



Ensuring That the Waters of the Great Lakes Basin Are Healthy, Public, and Protected for All

November 8, 2021

Mr. Andrew LeBaron
EGLE, Water Resources Division
P.O. Box 30458
Lansing, Michigan 48909-795
Sent by email to: LeBaronA@Michigan.gov

RE: Atlantis Fish Company Water Withdrawal Permit Application

Dear Mr. LeBaron:

Thank you for the opportunity to comment on Atlantis Fish Company's ("AFC") water withdrawal permit application for 4 million gallons per day. For Love of Water ("FLOW") has serious concerns about this application, which is one of the largest requests of its kind before or since the enactment of the 2008 amendments to Part 327 of the Natural Resources and Environmental Protection Act ("NREPA"). We respectfully request that the Department of Environment, Great Lakes, and Energy ("EGLE") find the application incomplete or deny it outright for the following reasons:

1. Section 5(d) of AFC's September 9, 2021 letter to EGLE acknowledges that the supply potential of local aquifers has not been validated. Without this information, the application does not include an "evaluation of existing hydrological and hydrogeological conditions" as required by Part 327. MCL 324.32723(2). The absence of this information also precludes a determination that the proposed withdrawal will not impair flows and levels of nearby lakes, streams, or wetlands under the common law of groundwater and riparian rights, public trust law, and Part 303 of the Wetlands Act.
2. Sections 5(e) and 5(f) of AFC's September 9, 2021 letter to EGLE state that no adverse impacts to resources or hydrologic conditions and functions are expected while acknowledging that AFC has not completed its due diligence for the project. Section 5(e) expressly states:

Further diligence will include a hydrogeological investigation that could involve test drilling, monitoring well construction, test production well construction, and constant rate aquifer testing.

The letter goes on to state that *if* such due diligence uncovers "[s]ignificant adverse resource impacts that cannot be remediated or mitigated in a cost effective way," AFC may voluntarily abandon the site. This is not the way the permitting process works. Part 327 requires a comprehensive "evaluation of existing hydrological and hydrogeological conditions" *before* a permit is issued. MCL 324.32723(2).

3. The application does not address and EGLE has not determined based on sufficient information whether there is likely pollution, impairment, or destruction of water, natural resources, and public trust in those resources as required by Part 17, Michigan Environmental Protection Act ("MEPA"), MCL 324.1705, and Michigan Supreme Court and Court of Appeals legal precedent.

See State Hwy. Comm. v. Vanderkloot, 392 Mich. 159 (1974). This MEPA determination is separate from and supplemental to the permit-approval requirements of Part 327.

4. FLOW incorporates by reference the concerns raised by Michigan Trout Unlimited in its November 8, 2021 comments regarding this permit application.

Due to these concerns, issuance of a permit would be unlawful in the absence of additional data and information. FLOW urges EGLE to either find AFC's application incomplete or deny the permit application outright.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "Liz Kirkwood". The signature is written in a cursive, flowing style.

Liz Kirkwood
Executive Director
FLOW (For Love of Water)

cc: EGLE Director Liesl Clark
Attorney General Dana Nessel