



Great Lakes Compact Up Close: Waukesha's Diversion Application

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Overview

The Legal Framework

The “Basic” Compact

Wisconsin Act 227

The City of Waukesha’s Application

The Critical Issues

No Reasonable Water Supply Alternative

Reasonableness of Requested Amount

Return Flow Requirements and Impacts

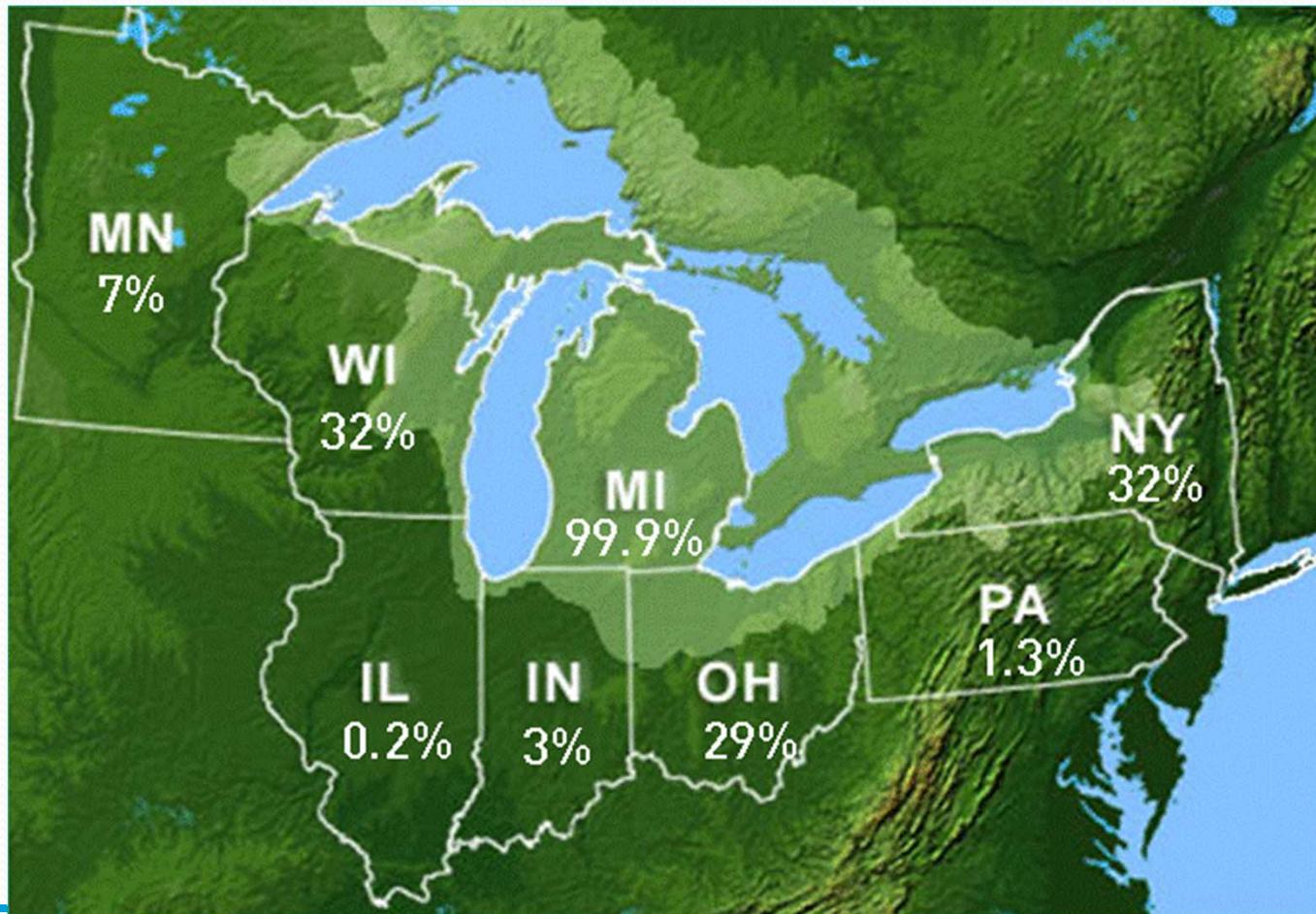
Water Conservation

The Latest, Next Steps and Anticipated Timeline

The Compact's Legal Framework



Great Lakes States





Impetus: Insufficient Legal Protection

1985 – Great Lakes Charter

1986 – Water Resources Development Act (WRDA)

1998 – Nova Group proposal

1999 – Recurring Lake level declines

Great Lakes "Compact"

What Was (and is) at Stake?

- Maintaining regional control of Great Lakes water resources.
- Ensuring water is available for future use and economic growth.



Compact: Key Elements

I. In-Basin Uses

- State / Provincial management and regulation.
- Use of common Decision-Making Standard.
- State flexibility for determining thresholds.
- State/Provincial opportunity to comment on all large new or increased consumptive uses.

II. Conservation and Efficiency:

- Development of Regional Goals and Objectives within 2 years.
- Development of Consistent State and Provincial Goals and Programs.
- Regional review every 5 years.
- Diversion Applications—Conservation and efficient use of existing water supplies required.

III. Treatment of Diversions

All new or increased diversions
prohibited...with 3 Exceptions:

- Straddling communities
- Communities in straddling counties
- Intra-Basin transfers



Under the Compact, a Proposal for a Diversion by a
“Community within a Straddling County” must meet
the following requirements:

- (1) All the water is solely used for *public water supply purposes*.
- (2) The community is otherwise *without an adequate supply* of potable water.
- (3) The diversion meets the *Exception Standard*.
- (4) The proposal *maximizes* the amount of water that originated in the basin that is returned to the basin and minimizes the amount of water that originated outside of the basin that is returned to the basin.
- (5) There is *no reasonable water supply alternative in the basin* in which the community is located, including conservation of existing water supplies.
- (6) The proposal is subject to management and regulation by the state that is the originating party regardless of the size of the proposal.
- (7) The proposal is reviewed by the regional body in a regional review.
- (8) The proposal is approved by the Council with *no disapproving votes*.



The Compact's Exception Standard:

- (1) Unavoidable Need—The need for the diversion cannot be reasonably avoided through efficient use and conservation of existing water supplies.
- (2) Limited to Quantities Considered Reasonable—The Exception will be limited to quantities that are considered reasonable for the purposes for which it is proposed.
- (3) Return-Flow—An amount of water equal to the amount diverted, less an allowance for consumptive use, will be returned to the watershed from which it was withdrawn. No water from outside of the Great Lakes may be used to satisfy this criterion, unless ... it is treated to satisfy water quality standards and to prevent the introduction of invasive species in the basin.
- (4) No significant adverse impacts—The diversion will result in no significant individual or cumulative adverse impacts to the quantity or quality of the water of the Great Lakes basin or related natural resources.
- (5) Environmentally sound and economically feasible water conservation measures will be used to minimize the amount.
- (6) Compliance with all applicable laws.



WI Act 227 definition

Reasonable Water Supply Alternative:

(ps) “Reasonable water supply alternative” means a water supply alternative that is similar in cost to, and as environmentally sustainable and protective of public health as, the proposed new or increased diversion and that does not have greater adverse environmental impacts than the proposed new or increased diversion.



WI Act 227

Additional Exception Standard Provisions:

3m. The place at which the water is returned to the source watershed is **as close as practicable** to the place at which the water is withdrawn unless . . .

- A. Not economically feasible.
- B. Not environmentally sound.
- C. Not in the interest of public health.



WI Act 227: Return Flow

- (4m) If water will be returned to the source watershed through a stream tributary to one of the Great Lakes, the physical, chemical, and biological integrity of the receiving water . . . will be protected and sustained . . . considering both low and high flow conditions and potential adverse impacts due to changes in temperature and nutrient loadings.



**WI Act 227:
Water Supply Service Area Plan Consistency**

(Em) The proposal is consistent with an approved water supply service area plan under s. 281.348 that covers the public water supply system.

Waukesha's Application



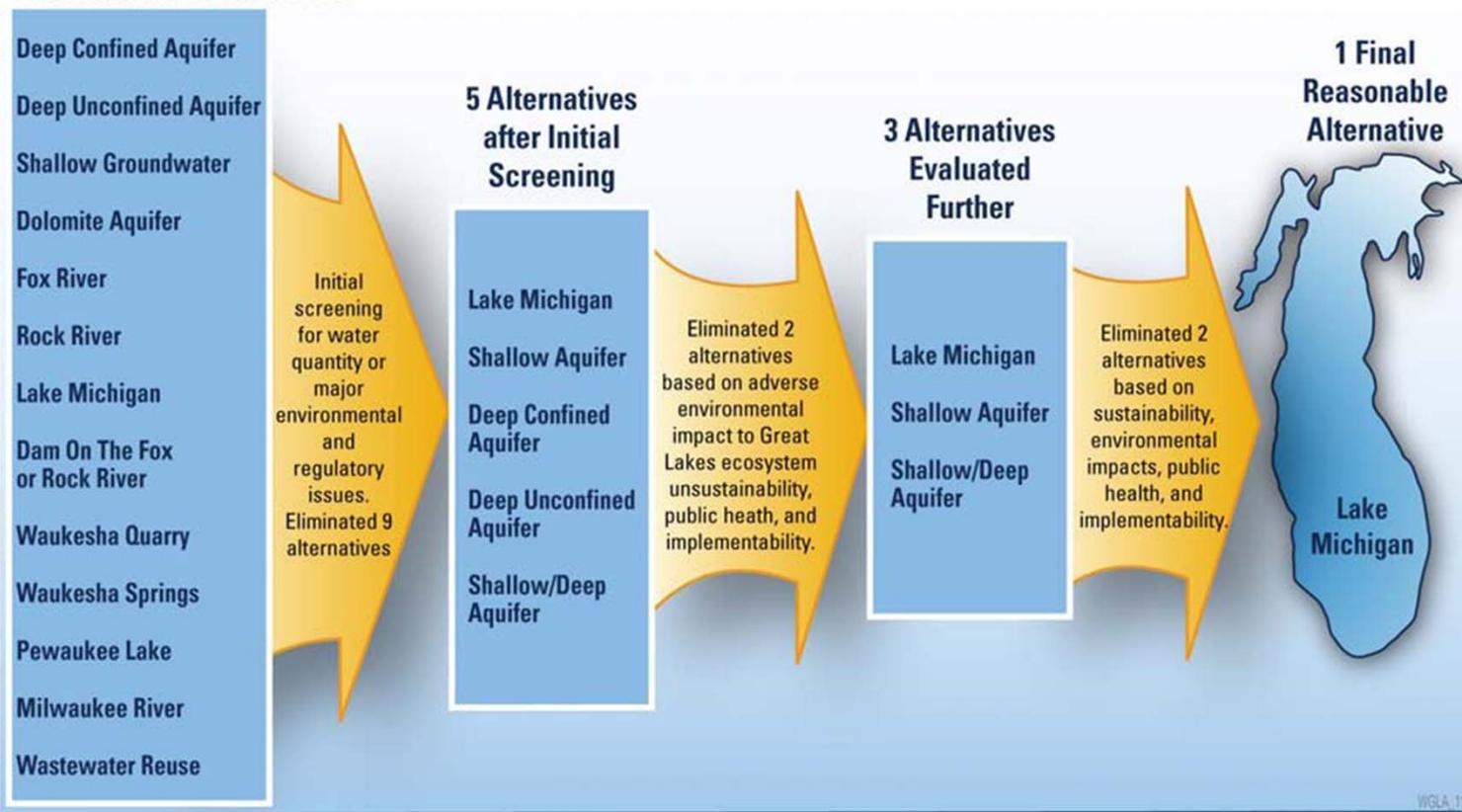
Waukesha's Application in a Nutshell



The City of Waukesha says it needs a new water supply, because (a) the groundwater in the deep aquifer is severely depleted, (b) there is radium in the drinking water, and (c) shallow aquifer withdrawals will significantly reduce water available for local streams, brooks, and wetlands.

Waukesha's Winnowing of Water Supply Alternatives:

14 Alternatives Considered

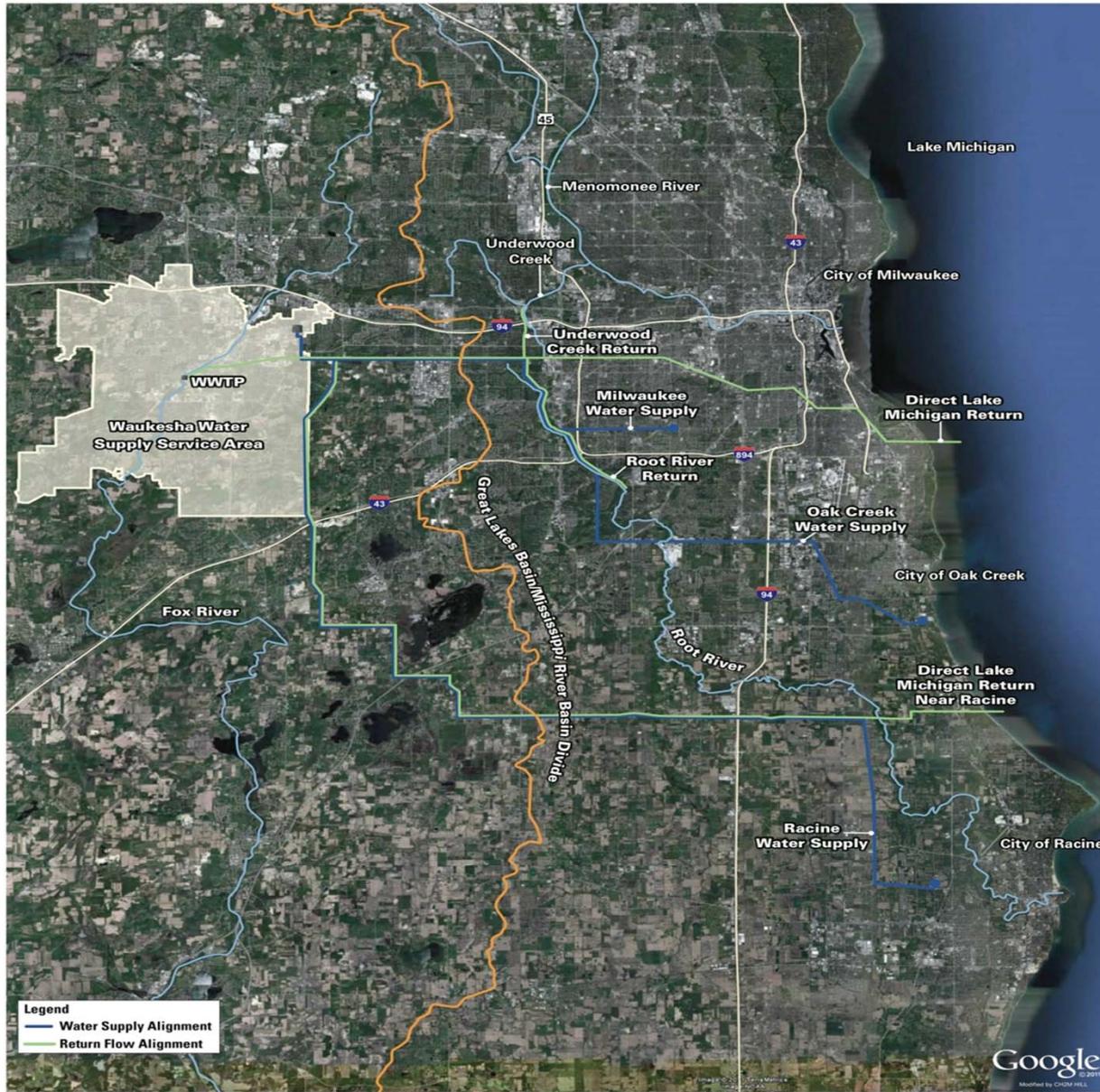




Return Flow Alternatives

1. Underwood Creek (Milwaukee)
2. **Via Root River (Racine)**
3. Direct to Lake Michigan
4. Via Milwaukee Metropolitan Sewerage District (MMSD) system

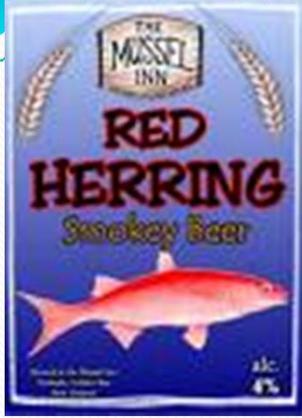
City of Racine Diversion Application



Waukesha's Diversion Application: Critical Issues

- Need for another water supply?
- No other reasonable alternatives?
- Reasonableness of amount?
- Inclusion of Service Supply Area?
- Return Flow?
- Water Conservation Measures?





Radium in the Water— Imperative or Red Herring ?

- City of Waukesha's deep sandstone aquifer ground water wells do not meet Environmental Protection Agency standards for radium, a naturally occurring contaminant linked to bone cancer.
- Currently, Waukesha is under a stipulation with the Wisconsin DNR to meet a June 30, 2018 deadline to meet the federal radium standards, or face stiff penalties.

Nonetheless,

The City of Waukesha currently meets radium standards for most of the year.



Reasonable Water Supply Alternative

Compact: There is no reasonable supply alternative within the basin...including conservation of existing water supplies.

Has Waukesha thoroughly demonstrated no other groundwater and surface water alternatives (or combinations thereof) are available, including:

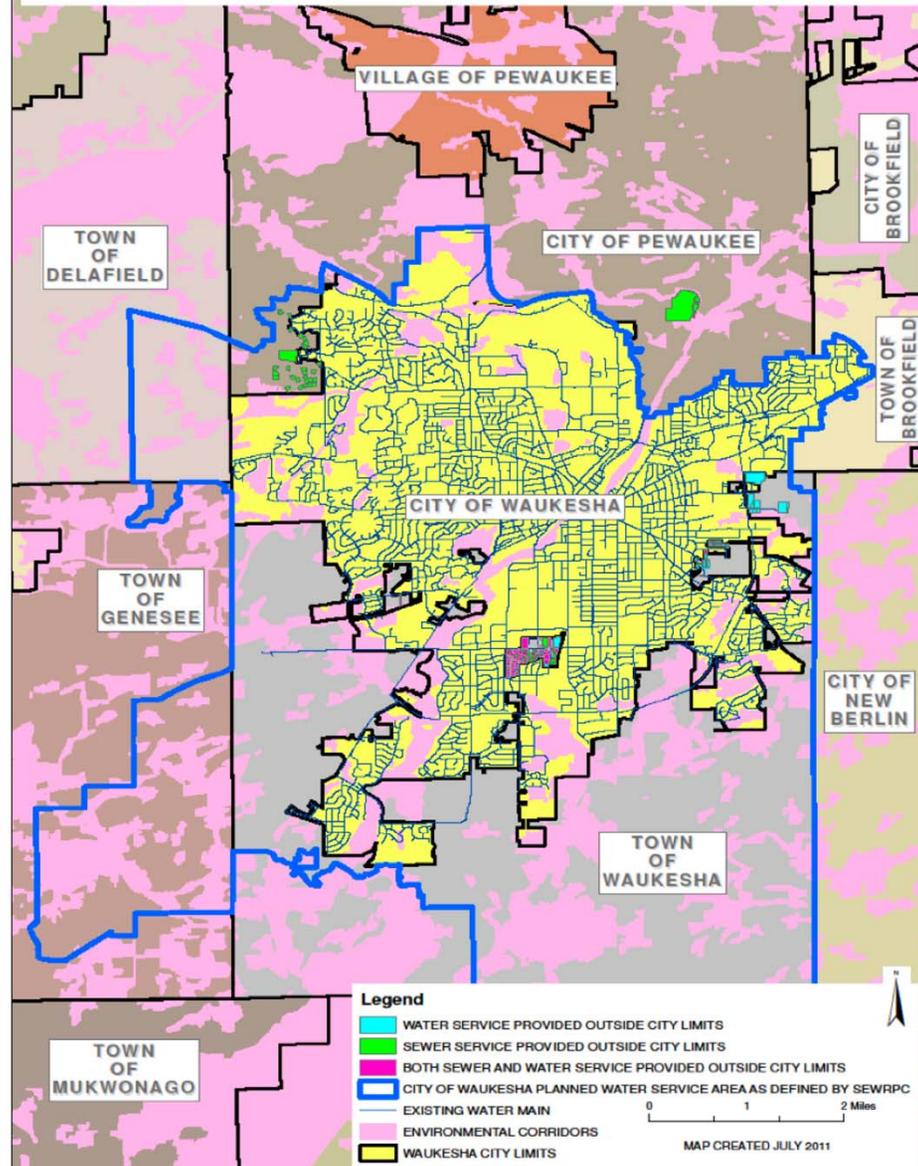
- * the unconfined deep aquifer to the west
- * river groundwater inducement
- * enhanced conservation
- * expanded radium treatment systems



Reasonable Amount

- Compact: Limited to quantities reasonable for purpose proposed.
- The Amount Requested: 10.1 mgd on average.
- Expanded Service Area: Currently the Waukesha Water Utility serves an area of approximately 22 square miles → the proposed service area for the water diversion would add an additional 17 square miles to this land area.
- Growing population: Waukesha's population is projected to increase by 25% from now to 2028, with further estimates as high as 98,000 (from 70,000) by 2035, BUT usage rates having been going down for decades.

EXISTING AND PROPOSED WATER SERVICE AREA CITY OF WAUKESHA





Inclusion of Expanded Service Area?

- Compact: community within a straddling county means ... city, town or equivalent thereof.
- Is a water supply service area an “equivalent thereof”?
- What does Compact say about requesting diversion for areas, many of which have no water shortage now or into foreseeable future?



Return Flow

- Compact: must maximize portion of water returned as basin water and minimize surface water and groundwater from outside the basin; also, all water withdrawn shall be returned less allowance for consumptive use.
- What steps will Waukesha employ to meet these requirements?
- Wis. Act 227: if water returned through a stream, the physical, chemical and biological integrity of receiving water will be protected and sustained.
- What impact would Waukesha's wastewater discharge into the Root River have in terms of fecal coliform, bacteria and phosphorus levels?



Water Conservation Measures

- Compact: The need ...cannot be reasonably avoided through the efficient use and conservation of existing water supplies
- At present Waukesha's conservation plan does not commit to implementation of all cost-effective water conservation and efficiency measures, and applicant has not put all measures in place prior to submitting its application. Does it need to do so according to the Compact?
- Other communities in service area proposed for inclusion have not implemented conservation measures nor would they plan to until hooked up to Waukesha. Does this meet requirements of submission?



The Latest...

- Waukesha submitted initial application to Wisconsin DNR in May 2010.
- Waukesha submitted revised application on October 14, 2013 (over 3000 pages).
- Public informational meetings on revised application to be held November 2013.



Next Steps and Anticipated Timeline

- Wisconsin DNR prepares technical review and EIS, making preliminary decision on application, anticipated January 2014 at the earliest.
- Holds hearings on draft EIS, technical review and preliminary decision and provides 45 day public comment period.
- DNR reviews comments and finalizes EIS and technical review – 30 day comment period to follow.
- If application approvable, DNR forwards to Regional Body and Compact Council, maybe June 2014.



Role of Regional Body and Compact Council

- Regional Body (States and Provinces) will issue a declaration of findings.
- Subsequently, the Compact Council (the States) must **UNANIMOUSLY** approve the application in order for Waukesha to obtain Lake Michigan water.



Thank you. Questions?

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