



Protecting the Common Waters of the Great Lakes Basin
Through Public Trust Solutions

November 3, 2016

Ms. Heidi Grether
Director, Michigan Department of Environmental Quality
P.O. Box 30473
Lansing, Michigan 48909-7973

Ms. Teresa Seidel
Chief, Water Resources Division
Michigan Department of Environmental Quality
P.O. Box 30458
Lansing, Michigan 48909-7958

Ms. Carrie Monosmith
Office of Drinking Water and Municipal Assistance
P.O. Box 30241
Lansing, Michigan 48909-7741

Re:: Application of Nestlé for Water Withdrawal and Diversion of Water from PW-101, White Springs Site, Chippewa and Twin Creek Watersheds, Osceola County, Michigan

Dear Director Grether, Chief Seidel, and Ms. Monosmith:

These preliminary public comments from FLOW For Love of Water ("FLOW"), a Michigan nonprofit Great Lakes and water policy center, are made with the intention of promoting the highest and best common good for water, the environment, quality of life, and sustainable economy of Michigan. Water defines our quality of life and economy here in Michigan. If the State, including the Governor and MDEQ, do not live up to this high, solemn responsibility, our water, quality of life, and economy will be impaired and eventually subordinated to the interests of others, including those interests outside our watersheds and the Great Lakes Basin.

FLOW became concerned earlier this week regarding Nestle's doubling the size of its water withdrawals and diversions from the Chippewa/Twin Creek tributary headwaters, just north of Evart, Michigan, for exporting 210,000 million gallons a year of spring water from our watersheds or outside the Great Lakes Basin.

First, in reviewing the application summary and report, it became apparent that important data, studies, and reports essential to understanding and comment on the application were not included and on inquiry and not posted or available for public review on the MDEQ website link. Second, the comment period had been set for just a few days for November 3, 2016. On behalf of FLOW, I called Carrie Monosmith's office, and her staff graciously emailed me copies of the more than a dozen reports, studies and other documents. On review of these documents, I immediately drafted a letter for comment today to urge you to postpone and make available these studies and reports, because without them, meaningful public comment would be impossible.

The draft letter also urged you to extend the time for public comment in light of short time-frame for comment and the lack of adequate public notice back in September, 2016, and earlier in 2015 and 2016 when Nestlé incrementally registered and sought clearance under the water assessment tool to incrementally increase withdrawals from this headwater area (renamed White Pine Creek Site) with little or no public notice or awareness. Indeed, despite the assessment tool sometimes understatement of flows in these tributary headwaters, for one of Nestle's requests it appears the tool may have rejected the request. This is curious because a subsequent field review ended up approving the increase.

Today, FLOW learned that the Department has decided to extend the public comment to December 3, 2016. Moreover, we understand you will immediately post and otherwise make available the studies, reports, data and documents cited in the Index or relied on for the Nestlé application.

FLOW's first comment is an expression of gratitude for extending the time for public comment and making available studies, reports, and information that is essential for reviewing the matter and submitting public comments. As noted FLOW appreciates the opportunity to do so within the new time frame, directing its attention to scientific and water law and policy principles of Michigan and for the Great Lakes, and public trust in those waters and their tributary streams and groundwater.

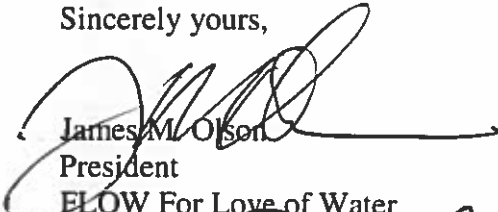
Our second comment is to stress the significance of this large quantity withdrawal and diversion of water from these headwater watersheds, and the application of Michigan's water withdrawal laws, diversion ban, Great Lakes Compact, common law of riparian and public trust in water, and Part 17, NREPA, MCL 324.1701 et seq. It is important that these laws are interpreted procedurally and substantively with the highest degree of scrutiny in light of Michigan's solemn duty to protect water and related natural resources, reflected in our state constitution, Mich Const., art. 4, sec. 52, and Michigan Water Strategy project. Michigan communities, businesses, farmers, and tourists, recreationists, and citizens can ill-afford the risk of unintended bad precedent or impacts at stake in this matter.¹

¹For example, how is it that the water withdrawal law and assessment tool can be ignored or used to allow pumping and diversion of this much water before any approval under Section 17 of the SWDA? Shouldn't the procedures and standards


In closing, we again thank you for setting this matter back on the right course; FLOW will review and submit public comments on this matter to hopefully bring about the right, best decision for our water and quality of life now and in the future. Further, for the reasons noted above, until this matter has been thoroughly reviewed and considered in the public arena with full participation and comment, we believe it is most prudent for Nestlé to reduce its water withdrawals from PW-101 to 150 gallons per minute. You are requested to ask Nestlé to do so.

If you have any questions or would like to discuss any of the above, we are available for a meeting or phone conference.

Sincerely yours,



James M. Olson
President
FLOW For Love of Water



Elizabeth R. Kirkwood
Executive Director
FLOW For Love of Water

considered under the water withdrawal law, Part 327, NREPA, be integrated and coordinated with the SWDA? Both laws also must comply with other water and environmental laws like Part 17, NREPA ("MEPA") and the common law principles, such as those that limit diversions of water to protect the integrity of watersheds, headwaters, creeks and streams. E.g. *Schenk v City of Ann Arbor*, 163 Mich 109 (Mich 1917); *Dumont v Kellogg*, 29 Mich 420 (1874); (diversions of groundwater and streams not allowed where there is measurable or material diminishment of flow); cf. *Michigan Citizens for Water Conservation v Nestlé*, 709 NW2d 174 (Mich 2005).