



Michigan Resource Stewards

Resource Professionals Continuing a Tradition of Service

Arminda Koch, President James Maturen, Vice President Gregory Eagle, Secretary Jim DeClerk, Treasurer

December 14, 2019

Regina R. Strong
Environmental Justice Public Advocate
Michigan Department of Environment, Great Lakes and Energy
PO Box 30473
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Dear Ms. Strong,

You will recall our conversation at Director Clark's gathering of environmental groups at Constitution Hall on November 22, 2019, regarding my struggles in garnering access to EGLE staff concerning a Nestle Waters of Michigan information inquiry. I am corresponding on behalf of the Michigan Resource Stewards (hereafter "Stewards"), an organization of resource professionals continuing a tradition of service to the people of Michigan focused on the proper management of the environment and natural resources. Our experiences in conducting an inquiry requested from one of our members illustrate needed improvement in EGLE operations to improve public access to information, especially those who lack any familiarity with the EGLE organization. Systems that are at the worse, evasive, and best as not easily engaged or accessed, aggravate environmental justice to those most disadvantaged. Additionally, environmental justice must progress beyond just improving access to include the ability to be heard and the power of influence. EGLE should also bear the responsibility to educate and guide the public on how best to affect that influence. Further, EGLE should be a regulatory agency with permits being the process of protecting the environment rather than the objective in themselves. The adage, "trust but verify," must operate within the Department of EGLE and our recent experience causes suspicion of this not always being the case at least within the units engaged. Those in lower income urban and rural areas suffer disproportionately from unenforceable or poorly enforced resource use authorizations. The systemic deficiencies that existed in the drinking water program that resulted in the Flint Water Crisis seem to remain within EGLE.

At our September meeting this year, one of our members, who happens to also be a member of Michigan Citizens for Water Conservation, asked the Stewards to consider devoting its resources to familiarization with the Nestle Waters of Michigan White Pines Springs water withdrawal operation. That member lived in the affected community and was concerned over observed losses of water from two impacted trout streams and nearby wetlands. The Stewards have limited resources and have been engaged in issues such as Enbridge Line 5 pipeline, the polluter panels, chronic wasting disease, and septic tank legislation. In the interest of assisting a member who was not successful in gaining access to EGLE, we agreed to assist the member in making some initial inquiries to better understand for ourselves the history of regulation of the Nestle withdrawal and to discern possible environmental and natural resource degradation.

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With that background, I undertook an initial inquiry myself by telephoning and emailing the EGLE staffer who appeared to be the best, first person to contact related to the member inquiry. The inquiry did not go as expected. I faced no response to phone calls and emails, despite introducing myself as a retired DEQ employee and an officer of the Michigan Resource Stewards. I learned from a trusted EGLE employee that it has become not unusual for public email contacts being ignored, especially those from unknown senders or emails ending up first in spam folders. In consequence of the lack of response and frustration, I took steps to submit a FOIA request. It was only via that FOIA that our inquiry was able to move forward since the EGLE FOIA staff person took time to understand my needs and facilitated contact with the appropriate EGLE staff person prompting dialogue. That staffer then arranged for dialogue with other EGLE staff involved in the Nestle water withdrawal matter. Assistance improved substantially, though a less tenacious and experienced inquirer might have given up in frustration long before. I have attached a more detailed summary of my steps to obtain information in order to keep this letter less verbose.

In subsequent dialogue with relevant staff responsible for the Nestle water withdrawal matter, my knowledge of the Nestle withdrawal and the events leading up to that withdrawal increased substantially. That engagement determined a very complicated and multi-unit regulatory process that challenged even me, a long term employee familiar with the complications of various regulatory programs, laws, rules, and programs.

With a fairly good understanding of the water use authorizations afforded to Nestle, I then expanded my inquiry into trying to better understand the details of the withdrawal authorization in order to better understand our member's concern over resource impact. One of the most noteworthy findings was that, though water use total volume reporting is required, EGLE does not have knowledge of nor has required documentation on how water use is measured and what equipment/process generated the usage data reported to EGLE. Industry reports seem to be accepted without question and reporting does not reflect the actionable compliance measurement of gallons per minute (gpm). Also, my review of Nestle records supplied by EGLE staff and EGLE web site information found what I thought might be an inappropriate, perhaps illegal, submittal of records to EGLE from Nestle or its drilling contractor. I found a potential misrepresentation of the pumping capacity of the Nestle production well number 101 as 250 gpm when the pump model has the capacity to withdraw at a significantly higher rate. The pumping rate may be withdrawing public waters at a faster rate of water removal than currently allowed. The false or misleading information on an official EGLE record was suspicious to me as a former environmental law enforcement officer. I pointed it out to water use staff, who felt there was no standing to challenge the current record and suggested I do some investigation myself to better understand how the pumping capacity came to be reported on the official record; and surmising that there was likely a justifiable explanation for the pump capacity reported. Excessive workload appeared a substantial factor in the staff lack of interest in pursuing my concerns.

The Nestle water withdrawal is a matter of statewide citizen concern. This is evidenced by the 80,000 plus responses to the SDWA permit application. We understand in reviewing the then DEQ response to those comments, that most of the comments lack relevance to the criteria on which the agency had to make its determination on the permit. But, that permit is in the contested case hearing process and that level of public comment warrants a significant sensitivity to public inquiries and concerns. The Flint Water Crisis investigations documented significant problems within the agency on such sensitivities, and illustrated the problems associated with lack of communication between units within the DEQ, as well as within state government. Yet, in this inquiry we have observed the parochialism that can exist when one program uses separation of programs to justify not interacting with the other despite the obligation to make the interest of environmental and natural resources protection paramount. We have to conclude that a mentality may have developed in an organization oppressed in its duties for years by an administration not attentive to the protections of health and the environment afforded by the Michigan Constitution of 1963. The Stewards do hope that a stewardship and caretaker mentality is returning to the agency, but these

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experiences in making the Nestle inquiry certainly illustrate the potential for environmental injustice to citizens of this state who are not as skilled as we are in understanding the regulatory process or access to information.

In conclusion, Michigan Resource Stewards does not correspond to demean EGLE staff. To the contrary, our investigation has found the staff, once successfully engaged, to be candid and helpful. But, if this inquiry was a struggle for a retired career employee, what must an inner city resident or rural resident, such as the Stewards member making the initial request, encounter. Further, within the water withdrawal program, we have an impression that taking a critical review of actual water use is not the priority and staff appear overwhelmed by permitting demands. However, the recent completion of staff responses to the Nestle monitoring program may be proposing some changes in oversight, but that permit related review has no effect on the monitoring of withdrawals currently taking place on merely an authorization by registration and site specific review. This is not the status we would have predicted following the Flint Water Crisis and a change in executive branch administration. If you need to know more details of my experiences, please let us know.

Respectfully,

Gregory C. Eagle, Secretary
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Cc: Liesl Clark, Director EGLE
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