

On July 17, 2003, Jim Olson sent Judge Lawrence Root a motion for temporary injunction under common law of water in Michigan and pursuant to Section 4 of the Michigan Environmental Protection Act (now Part 17 of the Natural Resources and Environmental Protection Act), MCL 324.1704(1) against Nestle pending a final decision by the judge. The hearing will be held before Judge Root on Wednesday, August 20, 2003, at 1:30 p.m. at the Mecosta County Circuit Court. The purpose of the motion is to impose limits on pumping to prevent or minimize harm to the Dead Stream and adjacent wetlands pending the Court's final decision.

The facts are Dead Stream has and is suffering serious damage due to a combination of low precipitation and pumping over the past year. The condition of the stream and riparian system continues to be impacted each day and the injunction has been filed to save or minimize even more serious damage.

Nestle thinks Dead Stream is low because of the breached beaver dam. Dr. Hyndman says all the beaver dam did, if it had any hydraulic effects, was to temporarily retain upstream water around the confluence of the Dead Stream and Gilbert Creek. Dr. Andrews believes the level has dropped  $\frac{1}{4}$  inch based on resumed pumping, and Dr. Hyndman has found from the stream levels and flow data, that the stream's level has dropped by nearly 1 inch due to pumping at the rate of 200 gpm.

During the judge's site visits of July 5 and July 9, 2003, the staff gauge at Doyle's had gone from 1.35 inches to 1.39 inches. The mud flats were covered up to the grassy area and were more navigable than at 1.3 or 1.35. This confirms Dr. Hyndman's opinion that  $\frac{1}{4}$ ,  $\frac{1}{2}$ , or 1 inch would have a significant impact.

When R. J. Doyle testified, he showed photos of Dead Stream from July 2002, and compared the area to now, July 2003. Dead Stream is the lowest he has ever seen. There was a difference of about 1.2 inches from 2002 to 2003.

According to law, the diversion by Nestle from the riparian system and out of the watershed measurably and materially diminishes the flow of the Dead Stream, Thompson Lake or Tri-Lakes, or alienates and severs riparian waters from the riparian land for purely artificial and non-riparian purposes.

The claims in this case arise under the common law of water rights, especially of riparian landowners to natural flow and water level, and the MEPA. This case shows a violation of the common law water rights and the MEPA, which prohibits conduct that is likely to pollute, impair, or destroy the environment, and specifically authorizes temporary injunctions to preserve the status quo of the environment from further degradation.

MCWC is asking the Court:

1. Prohibit Nestle from pumping above 200 gpm;
2. Order Nestle to stop pumping above 100 gpm when the water of the Dead Stream at staff gauge Doyle drops below 960.2;
3. Order Nestle to stop pumping above 100 gpm during late Winter and early Spring when the level at M-20 Bridge falls below 960.5;
4. Order Nestle to stop pumping altogether when the Summer water level of the Dead Stream at Doyle's drops below 960.1.

MCWC is also asking the court to order Nestle to continue all measurements of flows and levels and pumping data and to submit this data to Dr. Hyndman so he can continue to monitor the system to assure compliance with the temporary injunctive order.

Please continue to support MCWC by becoming a member, donating time and money to the grassroots organization, and visiting its web site at [www.savemiwater.org](http://www.savemiwater.org). MCWC is hosting a "End of the Trial - Beach Party" on August 23, 2003 at 1:00 pm at the Round Lake Resort at 11133 11 Mile (M-20), Mecosta, MI. Please join us at the event. - Terry Swier, President of MCWC