IT WAS NOVEMBER of 1983, and most of the Great Lakes region was struggling to recover from the near depression of the previous years. In Michigan, unemployment had climbed to 17 percent only 12 months earlier. So when a batch of newly elected Great Lakes governors met in Indianapolis, regional economic competition and growth were high on the agenda. As an aide to the governor of Michigan, I had one aim: to cinch agreement among the chief executives on the request from my boss to deal with one of the most critical long-term economic issues facing the region.

The chief result: Democratic Michigan governor James J. Blanchard got what he wanted. The eight governors or their representatives agreed to set up a task force on how to prevent the draining of the Great Lakes.

Looking back on two and a half decades of talk about the issue of Great Lakes water exports, it’s critical to observe that in the compartmentalized world of public policy it was the further loss of jobs, not the risk of environmental catastrophe, that characterized the issue. Environmental policy aides and water law experts were nominally in charge of developing the governors’ plan to protect the Great Lakes, but the saliency of the issue to the public, and hence the politicians, derived chiefly from the nightmare of additional economic erosion to the oil-producing, temperate Sunbelt states.

What worried the Great Lakes public in 1983 was the mental image of a giant pipeline, reaching from, say, the south end of Lake Michigan to
Texas, fueling the rapid economic expansion of the Southwest. Prohibitively expensive, an engineering feat of monumental proportions, and decades away from reality at best, the image was nonetheless compelling. It played to our region’s sense of abandonment by the nation after putting America on wheels and serving as the central arsenal of democracy in World War II. The Sunbelt would drain not just our population but also our distinguishing natural resource—water. We were not about to let that happen.

Some would call that economic protectionism, and it’s true that the Great Lakes then and now have a great deal to do with the economy of their surrounding states and Canadian provinces. In the 1980s, the rule was that each inch by which one of the Great Lakes fell cost commercial shippers $50 million in lost cargo capacity. Availability of water as a transport route, a raw material, and the heart of the ecosystem had contributed to the emergence of the steel, auto, and chemical industries in the early 1900s, the prosperity of agriculture, the sportfishing boom begun in the 1960s, and the expansion of tourism. Restaurants, hotels, cottages, resorts, marinas, and more depended on the lakes. Sucking them up, even in part, would undermine that residue of the region’s economic base.

At least two paper plans to begin the draining of the lakes had set off an alarm. A $2.1 billion scheme to construct a coal slurry pipeline from the Powder River Basin in Wyoming and Montana to Duluth, using Lake Superior water to suspend the coal, excited concerns in the late 1970s and early 1980s. The International Joint Commission, a treaty organization created by Canada and the United States, concluded that the impact would be minimal—less than 1 percent of the Chicago diversion—if any Lake Superior water would be needed at all.1 Ultimately the project failed on economic grounds.

The bigger insult to the pride of the Great Lakes states was delivered in 1982 when, under a mandate from the U.S. Congress, the Army Corps of Engineers studied the feasibility of diverting the Great Lakes to replenish water supplies in the agricultural region served by the once-vast Ogallala Aquifer, which underlies some of the nation’s most productive farmland. Although the study did not support the economics of the proposal and the corps didn’t recommend moving forward, the review spooked Great Lakes citizens and the politicians who represented them.2 That’s where Michigan governor Blanchard stepped in to call for the regional task force.
There was another, less dramatic but also national impulse behind the concern about Great Lakes water exports. In 1982, in a case involving ranchers who owned contiguous land in both Colorado and Nebraska and wanted to overturn Nebraska’s ban on the export of groundwater to another state, the U.S. Supreme Court ruled that water was not just the source of life but also an article of interstate commerce “similar to wheat or steel,” as one analyst put it. (Ten years later, the court would confirm in a Michigan case that household garbage belongs on the list of articles of interstate commerce along with water.) Unless Congress explicitly delegated the power to regulate commerce in water to the states, the court held, state export bans not related expressly to the legitimate policing-power purposes of water conservation or water resource preservation would not stand.

And so, as the task force advising the Council of Great Lakes Governors began its work in late 1983, two forces were about to collide. The region’s citizens and politicians wanted a way to just say no to water exports. But the task force, peering at the Supreme Court decision, decided it needed to tailor restrictions to meet a much more complicated design—water conservation. Otherwise, the Supreme Court would ultimately strike down the enactment of its recommendations. The task force would have to come up with rules that would, instead of banning water exports, authorize them under certain select, though infrequent, circumstances. Those circumstances couldn’t be too far-fetched or speculative lest the Supreme Court call the rules a ban in disguise.

To make matters even more complicated, the task force had the job of coming up with an ecological rationale for limiting exports of the world’s most abundant freshwater resource. It would literally have to show how and why resource conservation, not protectionism, was the basis for action by the Great Lakes states—even though enough water filled the lakes to make the continental United States into a swimming pool. Difficult enough in any case, the job was made tougher by the fact that most of the Great Lakes states had no statutory restrictions on the in-state use of water. They would have to persuade the Supreme Court someday that they simply wanted to use water wisely while they exercised no control over water use within their boundaries.

And nowhere was this contradiction more clear than in Michigan, whose license plates boldly proclaimed it to be the Great Lakes state.
Michigan, 99.9 percent of which benefits from and drains into the Great Lakes, had no meaningful statutory law promoting water conservation. Why should it? Generations of lawmakers and citizens had asked that question. *We’re surrounded by so much water we don’t know what to do with all of it.*

Enter Thomas L. Washington, the executive director of an organization that terrified politicians, the Michigan United Conservation Clubs (MUCC). Born from the anger of sportsmen in the late 1930s about the threat of a return to the political spoils system that had permitted the ravaging of Michigan’s forests, fish, and game, MUCC had fought ever since—at least in theory—to make sure Michigan’s conservation agencies thought about long-term values, not immediate electoral rewards for governors and legislators. In 1976, just six years before the election of my boss, Blanchard, MUCC had claimed the lion’s share of the credit for defying the legislature and collecting more than 300,000 petition signatures to place on the November ballot a law requiring deposits on beer and soda containers—an antilitter, prorecycling initiative opposed by beer and wine wholesalers and store operators. Voters had approved the MUCC law by a whopping margin. And that scared the politicians.

In July 1983, after joining the governor’s staff, I began regular visits to Mr. Washington’s office. I’ll never forget them. The first time, after waiting an appropriate length of time in his receptionist’s office, I was ushered into his sanctum. I moved briskly to a chair in front of his massive desk as he greeted me and tapped a cigarette out of its pack. He lit it and puffed. I waited for him, sensing but not yet really grasping the furnishings around me. After repeated visits I’d develop an inventory: the bearskin rug, the stuffed African primate holding a roll of toilet paper between its stilled hands, the deer hoof ashtray. During our talks Washington would remain seated, sometimes sipping coffee from an incongruous fine cup and saucer, sniffing at me when I said something naive but generally remaining congenial.

Not long after the Council of Great Lakes Governors announced the creation of its task force to come up with a legally defensible strategy to save the waters of the lakes, and even closer to the day when Governor Blanchard (on my recommendation) named a University of Michigan environmental law expert, Joseph L. Sax, to represent the state on the task force, Washington brought up the subject. I don’t read people well now,
and was even worse at it in 1983. When he said he had problems with the governor's initiative, I wasn’t sure what he meant. Obviously Tom Washington and MUCC wanted to stop the draining of the Great Lakes. Then what did they object to?

A polite phone call from a typically very outspoken staff ecologist for MUCC, Wayne Schmidt, educated me a bit. It turned out that Joe Sax and Tom Washington had collided over a major 1970s environmental issue of which I knew little. Sax had argued with eloquence and passion for the protection from oil and gas drilling of the Pigeon River Country State Forest, a stunning wild area cultivated by thoughtful foresters and administrators after the timber ravaging of the late 1800s. Washington had cut a deal with the oil and gas industry permitting limited drilling in exchange for the dedication of oil and gas revenues from drilling on state lands to a special fund used to purchase public recreational land. The two men had sparred angrily in public over the deal. Wayne politely suggested that I might have done a little research on this before recommending Joe Sax even though Wayne respected Sax’s intelligence and legal scholarship.

That was blunder number one. It wouldn’t be the last.

Well into 1984, Professor Sax, who quickly commanded the respect of the others on the task force with his understanding of constitutional law and his commitment to the public trust doctrine (more on that later), kept me informed of his work on behalf of the state. He was careful to let me know that he was determined to craft a strategy that would stand up in the U.S. Supreme Court and would protect the Great Lakes for all time. That wouldn’t mean an embargo on water exports, he reminded me. It would set rules, based on defensible science and law, for any withdrawals or exports that might someday occur. In doing so it would meet the test of evenhandedness sought by the Supreme Court. The Founders, clearly, had not intended that regions of the United States would put up economic walls; this was one nation, and its prosperity could best be assured through national, not multiple regional, superintendents.

I recognized what he was saying but had to reflect on how differently Tom Washington thought and felt. In one of our conversations he had said words to the effect, “The Great Lakes can’t be protected by half measures. We either stand up and say ‘not a drop leaves the basin’ or we lose control for good.” Implicit in his words was not just a hard-knuckled political sensibility but also a native’s sense of attachment to the holy waters. Washing-
ton and Sax had essentially traded places from the Pigeon River debate: the MUCC head opposed any compromise while the environmental law expert saw it as the only way to protect the lakes from being drained.

It was fortunate, for me at least, that a governor of a state like Michigan has more important things to do than accept daily, weekly, or even monthly briefings from a staff aide on such matters as a Great Lakes task force. I could ponder the temperamental and rational differences between Sax and Washington at my leisure without having to disturb the chief executive of the state with them. I could also defer the day of reckoning for me. In the spirit of all long-serving political aides over the eons, I hoped to find a way to bridge the gap. My vision, though never so explicit, was a news conference where Governor Blanchard, Joe Sax, and Tom Washington would declare with pride that Michigan had stood up for the Great Lakes, which would be defended in perpetuity by a strategy on which the three men agreed.

That day never arrived. As 1984 wore on and the interstate task force began to develop its recommendations to the governors, I wondered how I could get the governor and myself out of the mess I had created. I hadn’t thought through the legal and political issues. As Professor Sax continued to brief me, I realized he was captaining a report that Tom Washington would condemn to any reporter that would listen. The governor was about to take a political beating from the most important conservation group in the state less than two years before his reelection campaign. And most of Michigan’s electorate would agree with Washington: why would their governor tolerate a proposal that would allow some water to be taken from the lakes for other regions, including, perhaps, the Sunbelt?

Although I sweated over it, I ultimately decided there was only one proper course for the interests of the governor: he would have to reject the idea of setting rules on when Great Lakes water could be exported. This is where memory blurs. I’m not sure—and am doubtful—that I directly said this to Professor Sax. My recollection is that I hinted at it and when presented with his draft recommendations edited them to reflect a “no exports” position.

I must have sent the paper back to him because somewhere around Christmas 1984 I received a phone call from a reporter for the Detroit News. “Dave,” the reporter said incredulously, “Joe Sax has resigned.” My
heart nearly seized. There was nothing I could do but mumble the trite generalities that all politicos rely on: the governor was grateful for the professor’s service, but on the governor’s behalf I wasn’t sure he could support the recommendations of the interstate task force. Professor Sax was in the right, I knew: I’d put him, as well as the governor, in an impossible position.

The other Great Lakes states and Ontario weren’t happy, either. After spending a year on a report commissioned by Michigan, they were now being asked to embrace a revised version that would not commit the Great Lakes state to the enactment of a statute permitting water use. I accepted a series of phone calls from members of the task force who wondered whether they were being sandbagged.

I told them there was still great value in moving ahead with the report. At least it bound all eight Great Lakes states and the provinces of Ontario and Quebec in a common accord on management of major new water withdrawals and diversions. The revised proposal would oblige each signatory to give notice to all the others whenever such withdrawals or diversions were proposed and to consider (though not necessarily heed) comments or objections from the others. This “good neighbor” rule would put into action a concept at the center of Great Lakes management since the previous decade—ecosystem management. It would also expressly state that the chief executives of all 10 jurisdictions held the lakes to be “precious public natural resources, shared and held in trust by the Great Lakes States and Provinces.” And, although it wouldn’t commit anyone to the enactment of new laws, it would strongly hint at the necessity of doing so: “In recognition of their shared responsibility to conserve and protect the water resources of the Great Lakes Basin for the use, benefit, and enjoyment of all their citizens, the States and Provinces agree to seek (where necessary) and to implement legislation establishing programs to manage and regulate the diversion and consumptive use of Basin water resources.”

It was a step forward in other words. And the other jurisdictions reluctantly agreed.

If I thought all of this would be enough to calm down Tom Washington, I was wrong. (For one thing, you never “calmed down” Washington any more than you calmed down a hurricane. Both forces have to spend themselves.) The revised agreement, now called the Great Lakes Charter,
certainly suggested that Michigan needed to produce a law that would allow the issuance of permits for some water diversions. In the fine print, which Washington and his adviser Schmidt read, the charter said that states or provinces that didn’t have laws giving them the authority to “manage and regulate” diversions and withdrawals averaging 2 million gallons or more per day were not entitled to prior notice and consultation by the others. This meant that unless Michigan passed such a law it might be ignored in regional conferences on major new water uses.

Subsequently MUCC launched an all-out offensive against Michigan’s participation in the charter. Washington personally appeared before the chief governing body of the Michigan Department of Natural Resources (DNR), the Natural Resources Commission, to urge the seven members to advise against the charter, calling it a betrayal of the Great Lakes. On behalf of Governor Blanchard, I appeared before the commission to urge just the opposite, and I was able to tell the members that former governor William G. Milliken, a much-loved Republican who had retired at the end of 1982, also supported the charter. In a phone call placed not long before the commission met, the former governor had graciously expressed his view that regional unity of purpose on the water export issue was worth any minor compromise in the charter. The commission agreed—perhaps influenced in part by the fact that its members are appointed by the governor of Michigan.

And so, in the teeth of opposition from the state’s largest conservation group, Governor Blanchard prepared to join his executive colleagues in Milwaukee in mid-February 1985 to sign the charter to national fanfare. Flying over a frozen Lake Michigan with a pleased Governor Blanchard that morning, I felt relief and a faint exaltation. But I also wondered whether Tom Washington and MUCC’s gut instinct might have had more legal support than I supposed. At any rate, the decision on whether Michigan could take a tougher line on water diversions could be studied, and handled, another day. For now, preserving a still-fragile Great Lakes regional unity was more important. The road to the charter had been rocky, full of potholes resulting from my naïveté and inexperience, but the journey had been worth it. Not waiting for Washington and Ottawa to work their inscrutable—and perhaps hostile—will on the lakes, the states and provinces were beginning to undertake stewardship of the great waters.

As the photographers snapped pictures and reporters jotted down the
scripted quotes of the governors and premiers that morning, it felt like history had been made.

Unfortunately, it would be the first of several Great Lakes agreements and laws that would prove less sturdy in practice than they seemed on paper.