

Groundwater use: Are stronger laws needed?*

Keith Schneider, Michigan Land Use Institute

POINT
BOIN



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The 19th-century policy of encouraging people to use as much water as they want, whenever they want, needs a 21st-century update. The recent court order to shut down four high-capacity wells supplying Nestle Water's spring water bottling plant in central Michigan is one example of why.

The ruling, by Mecosta County Circuit Court Judge Lawrence Root, shows just how vulnerable private concerns are to increasing competition for the abundant fresh water of the Great Lakes basin. Nestle's \$150 million investment in the bottling plant is in jeopardy because an overly narrow interpretation of state environmental statutes that cleared the way for the project has been overturned by Judge Root.

Property rights activists have built their movement on what they view as harms caused by government restrictions on the use of their land. But the Nestle Waters case is based, to a signifi-

cant degree, upon the real damages to property caused by government cooperation, not restriction. Just as weakening regulation of corporate business practices led to vast financial scandals that damaged the economy and cost ordinary Americans billions in lost investments, weak natural resource protection eventually leads to serious environmental and economic damage.

As it stands now, the Great Lakes basin still has no broad protection against those who would garner unto themselves billions of gallons of groundwater for private use. A planet-wide population desperate for new supplies of fresh water will go to extraordinary lengths to get them. Without strong laws based on groundwater's crucial importance to maintaining lake and stream levels, the traditional access to fresh water long enjoyed by Great Lakes residents and commercial sectors such as tourism, farming and industry, remains in danger.

counterpoint

Doug Roberts, Jr., Michigan Chamber of Commerce



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Water is Michigan's defining natural resource. The waters within the Great Lakes Basin benefit residents through the creation of economic opportunities, support of recreational activities, and enhancement of surrounding ecosystems. The water resources must be protected through regulation that offers a balance between sound environmental protection and reasonable water use.

In 2002, the Michigan legislature enacted two important pieces of legislation that recognize this critical balance: Public Acts 177 and 148 of 2003.

- **Public Act 177** accomplishes two important goals: First, it establishes a mechanism to resolve disputes between groundwater users. Second, it protects aquifers from overuse by empowering state government to take appropriate action when water withdrawals exceed the recharge rate of the aquifer.

- **Public Act 148** establishes a statewide data

collection effort on the use of water and charges a council of experts to develop a map of areas where water shortages or conflicts exist.

The combination of data collection and reasonable water use restrictions established by these laws should help to protect critical aquifers.

The sweeping ruling by a Mecosta County Circuit Court Judge has created a sense of uncertainty about our state's regulatory structure. His opinion requiring groundwater users to receive both wetlands permits and inland lakes and streams permits is outside the bounds of anything the legislature ever envisioned or intended.

Given the fragile condition of Michigan's economy, with the loss of over 260,000 jobs in the last three years, the last thing Michigan needs are onerous restrictions on water use. We applaud the legislature for its prudence. We question the judicial activism that threatens the predictability of our water laws.

*On Nov. 25, a Michigan Circuit Court ordered Nestle's spring water bottling plant in central Michigan to cease operations, finding the withdrawals negatively impacted the water rights of others. The plant remains open while the decision is appealed.