

# Michigan Resource Stewards

Resource Professionals Continuing a Tradition of Service

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## NESTLE OF MICHIGAN INQUIRY FINDINGS

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This summary has been prepared on behalf of the Michigan Resource Stewards by Gregory Eagle, Secretary of the “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. These related experiences are regarding an inquiry requested from one of our members and illustrate needed improvement in EGLE operations to improve public access to information, especially those who lack any familiarity with the EGLE organization, and to improve actual influence of the public. The lack of such improvements aggravates environmental justice to those most disadvantaged by systems that are at the worse, evasive, and best as not easily engaged or accessed. Environmental justice should not be just a matter of access, but equally important, for EGLE to listen, organize its structure to improve general public understanding of who and where decisions are made, educate the public on how to properly influence decisions, and to insure that influence is balanced. Further, the adage, “trust but verify,” must operate within the Department of EGLE and the recent experiences causes suspicion of this not being the case at least within the units engaged.

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. But, 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.

With that background, a small group of members undertook an initial inquiry with Greg Eagle leading that inquiry by telephoning and emailing the EGLE staffer Matt Gamble whom internet research indicated might be the best, first contact at EGLE on the matter. Those attempts included an introduction of himself as a retired DEQ environmental conservation officer. After following up on those repeatedly, with no success, he then made a call to the Cadillac EGLE office to see if the EGLE district office staff was a route to information. Calling the local office number, he spoke with a person assumed was housed there, asking to speak with a drinking water representative. The staffer believed that no drinking water staff was housed at that location, but would refer to a staff person in the Grand Rapids office who might be able to help. In that conversation, it became apparent that, though the number called was a Cadillac local phone number, the staffer was with the environmental assistance center. The call was then referred to a Grand Rapids staff person who was only responsible for the campground

water supply program. After re-explaining the Nestle inquiry and the inquiry to Matt Gamble, she provided a phone number to Mr. Gamble's administrative assistant. That number was called and a message left. These inquiries resulted in no response. Mr. Eagle discussed his frustrations with a familiar, current EGLE employee who confidentially reported knowledge that some staff in EGLE are regularly ignoring public emails that seem inconsequential, especially paying little attention to spam folders. Though not wishing to take the route of a FOIA request, it seemed the only approach to establishing a substantive contact.

The FOIA inquiry resulted in a reply from the EGLE FOIA representative whom took time to understand that I was not making the traditional request for records, but rather, to speak with an EGLE employee knowledgeable of the Nestle White Pine Spring matter. Her efforts succeeded in a quick, apologetic response back from Mr. Gamble which started a greater dialogue on the Stewards inquiry related to the Nestle water production permit. Mr. Gamble also assisted in creating contact with Jim Milne who was in charge of the water usage by Nestle. Jim was a former coworker of Mr. Eagle, so that helped in obtaining a more personal response to the inquiry. Jim then directed his staff, via Andrew LeBaron, to help provide information on Nestle water use and help understand the history of the Nestle water withdrawal authorization and the nuances of regulation. Beginning as a very frustrating start, the inquiry became much more responsive. Knowledge of the Nestle withdrawal and the events leading up to that withdrawal increased substantially; however, that engagement determined a very complicated and convoluted regulatory process even from the perspective of a long term employee familiar with the complications of various regulatory programs, laws, rules, and programs. Repeatedly, the inquiry bounced back between water use people, SDWA permit staff, and USGS technicians in attempts to discern where one program had primacy and other took over. Just recently, the inquiry was referred to Environmental Health, another EGLE unit for information on the well drilling and pumping equipment of the Nestle water production well. At this point, sufficient information was in hand at least on which to advise the leadership of the Stewards concerning the earlier request from our member.

With the fairly good understanding of the water use authorizations afforded to Nestle, the inquiry then expanded to 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 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. Also, review of Nestle records supplied by EGLE staff and EGLE web site information found what might be an inappropriate, perhaps illegal, submittal of records to EGLE from Nestle or its drilling contractor. Though perhaps a merely technical violation, there existed a potential misrepresentation of the pumping capacity of the Nestle production well number 101 which could result in a faster rate of water removal than currently allowed. The false or misleading information on a record, reported by EGLE staff to be an official record, was suspicious at best and perhaps intentional records falsification to reflect that the pump could not exceed the authorized pumping maximum. When suspicions were pointed it out to water use staff, the response was that there was no standing to challenge the current record and a well meant suggestion for the Stewards to do some self-education and investigation 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 level. Further, the staff person, while trying to help me understand who in EGLE was responsible for what, also suggested contact with yet another EGLE organization unit to report 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 were determined to lack relevance to the criteria on which the agency had to make its determination on the permit. As Director Grether noted in an op-ed, "In full transparency, the majority of the public comments were in opposition of the permit, but most of them related to issues of public policy which are not, and should not be, part of an administrative permit decision. We cannot base our decisions on public opinion because our department is required to follow the rule of law when making determinations." 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 Crises documented significant problems within the agency on such sensitivities, and investigations illustrated the problems associated with lack of communication between units within the DEQ, as well as within state government; and concluded a lack of a compliance mentality. Program parochialism seems to continue especially when one program puts blinders on potential violations regarding matters of another organizational unit and fails to refer potential offenses to the other rather than focusing on needed environmental and natural resources protection. One might 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 experienced the basis for environmental injustice to citizens of this state who are not as skilled as insiders or former employees in understanding the regulatory process.

The investigation proceeded to developing an understanding of oversight of Nestle registrations under the Water Withdrawal Assessment Tool and the issued SDWA permit #1701. One of the important factors to understand is the volume of water withdrawal historically and currently. Records of water withdrawal were graciously supplied by EGLE staff and, in consideration of the excessive pumping rate ability reported to EGLE on the well drilling record, the investigation proceeded to understanding oversight of use reports. It was learned that EGLE staff have no information on how water use information is documented at Nestle nor does EGLE staff require any details on engineering or equipment used by Nestle to document monthly reports of water use. This is contrary to oversight processes established in other regulatory programs where regulations and permits specifically designate, for example, discharge measurement equipment and recordkeeping. When concern over the lack of oversight, EGLE staff reported belief that the Nestle White Pine Springs permit is, "...by far the most closely monitored and tightly regulated withdrawal in the state." This may be true as a water withdrawal permit, but certainly is not reflective of the regulatory posture of other EGLE permitting programs. Further, there appears to be no monitoring of pumping rates. The well record containing a Nestle suspicious pump capability was characterized as inconsequential, "First, while it is true that well drillers and pump installers are instructed (i.e. advised) to state the pump's rated capacity on the well log record, it is not a requirement that they do so. The legal requirement is simply to record 'the pump capacity in gallons per minute.'" "And, again to be frank, in my personal opinion there is no reason to investigate record falsification." We can attempt to make our conclusion that this statement is based on an understanding that puts little credence on the legal standing of a well record, but as an organization promoting good public policy, it is not a recommended regulatory philosophy to insure compliance. Trust but verify must always operate in EGLE or the organization risks being not taken seriously as a regulator and enforcer.

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 drinking water program, it is a definite impression that taking a critical review of resource use is not the priority and staff appear overwhelmed by permitting demands.

A handwritten signature in black ink that reads "Gregory C. Eagle". The signature is written in a cursive, flowing style with a large initial 'G' and a distinct 'Eagle' at the end.

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