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LIMITATIONS ON THE RIGHT TO USE WATER: A CASE OF FIRST IMPRESSION IN MICHIGAN

By Rachael Moshman*

Despite advertisements suggesting that bottled waters come from crystal clear springs found deep inside forests, removing water is likely to affect the resources of surrounding communities. In December 2000, Ice Mountain, a subsidiary of Nestle, located a water source for their bottled water factory on the edges of Mecosta County, Michigan.¹ They began an operation that pulled 400 gallons per minute, or 210 million gallons a year, from a spring that contributes to the Little Muskegon River, which feeds into Lake Michigan.²



This photo is used by Michigan Citizens for Water Conservation to illustrate how mudflats are reappearing due to the continued pumping by Ice Mountain.

Though Ice Mountain was pleased with their situation, in September 2001, a lawsuit was filed by Michigan Citizens for Water Conservation and plaintiffs R.J. and Barbara Doyle and Jeff and Shelly Sapp against Nestle Waters North America, Inc., formerly the Perrier Group. The plaintiffs claimed that Ice Mountain's withdrawal of water was diminishing Mecosta County's wetlands. Water, they argued, was a common resource, to be held in public trust and managed with public benefit in mind.³

In the lower court decision, on November 23, 2003, the Circuit Judge, Hon. Lawrence C. Root, identified the issue, a matter of first impression in Michigan courts, as to what extent the right to use water is limited by the rights of others to use the same resource.⁴ In the end, Judge Root found that the plaintiffs had shown sufficient evidence that wet-

lands had been affected by Ice Mountain's withdrawal of water,⁵ and ruled that "riparian rights are superior to the diversion and sale of groundwater."⁶ Based on these findings, he ordered Ice Mountain to stop removing water from the spring.

One month later, while asking for an injunction against the lower court's order to stop bottling water, Ice Mountain argued that current wetland water levels were comparable to levels before Ice Mountain began taking water from the area and that in the months leading up to the trial, rainfall was below average, affecting the data the judge had viewed.⁷ Since Judge Root's decision, the case has been appealed to the Michigan Court of Appeals. The Appeals Court has granted an injunction against Judge Root's order, and will allow Ice Mountain to continue to pump water until the lower court's ruling is reviewed.⁸ The Plaintiffs hope the Michigan Court of Appeals will hear their case by Spring or Summer 2005.⁹



ENDNOTES:

¹ Keith Schneider, *Perrier vs. The People*, GRIST, Oct. 30, 2002, available at http://michiganimc.org/newswire/display_any/583 (last visited Nov. 24, 2004).

² Michigan Citizens for Water Conservation, *Judge's Ruling on Water Rights Case*, Nov. 25, 2003, available at http://michiganimc.org/newswire/display_any/3913 (last visited Nov. 24, 2004).

³ *Supra* note 1.

⁴ Michigan Citizens for Water Conservation v. Nestle Waters, No. 01-14563-CE, at 41 (Mich. 49th Jud. Cir. filed unknown), available at <http://www.envlaw.com/decisions/MCWC%20decision.pdf> (last visited Nov. 24, 2004).

⁵ *Id.* at 13, 15.

⁶ Michigan Citizens for Water Conservation, *Court Orders Nestle to Pay Plaintiff Fees*, May 7, 2004, available at ftp://aquaman:100yellow@waterissweet.org/nestle/nestle_fees.html (last visited Nov. 24, 2004).

⁷ Bottled Water Web, *Ice Mountain Files for Stay of Injunction; Notifies Employees of Potential Lay-Offs*, Dec. 8, 2003, available at http://www.bottledwaterweb.com/news/nw_120803.html (last visited Nov. 24, 2004).

⁸ *Bottled Water Foe Lauded for Devotion*, THE DETROIT NEWS, Sept. 29, 2004, available at <http://www.detnews.com/2004/metro/0409/29/c10-287609.htm> (last visited Nov. 24, 2004).

⁹ Email from Terry Swier, President, Michigan Citizens for Water Conservation to Rachael Moshman, author (Nov. 17, 2004) (on file with author).

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