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## Testing The Great Lakes Compact: In Brief

At the heart of many of today's Great Lakes controversies is a little-known law called the Great Lakes Compact. Ratified by all 8 Great Lakes States, approved by both houses of Congress, and signed by President Bush on October 3, 2008, the legally-binding interstate compact created a standardized set of tools and protocols for the management of Great Lakes water. Most notably, the agreement effectively banned all water withdrawals located outside the Great Lakes basin, and it restricted withdrawals that have a measurable negative impact on a surrounding watershed.

The first test of the compact was a request by the city of Waukesha, Wisconsin to pipe water from Lake Michigan. The city limit of the Milwaukee suburb lies several miles outside the Lake Michigan drainage basin and approximately seventeen miles from Lake Michigan itself. Since the city is located in a county straddling the divide between the Great Lakes and Mississippi River drainage basins, it was eligible to apply for a diversion, which required approval of state regulators and all of the Great Lakes states governors.

The Waukesha proposal took five years before earning a unanimous vote by the Great Lakes governors in June 2016. To comply with the Compact, Waukesha must return an equal volume of water back to Lake Michigan, which requires wastewater treatment improvements and a new pipeline to return treated water back to a tributary river. The city expects to complete the transition by 2023.

The case of Waukesha was inherently controversial because the entirety of the city was well outside the drainage basin boundary. Legal and administrative challenges charged that the agreement violated the Compact, but those challenges were ultimately dropped. Instead, Great Lakes mayors announced their intention to meet with state representatives over the coming year to negotiate potential changes to procedures for reviewing future diversion requests.

While some folks aren't happy with the outcome of the Waukesha test, the agreement held up and operated as intended. The Waukesha decision was diligently considered with a great deal of scrutiny, and this first test of the Great Lakes Compact reveals areas where the agreement can be strengthened.

Inside, we explore the Compact in its broader context, and ponder a future in which water is the new gold and the Great Lakes is the world's largest gold mine.





# Testing The Great Lakes Compact: Dive Deep

## The Compact

Work began on the Great Lakes Compact in 1999 after a series of proposals floated by private corporations and government agencies caused a stir: a Canadian company proposed shipping Lake Ontario water to Asia, and others floated piping Great Lakes water to Arizona or western Canada to replace depleting aquifers and alleviate ongoing droughts. Governors and legislators in the region, alarmed by the schemes, sought to strengthen existing legal barriers to such proposals. At the time, lake levels were nearing historic lows, and industries relying on the Great Lakes were suffering: commercial fishing, hydropower electricity generation, tourism, shipping, etc. The politics of water withdrawals were perilous.

What made the Compact such a radical departure from the environmental law of the time is that it treated groundwater, surface water, and Great Lakes tributaries as a single ecosystem. The law is clear: no diversions of Great Lakes basin water, period—not by pipe to Arizona, not by ship to China, not even to Madison, Wisconsin or Columbus, Ohio.

## The Waukesha Test

Where the law has been profoundly unclear is in the case of municipalities that straddle the Basin. What happens when half of a town is inside the Basin, and half is outside? Or even more drastic, what if a town finds themselves just barely on the wrong side of the water slope? The answer is complicated, in part because it's still being debated.

The Waukesha proposal took five years before earning a unanimous vote by the Great Lakes governors in June 2016. The case was inherently controversial because the entirety of the city was well outside the drainage basin boundary, and the decision reveals areas where the agreement can—and should—be strengthened.

## Nestlé Waters: Bottling the Great Lakes

Each day, 4.8 million bottles of water leave Nestlé's packaging plant in Stanwood, Michigan and end up neatly stacked one-by-one in gas station coolers across the Midwest. If you've sipped from an Ice Mountain-branded bottle in the last decade, you've sampled a tiny fraction of the 3.4 billion gallons that's been pumped from nine wells in Mecosta and Osceola Counties. Their handful of wells in mid-Michigan alone each pump over 200 gallons per minute, amounting to hundreds of millions of gallons per year.

Michigan law permits any private property owner to withdraw from the aquifer directly below for free, given they pay a nominal \$200 paperwork fee each year, and a clause in the compact exempts from the law water shipped in containers under 5.7 gallons—without regard to the total volume and number of containers.

It's a bizarre loophole that allows the company to continue its water withdrawals of hundreds of thousands of gallons per day and sell it on the marketplace for up to 240 times its production cost. Nestlé can profit upwards of \$1.5 million each day, as long as they ship the water in containers smaller than 5.7 gallons.

## The Future of Freshwater

At the center of the Nestlé conflict is a fundamental disagreement about what water means in our society and in our culture. Michiganans, and Great Lakes citizens broadly, still largely understand water as a public good—something we don't pay a premium for, something everyone has a right to access and enjoy, and something that sits at the foundational center of our social and economic lives. The Great Lakes and its tributaries were a one-time gift from the glaciers. Approximately 1% of the water evaporates or leaves the Great Lakes Basin each year, and approximately 1% is returned through precipitation. It's a delicate balance that humanity must take care not to disrupt. Great Lakes residents understand this.

Thus, in the end it doesn't matter that Nestlé is a drop in the freshwater ocean. The fundamental questions the case poses need to be answered. Is Great Lakes water up for sale? Should private corporations profit at the expense of local communities? Do we each have a right to clean, affordable, and accessible water for drinking, fishing, and sport? Do we have an obligation to share Great Lakes water with the world? Do watersheds and ecosystems have inherent value outside human use and consumption? The Great Lakes Compact has given us a foundation on which to begin answering these questions, but how we choose to use the Compact in these cases and beyond will have tremendous consequences in the years to come.

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