

**BILL SUMMARY:** The Great Lakes belong to all of us. And yet, state policy in Michigan allows private for-profit corporations to extract the waters of the state and sell them for mammoth profits. This is not only inconsistent with public trust law, but a raw deal for the citizenry. At the same time that Nestlé is taking public water at virtually no cost and reaping a windfall, thousands of Michigan citizens – both city dwellers and rural residents – do not have access to clean, safe and affordable water. Over 100,000 Detroit households have suffered water shutoffs and thousands of Flint children and residents have suffered lead poisoning and the loss of affordable drinking water in the fourth year of an ongoing water crisis. No current law addresses both the sale of water for profit and the protection of drinking water and public health with new infrastructure funds.

FLOW developed this model legislation, *Public Water, Public Justice*, to bring these colliding water crises under a comprehensive legal framework and to recalibrate Michigan's priorities on protecting its water and its people. Michigan and the seven other Great Lakes states should pass this model legislation drafted by FLOW in order to: (a) affirm public ownership over water, (b) protect sensitive water resources, (c) prohibit the sale of water except for the sale of bottled water authorized by a royalty licensing system, and (d) recoup for public purposes royalties derived from these bottled water sales. This model law places royalties into a public water, health and justice trust fund to serve people and communities for specific dedicated public purposes, such as replacing lead service lines or creating water affordability plans for disadvantaged people or cities and rural communities.

**WATER FOR PRIVATE PROFIT IS VIRTUALLY FREE:** On April 2, 2018, the Michigan Department of Environmental Quality (DEQ) issued a permit to the Nestlé Corporation to extract up to 400 gallons a minute of groundwater that feeds the headwaters of two creeks in Osceola County near Evart. Nestlé bottles and sells the water across the Midwest. The DEQ's decision came in the face of over 80,000 comments in opposition to the proposed permit, signaling the strength of public opinion. News of the permit's issuance was met with widespread and understandable outrage. The DEQ approved the permit without having in hand site-specific hydrogeological data demonstrating the increased withdrawal would have no adverse impact on sensitive resources associated with the headwaters of Twin and Chippewa Creeks.

Especially galling to many citizens is the fact that Nestlé pays next to nothing for the water it extracts and sells. Outside of a one-time \$5000 administrative fee for the processing of its permit, Nestlé pays only \$200 per year to the DEQ for the withdrawal. In sum, current state law, policy and DEQ decision-making allow Nestlé to take waters of the state and convert them to a commodity that ultimately reaps billions in private profit, and to pay almost nothing for the use of public water.

**WATER INJUSTICE:** At the same time that Nestlé is taking public water at virtually no cost and reaping windfall profits, thousands of Michigan citizens – both city dwellers and rural residents – do not have access to clean, safe, and affordable water. Nearly 12% of U.S. households face unaffordable water bills. Thousands of residents of Detroit have suffered water shutoffs and the citizens of Flint, in the fourth year of a water crisis, still do not have reliable access to safe drinking water. Thousands of private drinking water well owners in rural areas have contaminated water supplies and no source of public funding to assist them in obtaining clean drinking water.

Federal assistance to local water systems is currently 74% below its peak in 1977. This has contributed to the inability of public water utilities to address failing and aging infrastructure. An infrastructure panel appointed by Michigan Governor Rick Snyder estimated a gap of over \$900 million annually for the next

20 years between water infrastructure needs and available funding. The public interest demands that the state assure clean, safe and affordable water to all citizens of Michigan.

**THE GREAT LAKES COMPACT:** The eight-state Great Lakes Compact and a side agreement among the states and the provinces of Ontario and Quebec ban water transfers out of the Great Lakes in ships, trucks, rail tankers, pipelines, canals, aqueducts and other infrastructure. Ironically, the Compact exempts from this ban the transfer out of the Great Lakes Basin of water in containers 5.7 gallons or less in volume. This inconsistency is not based on environmental impact or consideration of public trust law. It is purely an accommodation for an industry that turns a public resource into private profit. The proposed law corrects the Compact's inconsistency by banning the out of Basin transfer of water in smaller containers unless it does not impair public trust uses, is licensed by the state, and is subject to royalties that benefit public water.

**KEEPING WATER PUBLIC:** Who owns the Great Lakes? We do. The 35 million people of the Great Lakes are the beneficiaries of these waters, with our state governments serving as trustees to protect these shared waters for the benefit of current and future generations. It makes sense that certain natural resources like water should be preserved in perpetuity for drinking, public use and enjoyment. And this is the essence of the common law known as the public trust doctrine.

The public trust doctrine prohibits the navigable waters of the Great Lakes Basin from being controlled by or transferred to private interests for private purposes or gain. Our rights to use the water of the Great Lakes Basin cannot be alienated or subordinated by our governments to special private interests; this means that all reasonable private use and public uses may be accommodated so long as the public trust waters and ecosystem are not harmed and the paramount public right to public uses is not subordinated or impaired. FLOW believes the doctrine is a necessary underpinning for the management and regulation of water resources, including extraction of water for sale.

**PROPOSED LEGISLATION:** FLOW's model legislation contains the following key provisions:

1. A declaration that **water in its natural state is held by the sovereign** and subject to the duty to benefit and protect for all citizens, and it is held in public trust where groundwater, springs, creeks, streams and lakes form a hydrologically connected whole.
2. A declaration that **persons have a right to access safe, clean, affordable, healthy water.**
3. **A prohibition** on the transfer or diversion for purpose of **sale of water** apart from its origination watershed or source-tract, except as narrowly allowed by license under the Act.
4. **Authorization of the sale of bottled water only if it is licensed** under the Act and **it is not "spring water," and it will not interfere or impair other uses or the environment.**
5. **Establishment of a royalty** (e.g. 25 cents per gallon, about a 5-cent increase in a 16-ounce bottle) whether the source of water is public waterworks, municipal system or private.
6. Creation of a **Public Water, Infrastructure, Health and Justice Fund** for royalties managed by a fairly constituted trust fund board, with rights of public notice, participation and enforcement, including public water protection and justice citizen suits to enforce the law and its requirements.
7. Dedication of **trust fund revenues** to: (a) access to clean, affordable water, or to municipalities who provide tiered or reverse-tiered pricing; (b) public infrastructure, provided systems are in place for equitable, affordable access; (c) conservation technology and research; (d) health needs; (e) water source protection.