



**WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM**

Memo No. 11

TO: MEMBERS OF THE SPECIAL COMMITTEE ON GREAT LAKES WATER RESOURCES COMPACT

FROM: Rachel Letzing, Senior Staff Attorney, and John Stolzenberg, Chief of Research Services

RE: Revised Index of Recommendations and Concerns Regarding the Compact Submitted by Special Committee Members and Others

DATE: December 14, 2006 (Revised December 22, 2006)

The following is a revised index of recommendations and concerns offered by committee members and others regarding the compact. The recommendations and concerns are grouped according to the subject areas and corresponding subsections of LRB-0058/P1. Recommendations or concerns not directly related to a specific compact provision, or which relate to multiple compact provisions, are included in the “Other Recommendations and Concerns” section at the end of the index. Recommendations to change the text of the compact are italicized; recommendations to include provisions in legislation which implements the compact are not italicized. This index does not include recommendations or concerns submitted regarding the issue of tributary groundwater raised by Public Member Dan Duchniak.

The revised version of this Memo reflects changes in the classifications of the submittals made after the committee’s December 15, 2006 meeting and the recommendations and concerns submitted by Professor Douglas Cherkauer, University of Wisconsin – Milwaukee, which were inadvertently omitted from the original version of the Memo.

LRB-0058/P1

(1e) Definitions

1. Recommend clarifying definition of “product” under sub. (1e) (o). [Public Member Ed Wilusz, Questions and Comments Regarding LRB-0058/P1, p. 2 (September 26, 2006).]
2. Recommend amending definition of “community within a straddling county” under sub. (1e) (d) to specify that the boundary of a community within a straddling county “shall be defined as those boundaries that exist as of December 13, 2005.” [Rep. Jon Richards, pp. 1-2; supported by Public Members Jodi Habush Sinykin and Keith Reopelle.]

3. Recommend amending definition of “straddling community” under sub. (1e) (t) to specify that the boundary of a straddling community “shall be defined as that which existed on December 13, 2005.” [Rep. Jon Richards, p. 2; supported by Public Members Jodi Habush Sinykin and Keith Reopelle.]
4. Recommend clarifying definition of “new or increased withdrawal or consumptive use” under sub. (1e) (L). [Public Member Ed Wilusz, Additional Compact Comments, p. 2 (December 5, 2006).]
5. Concern regarding scope and appropriateness of definition of “environmentally sound and economically feasible water conservation measures” under sub. (1e) (i). [Public Member Matt Moroney, p. 2, item 1.]
6. Recommend defining the term “tributary groundwater.” [Public Member Matt Moroney, p. 2, item 2.]
7. *Recommend removing the reference to “basin ecosystem” from the definition of “cumulative impacts” under sub. (1e) (g). In the alternative, recommend deleting the definition of “cumulative impacts under sub. (1e) (g) and delete all reference to “cumulative impact(s)” in the Compact.* [Wisconsin Manufacturers and Commerce (WMC), p. 2, “Definitions” items 1. and 2.]
8. *Recommend changing the definition of “environmentally sound and economically feasible water conservation measures” under sub. (1e) (i) to the following: ““environmentally sound and economically feasible water conservation measures” mean those measures, methods, technologies, or practices for efficient water use that are environmentally sound, technically feasible and available, and economically feasible and cost effective based on economic costs which consider the particular facilities and processes involved, the age of equipment and facilities involved, the processes employed, and other economic cost factors that would diminish the economic feasibility of the measures.”* [WMC, p. 3, “Definitions,” item 3.]
9. *Recommend changing the definition of “product” under (1e) (o) by deleting subs. (1e) (o) 3. to (1e) (o) 5.* [WMC, p. 3, “Definitions,” item 4.]
10. *Recommend deleting the definition of “water dependent natural resources” under sub. (1e) (w) and deleting all references to this term from the Compact.* [WMC, p. 3, “Definitions,” item. 5.]
11. Concern regarding the date that boundaries of “communities within a straddling county” and “straddling communities” are determined. [Sen. Mary Lazich, p. 4, “Implementation.”] Should be effective date of compact.
12. Recommend clarifying definitions of “sustainable” in sub. (1e) (am), “watershed” under sub. (1e) (c), “incorporated” under sub. (1e) (d), the phrase “water loss and waste” in definition of “environmentally sound and economically feasible water conservation measures” under sub. (1e) (i), “source watershed” under sub. (1e) (r), and “water” under sub. (1e) (v). Concern that “diversion” under sub. (1e) (h) does not include transfers of water into the basin, including ballast water. [Douglas Cherkauer, Professor of Geosciences, University of Wisconsin-Milwaukee, Section 1 – Definitions.]
13. Recommend that the terms “tributary groundwater,” “significant adverse impacts,” “conservation,” and “water resources” be defined. [Douglas Cherkauer, Professor of Geosciences, University of Wisconsin-Milwaukee, Section 1 – Definitions.]

(1m) Findings and Purposes

1. Concern regarding language in sub. (1m) (a) 1., and applicability of public trust doctrine to groundwater. [Lawrie Kobza, Municipal Environmental Group – Water Division, pp. 1-3.] *Recommend amending the compact by deleting “and held in trust” from the Compact p. 9, lines 18-19, so that this section provides: “The waters of the basin are precious public natural resources shared by the states.”*

2. Concern regarding the effect of the compact on the public trust doctrine, *Recommend deletion of “and held in trust.”* [Sen. Mary Lazich, p. 3, “Public Trust Doctrine.”]

(2) Organization [of the Great Lakes-St. Lawrence River Basin Water Resources Council]

1. Recommend stating that Wisconsin does not give consent to any action of the council outside the basin. [Public Member Matt Moroney, p. 2, item 3.]

2. *Recommend deleting the second sentence in sub. (2) (g), which provides that outside the basin, the council may act in its discretion but only to the extent such action may be necessary or convenient to effectuate or implement its powers or responsibilities within the basin and subject to the consent of the jurisdiction wherein it proposes to act.* [WMC, p. 4, “Organization.”]

(3) General Powers and Duties [of the Great Lakes-St. Lawrence River Basin Water Resources Council]

1. Concern regarding the meaning of council’s power to revise standard of review and decision in accordance with each party’s “respective statutory authorities and applicable procedures.” [Public Member Ed Wilusz, Questions and Comments Regarding LRB-0058/P1, p. 2 (September 26, 2006).]

2. Concern regarding the scope of council’s rule-making authority and public notice and hearing requirements. [Public Member Ed Wilusz, Questions and Comments Regarding LRB-0058/P1, p. 2 (September 26, 2006).]

3. Concern regarding the effect of the council’s “review of water management and conservation and efficiency programs of the parties and findings.” [Public Member Ed Wilusz, Questions and Comments Regarding LRB-0058/P1, p. 2 (September 26, 2006).]

4. Recommend specifying that the council member from Wisconsin must get legislative approval to revise the standard of review and decision. [Public Member Matt Moroney, p. 2, item 4.]

5. Recommend specifying that the Legislature must approve any council rule or regulation that is not administrative in nature. [Public Member Matt Moroney, p. 2 item 5.]

6. *Recommend deleting the language under sub. (3) (a) 2., which allows the council to revise the standard of review and decision.* [WMC, p. 4, “General Powers and Duties” item 1.]

7. *Recommend deleting the second sentence in sub. (3) (a) 3., which provides that the council shall adopt and promote uniform and coordinated policies for water resources conservation and management in the basin.* [WMC, p. 4, “General Powers and Duties, item 2.]

8. *Recommend deleting sub. (3) (c) 1., in its entirety.* [WMC, p. 5, “General Powers and Duties, item 3.]

9. *Recommend deleting sub. (3) (d) 2., in its entirety.* [WMC, p. 5, “General Powers and Duties, item 4.]

10. Concern regarding the Governor's authority to vote on the Compact's council for a change in the standard of review and decision. [Sen. Mary Lazich, p. 4, "Implementation."]

(4) Water Management and Regulation; Water Resources Inventory, Registration, and Reporting

1. Recommend option 1 under each issue listed in the options section of Memo 7. However, recommend that Compact requirements should not conflict with other legal requirements. Clarify which types of entities must cooperate with DNR in developing the inventory. [Public Member Ed Wilusz, Additional Compact Comments, p. 1 (December 5, 2006).]

2. Recommend establishment of a Strategic Data Acquisition Task Force and a Science and Technical Advisory Committee to develop the means of carrying out subs. (4) (e) and (4) (f). Recommend these entities specifically examine how the Great Lakes Observing System may serve as an appropriate overarching entity to fulfill the inventory, monitoring, and scientific assessment needs of the compact. [Bud Harris, Memo #11, items 1. and 2. (December 18, 2006).]

3. Recommend that water resources and information under sub. (4), should specify water quality in addition to water quantity. [Douglas Cherkauer, Professor of Geosciences, University of Wisconsin-Milwaukee, Section 4 – Water Management and Regulation.]

4. Recommend that when a person registers a withdrawal or diversion, information provided should include at least the amount of the withdrawal, the source from which it is to be withdrawn, the quality of withdrawn water, the use, and the location, quantity and quality of the return. [Douglas Cherkauer, Professor of Geosciences, University of Wisconsin-Milwaukee, Section 4 – Water Management and Regulation.]

(4b) Water Management and Regulation; Water Conservation and Efficiency Programs

1. Recommend authorizing a voluntary water conservation program. [Public Member Ed Wilusz, Questions and Comments Regarding LRB-0058/P1, p. 3 (September 26, 2006).]

2. Concern that goals upon which the basin-wide water conservation and efficiency objectives will be based are contradictory. Recommend that these goals not apply statewide. [Public Member Matt Moroney, p. 2, item 6.]

3. Concern regarding applicability and scope of the term "cumulative effect and climate." [Public Member Matt Moroney, p. 2, item 7.]

4. *Recommend deleting sub. (4b) (a) 1. and 2., goals, which basin-wide water conservation and efficiency objectives are based upon, of ensuring improvement of the waters and water dependent natural resources, and protecting and restoring the hydrologic and ecosystem integrity of the basin.* [WMC, p.5, "Water Management and Regulation; Water Conservation and Efficiency Programs, item 1.]

5. *Recommend revising sub. (4b) (b) to the following: "Within 2 years of the effective date of this compact, each party shall develop its own water conservation and efficiency goals and objectives, and shall develop and implement a voluntary water conservation and efficiency programs within its jurisdiction based on the party's goals and objectives. Each party shall annually assess its programs in meeting the party's goals and objectives, and make this annual assessment available to the public." Recommend deleting sub. (4b) (c) in its entirety.* [WMC, pp. 5-6, "Water Management and Regulation; Water Conservation and Efficiency Programs, item 2.]

6. *Recommend deleting the second sentence in sub. (4b) (e), which provides that conservation programs need to adjust to new demands and the potential impacts of cumulative effects and climate.* [WMC, p. 6, “Water Management and Regulation; Water Conservation and Efficiency Programs, item 3.]

7. Recommend development and implementation of mandatory conservation program. [Jodi Habush Sinykin (December 21, 2006).]

(4d) Water Management and Regulation; Party Powers and Duties

1. Recommend a specific timeline be provided for either the council or regional body, or both, to comment on a proposal. [Public Member Matt Moroney, p. 2, item 8.]

2. *Recommend deleting references in sub. (4d) (c), which requires a basis for permit approval beyond the decision-making standard.* [WMC, pp. 6-7, “Water Management and Regulation, Party Powers and Duties.”]

(4h) Water Management and Regulation; Regional Review

1. Concern about broad term “regionally significant or potentially precedent setting proposal.” [Public Member Matt Moroney, p. 2, item 9.]

2. Recommend considering whether to restrict Wisconsin’s ability to request regional review of an application even if such review is not required. [Public Member Matt Moroney, p. 3, item 10.]

3. *Recommend deleting sub. (4h) (a) 6., which provides that a majority of members on the regional body may request regional review of a regionally significant or potentially precedent setting proposal; such review must be conducted to the extent possible within the timeframes set forth in this subsection; any such regional review must be undertaken only after consulting the applicant.* [WMC, p. 7, “Water Management and Regulation; Regional Review, item. 1]

4. *Recommend deleting sub. (4h) (b) 3. b. in its entirety, which provides that an originating party may request regional review of an application even if regional review is not required; any such regional review must be undertaken only after consulting the applicant.* [WMC, p. 7, “Water Management and Regulation; Regional Review, item. 2.]

5. *Recommend deleting subs. (4h) (d) 3. and 4., which provide that any member of the regional body may conduct the member’s own technical review of any proposal subject to regional review; and at the request of the majority of its members the regional body must make such arrangements as it considers appropriate for an independent technical review or a proposal.* [WMC, p. 7, “Water Management and Regulation; Regional Review, item. 3.]

(4n) Water Management and Regulation; Exceptions to the Prohibition of Diversions

1. Concern about limiting the exceptions to the prohibition on diversions to water transferred solely for public water supply purposes. [Public Member Matt Moroney, p. 3, item 11.]

2. Concern regarding ability of one Governor on the council to veto a proposal for an inter-basin transfer or community within a straddling county diversion. [Public Member Matt Moroney, p. 3, item 12.]

3. Concern regarding difficulty of standards a community in a straddling county must meet in order to satisfy the exception to the prohibition on diversions. [Public Member Matt Moroney, p. 3, item 13.]

4. Concern regarding broad and undefined terms within the exception standard and impact of the “potential cumulative impacts of any precedent setting consequences” criteria. [Public Member Matt Moroney, p. 3, item 14.]

5. Recommend that implementing legislation include the following: “Consistent with state discretion under the Compact, it will be incumbent upon the applicant for a diversion to assess and to justify the economic feasibility or infeasibility of available water conservation measures pursuant to the Compact’s exception standard.” [Public Member Jodi Habush Sinykin, “Recommendations Regarding Water Conservation Provisions for Inclusion in a Legislative Council Option Memo.” Supported by Public Member Keith Reopelle.]

6. Recommend amending sub. (4n) (a) 1. and (d) 3., after the sentence, “All water withdrawn from the basin shall be returned, either naturally or after use, to the source watershed less an allowance for consumptive use,” to add the following: “The applicant shall return water withdrawn from the basin as close as possible to the point of the initial withdrawal from the source watershed, unless it can be shown that it is not feasible, and not cost effective and not environmentally sound to do so. In documenting how the return of the Great Lakes Basin waters back to the source watershed will be maximized the applicant communities must also demonstrate how the natural flow regimes and the physical, chemical, and biological integrity of the source watershed will be protected. In those instances where an applicant is proposing to return diverted Great Lakes water back to the source watershed through a river, stream or surface body of water that is connected to the source watershed, the applicant must document how the physical, chemical and biological integrity of the receiving waters will be protected and sustained as well as addressing how the return flow impacts on the receiving waters’ will be minimized including minimizing the impacts on the magnitude, frequency, time duration, rate of change and predictability of natural flow events of the receiving waters.” In meeting the provisions for return flow, applicants should be expected to fully comply with all applicable laws and agreements as provided in sub. (4n) (d) 6. [Public Member Ann Beier, “Requested Clarification of Language on Return Flow Provisions for Diversions.” Supported by Public Members Jodi Habush Sinykin and Keith Reopelle.]

7. Concern regarding the one state veto. [Sen. Mary Lazich, p. 1, “One State Veto.”]

8. Recommend that a reasonable upper limit on consumptive use be placed on the phrase “less an allowance for consumptive use” under sub. (4n) (a) 1. [Douglas Cherkauer, Professor of Geosciences, University of Wisconsin-Milwaukee, Section 4 – Water Management and Regulation.]

9. Recommend clarifying meaning of “groundwater hydrologically interconnected to the waters of the basin” in sub. (4n) (c) 2. [Douglas Cherkauer, Professor of Geosciences, University of Wisconsin-Milwaukee, Section 4 – Water Management and Regulation.]

(4p) Water Management and Regulation; Management and Regulation of New or Increased Withdrawals and Consumptive Uses

1. Concern regarding scope of and flexibility within language allowing the state to adopt and implement measures consistent with the decision-making standard and determine the scope and

thresholds of its program. [Public Member Ed Wilusz, Questions and Comments Regarding LRB-0058/p1, p. 3 (September 26, 2006).]

2. *Recommend amending sub. (4p) (a) to the following: Within five years of the effective date of this compact, each party shall create a program for the management and regulation of new or increased withdrawals and consumptive uses by adopting and implementing measures consistent with the decision-making standard. Each party, through a considered process, shall set and may modify threshold levels for the regulation and new or increased withdrawals. Each party may determine the scope and thresholds of its program, including which new or increased withdrawals and consumptives uses will be subject to the program.* [WMC, p. 8, “Water management and Regulation; Management and Regulation of New or Increased Withdrawals and Consumptive Uses.”]

3. Recommend clarifying terms “significant impacts” and “significant individual or cumulative adverse impacts” under sub. (4p) (a) and including a mechanism to decide the “significance” that needs to be provided. [Douglas Cherkauer, Professor of Geosciences, University of Wisconsin-Milwaukee, Section 4 – Water Management and Regulation.]

(4r) Water Management and Regulation; Decision-Making Standard

1. Concerns regarding scope and application of criteria to determine whether to approve a new or increased withdrawal or consumptive use, including the implementation of the “allowance for consumptive use,” undefined and vague or broad terms such as “significant adverse impact,” “individual impacts,” “cumulative impacts,” and issues related to cumulative impacts determination, and “interacting components of land, water and living organisms affected by waters of the basin.” Concerns regarding sub. (4r) (c) provision “environmentally sound and economically feasible water conservation measures”; preference for site specific focus, not industry wide focus. Additional concern regarding creation of state bureaucracy to determine these measures for all water users in basin. Concerns regarding guidance on how sub. (4r) (e) “reasonableness” criterion is interpreted and balanced. [Public Member Ed Wilusz, Questions and Comments Regarding LRB-0058/P1, p. 4-9 (September 26, 2006).]

- a. Recommend that existing surface water and groundwater quality regulations be used for the quality assessment and that no additional water quality assessment be required under the compact; proposals complying with existing regulations would be determined to meet the water quality impacts test.
- b. *Recommend in sub. (4r) (b) changing “and the applicable source watershed” to “of applicable source watershed.”*

2. Concern regarding scope and ambiguity of “no significant individual or cumulative adverse impacts to the quantity or quality of the waters and water dependent natural resources and the applicable watershed”; *recommend specifying “applicable watershed as a whole” and the “basin as a whole.”* Additional concern regarding “economically feasible water conservation measures.” [Public Member Matt Moroney, p. 3, item 15 a. and b.]

3. *Recommend amending sub. (4r) (b) to the following: “The withdrawal of consumptive use will be implemented so as to ensure that the proposal will result in no significant individual adverse impact to the quantity of the waters of the applicable source watershed.”* [WMC, p. 8, “Water Management and Regulation; Decision-Making Standard,” item 2.]

4. *Recommend deleting approval criteria in sub. (4r) (c) in its entirety.* [WMC, p. 8-9 “Water Management and Regulation; Decision-Making Standard,” item 3.]

5. Concern regarding authority of Department of Natural Resources (DNR) to make determinations regarding whether a withdrawal or consumptive use complies with applicable municipal or federal laws. Consider refining sub. (4r) (d), so that DNR will review projects based upon only those aspects of the law that DNR has the authority to enforce and interpret. [WMC, p. 9 “Water Management and Regulation; Decision-Making Standard,” item 4.]

6. *Recommend deleting approval criteria in sub. (4r) (e) in its entirety.* [WMC, p. 9 “Water Management and Regulation; Decision-Making Standard,” item 5.]

7. Recommend that implementing legislation should include either of the following: (a) “Consistent with Wisconsin’s discretion under the compact, Wisconsin determines that the exception standard under s. 281.343 (4r) (c) shall be interpreted to require that the need for all or part of the proposed consumptive use, withdrawals or exception cannot be reasonably avoided through the demonstrated conservation and efficient use of existing water supplies;” or (b) “Consistent with Wisconsin’s discretion under the Compact, Wisconsin determines that the exception standard under s. 281.343 (4r) (c) shall be interpreted to require that an application for a diversion may proceed only after the implementation of a measurable effective conservation program has demonstrated that the need for all or part of the proposed consumptive use, withdrawal or exception cannot be reasonably avoided through conservation and efficient use of existing water supplies.” [Public Member Jodi Habush Sinykin, “Recommendations Regarding Water Conservation Provisions for Inclusion in a Legislative Council Option Memo.” Supported by Public Member Keith Reopelle.]

8. Recommend that implementing legislation include the following: “Consistent with state discretion under the Compact, it will be incumbent upon the applicant for a new or increased withdrawal to assess and to justify the economic feasibility or infeasibility of available water conservation measures pursuant to the Compact’s decision-making standard.” [Public Member Jodi Habush Sinykin, “Recommendations Regarding Water Conservation Provisions for Inclusion in a Legislative Council Option Memo.” Endorsed by Public Member Keith Reopelle.]

9. Recommend that under sub. (4r) (a), the phrase “allowance for consumptive use” be further defined based upon a standard developed for different industry classes and municipalities, based on the consumptive use of a percent of the best performing facilities. Recommend an allowance for consumptive use equal to or less than the average of the top 50% of users in that industry class. [Public Member Keith Reopelle, “In-Basin Water Management and Regulation.” Endorsed by Public Member Jodi Habush Sinykin.]

10. Recommend further defining “significant individual or cumulative adverse impacts” under sub. (4r) (b). Possible model is definition under proposed ch. NR 820: “Significant Adverse (Environmental) Impact” means alteration of groundwater levels, groundwater discharge, surface water levels, surface water discharge, groundwater temperature, surface water temperature, groundwater chemistry, surface water chemistry, or other factors that cause significant degradation of environmental quality such as the health or aquatic flora and fauna.” [Public Member Keith Reopelle, “In-Basin Water Management and Regulation.” Endorsed by Public Member Jodi Habush Sinykin.]

11. Recommend the phrase “environmentally sound and economically feasible” under sub. (4r) (c) include compliance requirements with all applicable municipal, state, and federal laws as well as

regional interstate and international agreements including the Boundary Waters Treaty of 1909. [Public Member Keith Reopelle, “In-Basin Water Management and Regulation.” Endorsed by Public Member Jodi Habush Sinykin.]

12. Recommend clarifying terms “significant impacts” and “significant individual or cumulative adverse impacts” under sub. (4r) (b), and including a mechanism to decide the “significance” to be provided. [Douglas Cherkauer, Professor of Geosciences, University of Wisconsin-Milwaukee, Section 4 – Water Management and Regulation.]

(4t) Water Management and Regulation; Applicability

1. Concern regarding point at which baseline is set, particularly if it was economic low point for industry. [Public Member Ed Wilusz, Questions and Comments Regarding LRB-0058/P1, pp. 9, 10 (September 26, 2006).] Recommend baseline determination be based on the maximum hydraulic capacity of a facility; actual use of water should not be a capacity-limiting factor. If facility has multiple water systems and multiple water withdrawals and discharges, the capacities of all water systems should be aggregated to determine a baseline for a facility. [Public Member Ed Wilusz, Additional Compact Comments, p. 1 (December 5, 2006).]

2. Recommend that for municipal water systems, the baseline for existing withdrawals should be defined as the approved design capacity of the largest component of the utility’s existing facilities. [Lawrie Kobza, Municipal Environmental Group – Water Division, pp. 3-4.]

3. Concern regarding use of the basin surface water divide to determine the area of the basin. [Public Member Matt Moroney, p. 3, item 16.]

4. Recommend establishing the baseline so that facilities will be grandfathered based upon a baseline that reflects the facility’s maximum capacity. [WMC, pp. 9-10 “Water Management and Regulation; Applicability.”]

5. Recommend that implementing legislation should include the following: “Consistent with Wisconsin’s discretion under s. 281.343 (4t) (j) to determine the treatment of proposals to withdraw water and to remove it from the basin in any container 5.7 gallons or less in size, Wisconsin determines that water bottled for sale in any container 5.7 gallons or less will be defined as a diversion; as such, a proposal to withdraw water and remove it from the basin in any size container shall be treated under this compact in the same manner as a proposal for a diversion.” This would not apply to de minimus removals of water in containers intended for personal use. [Public Member Jodi Habush Sinykin, “Recommendations Regarding Treatment of Bulk Water Transfers and Bottled Water for Inclusion in a Legislative Council Option Memo.” Endorsed by Public Member Keith Reopelle.]

- a. In the alternative, recommend the following regarding bottled water: “Consistent with Wisconsin discretion under s. 281.343 (4t) (j) to determine the treatment of proposals to withdraw water and to remove it from the basin in any container 5.7 gallons or less in size, Wisconsin determines that a proposal to withdraw water and to remove it from the basin in any container less than 5.7 gallons shall be regulated in accordance with the decision-making standard set forth in s. 281.343 (4r).” [Public Member Jodi Habush Sinykin, “Recommendations Regarding Treatment of Bulk Water Transfers and Bottled Water for Inclusion in a Legislative Council Option Memo.” Endorsed by Public Member Keith Reopelle.]

6. Recommend that under sub. (4t) (a), implementing legislation regarding the decision-making standard focus on broad parameters, with details provided in administrative rules. Recommend that new and increased existing withdrawals over 100,000 gallons per day be classified as Type II actions under ch. NR 150, not needing an automatic environmental impact statement, but requiring an environmental assessment to determine whether further analysis is warranted. [Public Member Keith Reopelle, “In-Basin Water Management and Regulation.” Endorsed by Public Member Jodi Habush Sinykin.]

7. Recommend maintaining provision in sub. (4t) (e), using the basin surface water divide as the surrogate ground water demarcation line. [Douglas Cherkauer, Professor of Geosciences, University of Wisconsin-Milwaukee, Section 4 – Water Management and Regulation.]

(4z) Water Management and Regulation; Assessment of Cumulative Impacts

1. Concern regarding interaction of cumulative impact assessment in this section and the cumulative impact assessment in sub. (4r) (b) [decision-making standard]. Recommend clarifying whether cumulative impact assessment required under (4z) (b) is intended to refer to assessment required under sub. (4z) (a) and the assessment associated with an individual application. [Public Member Ed Wilusz, Questions and Comments Regarding LRB-0058/P1, p. 6, (September 26, 2006).]

2. Recommend requiring that the Legislature must approve any change in the standard of review and decision (for which the assessment of cumulative impacts is the basis). [Public Member Matt Moroney, p. 3, item 17.]

3. Concern regarding the weight given to climate considerations in the assessment of cumulative impacts. [Public Member Matt Moroney, p. 3, item 18.]

4. *Recommend deleting the cumulative impact assessment provision under sub. (4z) (a) and all references to this term.* [WMC, p. 10 “Water Management and Regulation; Assessment of Cumulative Impacts.”]

(7g) Dispute Resolution and Enforcement; Alternative Dispute Resolution

1. Concern regarding vague provisions including who will conduct the alternative dispute resolution, standard of proof, and timeline of the process. [Public Member Matt Moroney, p. 3, item 19.]

(7r) Dispute Resolution and Enforcement; Enforcement

1. Recommend examining citizen suit provisions and exploring options for narrowing sub. (7r) (a) and (b) 1. [Public Member Ed Wilusz, Questions and Comments Regarding LRB-0058/P1, p. 10 (September 26, 2006).]

2. Concern regarding lack of definition of “person aggrieved.” [Public Member Matt Moroney, p. 3, item 20.]

3. *Recommend deleting sub. (7r) (a) in its entirety.* [WMC, p. 10 “Dispute Resolution and Enforcement; Enforcement,” item 1.]

4. *Recommend deleting references to “aggrieved person” in sub. (7r) (c) 1. and deleting provisions in sub. (c) 3., which apply to lawsuits filed by an aggrieved person.* [WMC, p. 11 “Dispute Resolution and Enforcement; Enforcement,” item 2.]

(8) Additional Provisions

1. Concern about current common law water rights and whether these rights are the same in all states and provinces. [Public Member Matt Moroney, p. 3, item 21.]

2. Concern regarding the period of time it would take to change the compact once ratified. [Sen. Mary Lazich, p. 4, "Changes to Compact."]

OTHER RECOMMENDATIONS AND CONCERNS

1. Consider including provision in state law that would repeal the compact language if compact is never ratified and never takes effect. [Public Member Ed Wilusz, Additional Compact Comments, p. 2 (December 5, 2006).]

2. Concern regarding lack of reference in the compact to invasive species, and concern that the compact does not require Illinois to address this issue, specifically Asian carp, as a condition of their continued diversion. [Public Member Matt Moroney, pp. 3-4, question 7.]

3. Concern regarding how annexations and regional consolidation of services may be affected by the compact. [Public Member Matt Moroney, p. 4, question 8.]

4. Concern regarding authority of Congress to modify the ratified compact. [Public Member Matt Moroney, p. 4, question 9.]

5. Recommend that Wisconsin's conservation program should be comprehensive and include water recycling systems and water reclamation programs within the state's examination of available water conservation objectives and goals. [Public Member Jodi Habush Sinykin, "Recommendation Regarding Treatment of Bulk Water Transfers and Bottled Water for Inclusion in a Legislative Council Option Memo." Endorsed by Public Member Keith Reopelle.]

6. Recommend that the provisions in the compact regarding diversion proposals or critical withdrawals from the basin include the following: provide public notification of receipt of all applications and any notice of intent to file applications for diversions; allow the public reasonable opportunity to submit comments before applications are acted upon by the state; assure public accessibility to all documents relevant to an application, including public comments received; and open the decision-making process to the public. [Clean Wisconsin, "Recommendations Regarding the Compact's Public Participation Process for Inclusion in a Legislative Council Option Memo"; endorsed by Public Members Keith Reopelle and Jodi Habush Sinykin.]

7. Concern regarding availability of Lake Michigan water to communities in southeastern Wisconsin. [Sen. Mary Lazich, p. 1, "Policy Issues."]

8. Concern regarding authority of Congress to modify the ratified compact. [Sen. Mary Lazich, p. 2, "Congressional Authority."]

9. Concern regarding the expense of litigation over the meaning of language in the compact and its application. [Sen. Mary Lazich, p. 3, "Litigation."]

10. Concern regarding fiscal impact of the compact. [Sen. Mary Lazich, p. 2, "Fiscal Impact."]

11. Concern regarding Wisconsin not being able to learn from other states enabling legislation. [Sen. Mary Lazich, p. 1, "No Other State Has Yet Adopted the Compact."]

12. Recommend reference to “basin ecosystem”, “cumulative impacts”, and “water dependent natural resources” be maintained as used in the compact. [Bud Harris, Memo #11 (December 18, 2006).]

13. Recommend monitoring water resources by including at least the following: regular collection of ground water levels and samples for quality analysis in all aquifers; continuous monitoring of streamflows, lake and wetland levels and precipitation; regular sampling of the quality of surface waters, and measurement of the quantity and quality of diversions, withdrawals and returns to assess whether conservation is effective or the system is impacted by human actions or management decisions. [Douglas Cherkauer, Professor of Geosciences, University of Wisconsin-Milwaukee, p.3.]

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