NR 854.07(4) provide as follows:

(4) The public water supply system shall conduct a cost-effectiveness analysis of the identified alternatives based upon the information included in the water supply service area plan under sub. (3). Based upon the cost-effectiveness analysis, the public water supply system shall identify all options determined to be cost-effective. The water supply service area plan shall describe the public water supply system's analysis and conclusions.

f. MEG-Water proposes that NR 854.07(5) allow, but does not require, a public water supply system to select a water supply alternative to implement. If a water supply alternative is selected, Wis. Stat. § 281.348(3)(c)5 requires the public water system to prepare an assessment of environmental impacts under NR 854.08. MEG-Water suggests NR 854.07(5) provide as follows:

(5) The public water supply system may, but is not required to, select a water supply alternative to implement. If a public water supply system selects a water supply alternative, it shall be included in the water supply service area plan.

NR 854.08. Assessment of Environmental Impacts.

a. Revise Subsection (1) to require an assessment of environmental impacts under this Section only if the public water supply system selected a water supply alternative for implementation under NR 854.07. This is consistent with § 281.348(3)(c)5 which only requires an assessment of environmental and economic impacts of carrying out specific significant recommendations of the plan. Nothing in the statute requires the plan to include specific recommendations. When a public water supply system seeks to "implement" a water supply alternative, the assessment required by NR 854.08 should be conducted. However, conducting such an assessment prior to that time would be premature. The statute also does not contain any provision that would require an assessment for all identified alternatives. MEG-Water would strongly object to requiring an assessment of all identified alternatives. Given these comments, MEG-Water asks that NR 854.08(1) be revised as follows:

(1) If the water supply service area plan includes a selected water supply alternative under s. NR 854.07, the water supply service area plan shall also include a assessment of the environmental impacts of implementing the selected water supply alternative. ~~under s. NR 854.07 shall be part of the water supply service area plan submitted to the department.~~ The information submitted in the assessment of environmental impacts will be used by the department to determine whether an environmental analysis specified under ch. NR 150 is necessary. The assessment shall include all of the following:

b. MEG-Water asks that Subsection (1)(a) be revised as follows to address the comments in a. above:

(a) A description of the existing environmental conditions for the water supply service delineated planning area and environmental conditions relevant to the analysis of environmental impacts of each implementing the selected water supply alternative.

c. MEG-Water asks that Subsection (1)(b) be revised as follows to address the comments in a. above:

(b) A description of the environmental impacts of the proposed-selected water supply alternatives. Primary and secondary impacts of the proposed-selected water supply alternatives shall be described giving special attention to all of the following:

1. Unavoidable impacts.

2. Steps to mitigate adverse impacts.

3. Any irreversible or irretrievable commitments of resources resulting from implementation of the selected water supply alternative.

4. An evaluation of the significance of land use impacts based on the existing population of the planning area population for the water supply service area at the end of the planning period, percentage of the existing service area undeveloped or unoccupied, and plans for constructing the facilities.

NR 854.09. Public Participation Process for Water Supply Service Area Plans.

a. Revise Subsection (1) to be consistent with the change proposed in NR 854.06(12) which requires approval from the governing bodies of the entities within the public water supply system's existing service area and projected growth area, but does not require approval from consecutive systems. A consecutive system will be preparing its own water supply service area plan. MEG-Water suggests that Subsection (1) be revised as follows:

(1) Owners of a public water supply system preparing a water supply service area plan shall hold at least one public hearing prior to approval of the plan by the governing body of each city, village, and town included in the public water supply system's existing service area and projected growth area~~whose public water supply is addressed by the plan before the plan is submitted to the department for approval.~~

b. In Subsection (2)(f), replace the term "water supply plan" with the term "water supply service area plan" for consistent use of that defined term.

c. Delete Subsection (4). It is unclear what the intent of this section is, or how it fits with this rule. This would also seem to be covered by a public water supply system's open records obligation.

NR 854.12. Department Review and Approval Process for a Water Supply Service Area Plan.

a. Revise Subsection (2)(a) to be consistent with the statute. MEG-Water suggests the following revision:

(2) The department may not approve a water supply service area plan unless all of the following apply:

(a) The plan provides for a water supply system that is approvable under this chapter and other applicable statutes and rules based on ~~the completeness of any either~~ of the following:

1. A cost-effectiveness analysis of regional and individual water supply and water conservation alternatives; or -

2. A demonstration that the plan will meet the projected water demand over the 20-year planning period with existing ~~public~~ water supply facilities.

b. Delete Subsection (2)(c) as this is already covered by Subsection (2)(b) which requires the plan to include the required contents of a plan as specified in NR 854.06. NR 854.06(10) and (11) incorporate the cost-effectiveness analysis and the assessment of environmental impacts.

c. Revise Subsection (2)(d). Wisconsin statute § 281.348(3)(d)3. & 4. only requires consistency with the approved areawide water quality management plan and applicable

comprehensive plan. It does not require consistency with any other plan specified under NR 854.069(8), therefore this reference should be deleted. MEG-Water suggests Subsection (2)(d) be revised to provide as follows:

(~~cd~~) The plan is consistent with any applicable comprehensive plans as defined in s. 66.1001(1)(a), and any applicable approved areawide water quality management plans ~~and any other plan~~ specified under s. NR 854.06(8).

d. Revise the first sentence of Subsection (6) to replace the term "water supply distribution system facilities" with the term "water transmission facilities." This is to maintain the proper definition of the term "water supply."

NR 854.14(1). Revision of a Water Supply Service Area Plan.

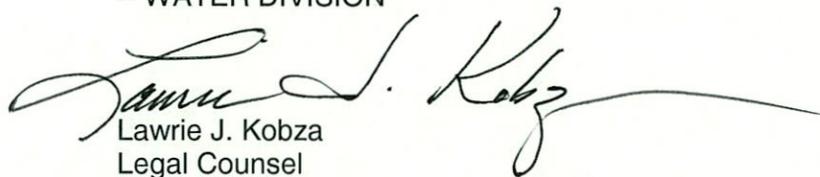
a. Replace the term "water demand projections" in the second sentence of subsection (2) with the term "projected water demands " in order to maintain the use of consistent definitions.

In conclusion, MEG - Water appreciates the work the Department has put into these water supply service area planning rules, and this opportunity to submit these comments on the proposed rules. If the Department would like to discuss these comments further, we would be happy to do so.

MEG-Water, however, questions whether the water supply service area planning program being developed is consistent with what the Legislature intended when Wis. Stat. § 281.348 was adopted. MEG-Water understands that DNR staff is working under the limitations of the statute as it develops these rules. It may make sense for the Legislature to revisit Wis. Stat. § 281.348 and consider statutory revisions in order to make the planning program more workable, useful and valued for public water supply systems.

Thank you for your consideration of these comments.

MUNICIPAL ENVIRONMENTAL GROUP
-- WATER DIVISION


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