

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR MECOSTA COUNTY

MICHIGAN CITIZENS FOR WATER
CONSERVATION, a Michigan nonprofit
corporation; R.J. DOYLE AND BARBARA
DOYLE, husband and wife; and JEFFREY R.
SAPP AND SHELLY M. SAPP, husband and
wife,

Plaintiffs,

v

NESTLÉ WATERS NORTH AMERICA INC.,
a Delaware corporation; and DONALD
PATRICK BOLLMAN AND NANCY GALE
BOLLMAN, husband and wife, a/k/a Pat
Bollman Enterprises,

Defendants.

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Case No. 01-14563-CE

Honorable Susan H. Grant

**AMENDED AND FINAL STIPULATED
ORDER**

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At a session of said Court held in the Courthouse in the City of Big Rapids, Michigan, this 6th day of July, 2009.

PRESENT: Honorable Susan H. Grant
Circuit Court Judge, acting by assignment

This matter having come before the Court pursuant to paragraph V.B. of the Stipulated Order on Remand dated January 25, 2006; and the hearing pursuant to said paragraph V.B. having commenced July 6, 2009; and the parties having compromised and settled all of their claims, rights and obligations in this litigation; and the Court being fully advised in the premises;

NOW, THEREFORE, IT IS ORDERED THAT THE STIPULATED ORDER ON REMAND IS AMENDED PURSUANT TO STIPULATION OF THE PARTIES TO NOW BE A FINAL ORDER WHICH READS IN ITS ENTIRETY AS FOLLOWS:

I. Groundwater Claim – Injunction.

A. The following levels of water extraction by Nestlé Waters North America Inc. (“NWN”) from the Sanctuary Springs location are deemed to meet the criteria discussed in the Court of Appeals Opinion (Part III), 269 Mich App 25, 53-82, and are hereby permitted:

	<u>Period</u>	<u>Maximum Average Withdrawal Rate</u>
1.	January 1 – March 15:	275* gpm monthly average (as defined below)
2.	March 16 – April 15:	225 gpm monthly average (as defined below)
3.	April 16 – May 15:	225 gpm monthly average (as defined below)
4.	May 16 – May 31:	175 gpm monthly average (as defined below)

5. June 1 – August 31: The maximum average withdrawal rate during the June 1 – August 31 period is limited by the following stage and flow criteria:

	<u>Stage at SG-Doyle</u>	<u>Maximum Average Withdrawal Rate</u>
a.	if less than 959.9' amsl (2 consecutive weekly readings)	50 gpm bi-weekly average
b.	if 959.9' amsl – 960.0' amsl	100 gpm bi-weekly average, subject to flow criterion (i) below
c.	if 960.01' amsl – 960.2' amsl	125 gpm bi-weekly average, subject to flow criteria (i), (ii) and (iii) below
d.	if greater than 960.2' amsl	175 gpm bi-weekly average, subject to flow criteria in (i), (ii), (iii), and (iv) below
	<u>Flow at SG-102 (M-20 Bridge)</u>	
i.	if 925 gpm or below (2 consecutive weekly readings)	50 gpm bi-weekly average
ii.	if 926 gpm – 975 gpm	100 gpm bi-weekly average
iii.	if 976 gpm – 1150 gpm	125 gpm bi-weekly average
iv.	if 1151 gpm – 1250 gpm	150 gpm bi-weekly average
v.	if greater than 1250 gpm	175 gpm bi-weekly average
6.	September 1 – September 15:	175 gpm monthly average (as defined below)
7.	September 16 – October 31:	210 gpm monthly average (as defined below)
8.	November 1 – December 31:	275* gpm monthly average (as defined below)

*If and to the extent that NWNA's actual average water extraction for the period June 1 through August 31 in any year is less than 150 gpm, the maximum

water extraction level for the following November 1 through March 15 time period shall be increased (up to, but not more than 290 gpm), to make up the gallons not extracted during June 1 through August 31. For example, if the actual average extraction for the period June 1 through August 31, 2009 were 135 gpm, the water extraction level for November 1, 2009 to March 15, 2010 would be 285 gpm monthly average.

“Monthly average” as used above means the average for the calendar month, or for a period less than one calendar month, the average for such time period. “Bi-weekly” as used above means every two weeks beginning with the first day of the specified time period. “SG-Doyle” as used above means the staff gauge currently located in Dead Stream near the Doyle residence. “SG-102” as used above means the monitoring location at the south side of the M-20 bridge at the Dead Stream.

As to the June 1-August 31 time period, if a weekly reading of stage or flow indicates that a reduced pumping limitation or increased pumping limitation is to take effect, such changed limitation shall take effect beginning on the third business day following the reading, unless the reporting of the applicable reading was delayed pursuant to the last sentence of paragraph III.B.2. below. If the reporting of the reading was delayed pursuant to the last sentence of paragraph III.B.2., the changed limitation shall take effect on the next business day following the reporting and shall remain in effect for at least 7 days (i.e., no subsequent change shall take effect prior to the expiration of 7 days).

- B. Levels of water extraction by Nwana from the Sanctuary Springs location in excess of those set forth in paragraph A above shall be deemed to interfere with the riparian

rights of Plaintiffs in violation of the principles and criteria set forth in the November 29, 2005 Court of Appeals Opinion, and are hereby enjoined.

II. MEPA Claim.

- A. The levels of water extraction from the Sanctuary Springs location set forth in paragraph I.A. above are deemed not likely to pollute, impair or destroy the air, water or other natural resources in violation of the Michigan Environmental Protection Act (“MEPA”), MCL 324.1701(1), and are hereby permitted.
- B. Levels of water extraction by NWNA from the Sanctuary Springs location in excess of those set forth in paragraph I.A. above are deemed likely to impair the water or other natural resources in violation of MEPA, and are hereby enjoined.

III. Additional Provisions.

- A. NWNA shall measure and record the stage and flow of Dead Stream at the M-20 Bridge (SG-102/SG-106) and the stage of Dead Stream at SG-Doyle at a weekly frequency during the period May 16 – August 31. During the remainder of the year, the monitoring frequency for SG-102/SG-106, SG-Doyle, SG-103 (Cole Creek) and SW-Gilbert/SW-101 (Gilbert Creek) shall be at the same frequency as for the “every four weeks” monitoring events in the Revised Monitoring Plan dated May 12, 2006, unless otherwise agreed by the parties. NWNA shall advise Plaintiffs’ designated representative of the dates and times of measuring such monitoring data and Plaintiffs shall have the opportunity to have their designated representative present to observe and/or inspect NWNA’s measuring and/or to take comparative measurements.

B. NWNA shall furnish monitoring data to Plaintiffs' designated representative within three business days following the monitoring event, and the monitoring data so furnished may be made publicly available. NWNA shall furnish pumping data to Plaintiffs' designated representative on the following basis:

1. Raw data for NWNA's daily total pumping volumes from the Sanctuary Springs location shall be furnished on a weekly basis, within two business days following the end of the week.
2. Reports of (a) NWNA's daily average pumping volume for each well at the Sanctuary Springs location (in gpm), (b) NWNA's total daily average pumping volume from all wells at the Sanctuary Springs location (in gpm), and (c) NWNA's average pumping volume from all wells at the Sanctuary Springs location (in gpm) during the applicable monthly or bi-weekly period pursuant to paragraph I.A. above, shall be furnished within four business days following the end of the applicable monthly or bi-weekly period.
3. Except as otherwise expressly provided in this Amended and Final Stipulated Order, the monitoring, exchange, and verification of monitoring, precipitation, and pumping data shall comply with the Revised Monitoring Program and the Plans and Procedures to Ensure Continuing Compliance, both dated May 12, 2006, unless otherwise agreed by the parties.

All of the foregoing time periods for furnishing data are subject to reasonable extensions or exceptions (as applicable under the circumstances pertaining to the furnishing of the respective data) for weather; power outages; hunting restrictions on monitoring data measurement at the Sanctuary; malfunction of meters, computers

and/or computer software; or other natural causes not within the reasonable control of NWNA.

- C. NWNA shall reimburse to Plaintiffs their costs in obtaining expert review of the monitoring data up to \$10,000 per year for 22 years, beginning in 2006. Thereafter, all monitoring data shall be provided monthly to an expert designated by MCWC or its successors and such designated expert shall have the right to be present, inspect, take comparative measurements, and receive the monitoring data as provided in paragraphs III.A. and III.B. above; provided, however, that if MCWC or its successors is dissolved or has notified NWNA that it no longer wants to receive such data, it shall be made available to Ferris State University, or other public library in Mecosta County willing to receive and maintain the information.

IV. Enforcement.

- A. If any party violates any of the provisions of this Final Amended Stipulated Order, any party may seek to enforce such provision by motion filed in the Circuit Court for Mecosta County, Michigan, as provided by law, seeking relief including but not limited to injunctive or other equitable relief; reduction of maximum average withdrawal rates in a subsequent period(s) to offset any previous withdrawals in violation of this Order; ancillary damages; contempt; or other sanctions. Any plaintiff who prevails shall be awarded their reasonable attorney fees and costs in obtaining enforcement of this Order. The trial court retains jurisdiction for purposes of enforcing this Order.
- B. It is expressly stipulated and agreed that MCWC has standing in this action, as a matter of fact and law, and that such standing shall continue necessarily as part of its

right to enforce this Amended and Final Stipulated Order. Further, it is expressly stipulated and agreed as a matter of fact and law that MCWC or its successor organization shall have the legal standing and the right to enforce the terms of this Amended and Final Stipulated Order under the Michigan Environmental Protection Act, MCL 324.1701 *et seq.* It is also stipulated and agreed as a matter of fact that (1) MCWC has members who are riparian land owners or members of the public who specifically use and enjoy the Dead Stream and/or Thompson Lake for viewing, boating, kayaking, canoeing, or other recreation (it being understood, however, that there is no right of public access to either Thompson Lake or the Dead Stream); (2) any reduction of flows and levels of Dead Stream or the levels of Thompson Lake due to a violation of the terms and provisions of this Amended and Final Stipulated Order would directly and actually injure or interfere with such uses and enjoyment; and (3) such injury and interference will be redressed by enforcement of the terms and provisions of this Amended and Final Stipulated Order. Accordingly, MCWC, as representative of the interests of these members, has distinct and special interests unique from the public at large to maintain a civil action to enforce the terms and provisions of this Amended and Final Stipulated Order as provided in paragraph A above.

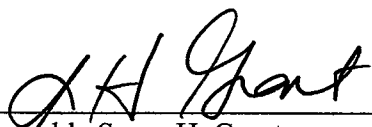
- V. **Amendment of Injunction.** The injunction set forth herein modifies, supersedes and fully replaces the injunction in the Stipulated Order on Remand dated January 25, 2006.
- VI. **Binding Effect.** The provisions of this Order shall be binding upon and shall inure to the benefit of the parties and their respective heirs, executors, representatives, successors and assigns.

VII. **Recording.** A copy of this Order may be recorded by either party with the Register of Deeds for Mecosta County, Michigan, as provided by law, and indexed with reference both to NRNA's interest in the Sanctuary Springs property and to the Doyle property and the Sapp property.

VIII. **MCR 2.602(A)(3) Last Order.** This Amended and Final Stipulated Order resolves the last pending claim and closes the case, and this being a complete compromise and settlement of all claims in this litigation, no appeals shall be filed by either party.

IT IS SO ORDERED.

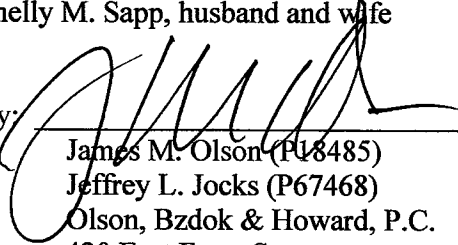
Dated: July 6, 2009



Honorable Susan H. Grant *P33079*
Circuit Court Judge, acting by assignment

We consent to the entry of this Order amending the Stipulated Order on Remand dated January 25, 2006:

Plaintiffs Michigan Citizens For Water Conservation, a Michigan nonprofit corporation; R.J. Doyle and Barbara Doyle, husband and wife; Jeffrey R. Sapp and Shelly M. Sapp, husband and wife

By: 

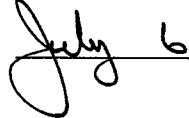
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Dated: July 6, 2009

Defendant Nestlé Waters North America Inc.

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Dated:  _____, 2009