The Great Lakes Agreement and Compact seek to manage the Great Lakes watershed through a collaboration with all the states and provinces in the watershed.

Each state and province must pass a law to enact the Agreement or Compact, and that law will control diversions of water from the Great Lakes watershed.

The Sustainable Water Resources Agreement is an agreement among the Great Lakes States, Ontario and Québec. In Ontario it has been enacted into law through the Safeguarding and Sustaining Ontario’s Water Act of 2007 and legislation has been approved by the National Assembly in Québec. The states are in the process of implementing the Agreement through the Water Resources Compact.

Created the Great Lakes - St. Lawrence River Water Resources Regional Body that includes the Great Lakes Governors and the Premiers of Ontario and Québec.

The Water Resources Compact is an agreement among the Great Lakes States that is passed into law through an interstate compact. The Compact has been enacted into law in all 8 Great Lakes states.

Created the Council of Great Lakes Governors composed of Governors from each Great Lakes State or their designees.

History of Interstate and International Cooperation:

Boundary Waters Treaty - 1909:

Purpose - to prevent disputes regarding the use of boundary waters and to ensure the equitable sharing of boundary waters between Canada and the US.

Treaty created the International Joint Commission (IJC) to decide issues of water diversion in the Great Lakes, and placed Canada and the US at the forefront of international efforts to protect and manage natural resources.

Canada and the US moved toward an equitable apportionment of the water's benefits.

However, tributary boundary waters - Lake Michigan, Georgian Bay, rivers feeding into the Great Lakes - were subject to the exclusive control of each nation which allowed for unilateral diversions such as the Chicago diversion.

More recent attempts to export larger quantities of water from the Great Lakes prompted a review by the IJC, which resulted in the Great Lakes Charter Annex in 2001 that ultimately led to the Agreement and the Compact.
Water Resources Development Act:

Congress enacted WRDA due to concerns about large-scale diversions of Great Lakes water. WRDA bans the diversion or exportation of Great Lakes water within the US without approval of each of the Great Lakes governors.

The City of Akron has the only diversion approved by WRDA, on the condition that the City returns an equal amount of water to Lake Erie.

As Michigan Attorney General, now-Governor Jennifer Granholm wrote an opinion stating that pumping bottled water within the Great Lakes basin for sale outside the Great Lakes basin required the approval of all Great Lakes governors under WRDA. However, she indicated that only a Great Lakes governor could initiate the process of having the other Great Lakes governors vote on whether to approve the diversion.


Purpose:

To act together to protect, conserve, restore, improve and effectively manage the Waters and Water Dependent Natural Resources of the Basin under appropriate arrangements for intergovernmental cooperation and consultation.

Current lack of scientific certainty should not be used as a reason for postponing measures to protect the Basin Ecosystem.

To provide for cooperative planning and action by the parties with respect to such Water resources.

To facilitate consistent approaches to Water management across the Basin while retaining State management authority over Water management decisions within the Basin.

To prevent significant adverse impacts of withdrawals and losses on the Basin’s ecosystems and watersheds.

To promote an Adaptive Management approach to the conservation and management of Basin Water resources, which recognizes, considers and provides adjustments for the uncertainties in, and evolution of, scientific knowledge concerning the Basin’s Waters and Water Dependent Natural Resources.

Regulating Agency:

**Great Lakes Council:**

Comprised of the Governors of each Great Lakes state or their designees.

Coordinate research on water resources and their uses, carries out investigations, and can file lawsuits.

**States:**

Must create water conservation programs.
Must regulate new or increased withdrawals and consumptive uses within its borders.

**Regulated Activity:**

States regulate new or increased withdrawals within their borders consistent with the following requirements:

1. All water withdrawn must be returned to its source watershed, minus a reasonable amount for consumptive use;
2. Any withdrawal must be implemented to prevent individual or cumulative adverse impacts to the quantity or quality of water in the Great Lakes;
3. Each withdrawal will be required to implement “Environmentally Sound and Economically Feasible Water Conservation Measures,” and to ensure compliance with all applicable laws;
4. Any proposed use must be reasonable, based on factors such as efficiency, minimization of waste, supply potential, and the probable degree and duration of any adverse impacts; and
5. Each state must balance economics and environmental protection in regulating new or increased uses.

The Compact prohibits diversions - transfers of water from one watershed into another, including from within the Great Lakes basin into a watershed outside of the basin - with a few major exceptions.

Diversions are permitted if:

(a) they are in one of the allowed categories, and
(b) they meet the general requirements of the exception standard.

**Allowable diversion categories:**

**Intra-basin transfers:**

Transferring water from the watershed of one Great Lake to another Great Lake is permissible.

Depending on the size of the transfer, it may be managed by the state, have to meet the exception standard, pass a regional review, and garner unanimous consent by the council.

**Straddling communities and counties:**

A community with land both within and outside of the Great Lakes basin watershed.

Only diversions for public water works are allowed for these communities, and all water must be returned to the watershed except for an allowance for consumptive use.

The proposed diversion must meet the exception standard, and depending on the size of the diversion, may require regional authorization from the council.

**Exception standard:**

(1) the need for the proposed exception could not be reasonably avoided through efficient use and conservation of existing water supplies;
(2) the exception is limited to a quantity that is reasonable for the purpose requested;
(3) all water withdrawn will be returned to the source watershed except for a reasonable allowance for consumptive use;
Any aggrieved party, including a Great Lakes state, has the right to compel compliance with the Compact through administrative appeals and ultimately in federal district court. The “any aggrieved party” standard would appear to include citizen groups or local governments who could establish standing.

**The Small Containers Exception:**

Under the definitions of “consumptive use” and “diversion,” water bottled for sale in containers of 5.7 gallons or less is considered a consumptive use, in which “water withdrawn or withheld from the Great Lakes basin [is] assumed to be lost or otherwise not returned.” Consumptive uses are expressly excluded from the definition of a diversion. A diversion is defined as “a transfer of water by pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a watercourse, tanker ship, tanker truck, rail tanker, or similar means from the Great Lakes basin into a watershed outside of the Great Lakes basin.” While it includes transfers of water in containers larger than 5.7 gallons, the definition of diversion excludes consumptive uses.

Each state may exercise complete discretion in regulating withdrawals of water from the Great Lakes basin in any container of 5.7 gallons or less.

Michigan has adopted the small containers exception, although there is a bill pending to repeal it that may or may not pass.

What this means is that one could not fill a tanker truck with Michigan water and drive it to Nevada, but one could fill a truck with the same amount of water in containers smaller than 5.7 gallons each and drive it to Nevada without being considered a diversion. This exemption opens up an enormous can of worms under the dormant commerce clause and international trade agreements, and it proves the Western water law adage that “water flows either downhill or toward money.”