

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

APPEAL FROM THE MICHIGAN COURT OF APPEALS  
Murphy, P.J., and Smolenski and White, JJ.

---

**MICHIGAN CITIZENS FOR WATER  
CONSERVATION**, a Michigan nonprofit  
corporation,

Plaintiff-Appellant,

v

**NESTLÉ WATERS NORTH AMERICA  
INC.**,

Defendant-Appellee.

Supreme Court  
Docket No. 130802

Court of Appeals  
Case Nos. 254202 & 256153

Mecosta County Circuit Court  
Case No. 01-14563-CE  
Hon. Lawrence C. Root

---

**BRIEF ON BEHALF OF *AMICUS CURIAE*  
MICHIGAN LAKE AND STREAM ASSOCIATIONS, INC.,  
IN SUPPORT OF THE APPEAL BY PLAINTIFF-APPELLANT**

**Attorneys for the Appellant:**

Robert Traver Smith (P11223)  
James Q. Stewart (P34455)

Fisher, Waters & Stone, PC  
222 Capitol Ave.  
Lansing, MI 48913  
(517) 333-2222

**Attorneys for the Appellee:**

John Harmsworth (P91234)  
Anthony Mazzoni (P43219)

Dewey & Howe, PC  
101 South Woodward  
Detroit, MI 48226  
(313) 321-7654

**TABLE OF CONTENTS**

	<u>Page</u>
<b>INDEX OF AUTHORITIES</b> .....	ii
<b>STATEMENT OF JURISDICTION</b> .....	1
<b>COUNTERSTATEMENT OF THE QUESTIONS INVOLVED ON APPEAL</b> .....	2
<b>I. THE MICHIGAN LAKE AND STREAM ASSOCIATIONS, INC.</b> .....	3
<b>II. FACTS</b> .....	3–5
<b>III. DISCUSSION</b>	
A. The Relevant Portion of the Trial Court Opinion and the Court of Appeals’ Decision Regarding Riparian Issues .....	5–8
B. The Proper Common Law Test to Apply.....	8–10
C. The Trial Court Reached a Narrow Decision .....	10–11
D. The “Superiority” of Surface Bodies of Water Over Groundwater .....	11–14
E. Impacts on Commerce and the Economy .....	14
F. The Importance of Common Law Riparian Property Rights.....	15
<b>CONCLUSION</b> .....	16

## INDEX OF AUTHORITIES

### **MICHIGAN SUPREME COURT CASES**

<i>Dumont v Kellogg</i> , 29 Mich 420 (1874).....	9
<i>Hoover v Crane</i> , 362 Mich 36 (1960) .....	9
<i>People v Hulbert</i> , 131 Mich 156, 170 (1902).....	7
<i>Schenk v City of Ann Arbor</i> , 196 Mich 75 (1917) .....	9
<i>Thompson v Enz</i> , 379 Mich 667, 686 (1967).....	7

### **MICHIGAN COURT OF APPEALS CASES**

<i>Maerz v United States Steel Corp</i> , 116 Mich App 710 (1982).....	9
<i>Mich Citizens for Water Conservation v Nestlé Waters NAm Inc</i> , 269 Mich App 25 (2005) .....	7

### **OTHER AUTHORITIES**

4 Restatement (Second) of Torts § 858.....	7
--	---

## **STATEMENT OF JURISDICTION**

Please see the brief of Plaintiff-Appellant.

## STATEMENT OF THE QUESTIONS INVOLVED ON APPEAL

### I

Did the Trial Court utilize the proper riparian test to protect riparian landowners and public waters from private diversion and sale out of the watershed involved?

The Trial Court answered, “yes.”

The Court of Appeals answered, “no.”

The Defendant-Appellee Nestlé answers, “no.”

The Plaintiff-Appellant Michigan Citizens for Water Conservation (MCWC) says, “yes.”

*Amicus Curiae* Michigan Lake & Stream Associations, Inc. answers, “yes.”

### II

Did the Trial Court generally reach the right decision in this case below?

The Trial Court answered, “yes.”

The Court of Appeals answered, “yes” as to some matters and “no” as to others.

The Defendant-Appellee Nestlé answers, “no.”

The Plaintiff-Appellant MCWC answers, “yes.”

*Amicus Curiae* Michigan Lake & Stream Associations, Inc. answers, “yes.”

## **I. THE MICHIGAN LAKE & STREAM ASSOCIATIONS, INC.**

Michigan Lake & Stream Associations, Inc. (“ML&SA”) is the largest formal organization in the state of Michigan that represents riparian property owners. ML&SA was founded over 40 years ago. It is primarily an educational, research, and social organization. Through its membership, affiliates, and related organizations, ML&SA represents, directly or indirectly, over 125,000 people in the state of Michigan. ML&SA is a state-wide organization.

ML&SA and its members have a direct interest in the subject matter (and the final outcome) of this lawsuit. Permitting significant withdrawals of groundwater for far away consumption which directly lower the water levels of Michigan lakes, wetlands, rivers and streams seems almost unthinkable. The outcome of this appeal could have a significant negative impact not only upon ML&SA and its members, but also upon many other riparian property owners and users (both public and private) of lakes, rivers and streams throughout Michigan.

## **II. FACTS.**

For purposes of this *amicus curiae* brief, ML&SA will simply rely upon the statements of the parties to the lawsuit and the recitation of facts in both the trial court opinions and the Court of Appeals’ published opinion regarding the specific facts in this lawsuit.

ML&SA respectfully asserts that it is important to always keep in mind what this case *is not*. First, the situation at issue does not involve a well which taps into a deep or confined aquifer, as is often the case with municipal water systems, farm irrigation, and similar water well uses. Rather, the bottling company in the current case is utilizing a well which taps into a shallow unconfined aquifer, where the aquifer has extensive water interchange with the earth’s surface, groundwater, and existing surface bodies of water. The bottling company in this case is intercepting underground water before it can reach the surface to supply or recharge a stream, vari-

ous wetlands, and more than one lake. Accordingly, to the extent that there are people who claim that Judge Root’s decision would severely impact municipal water systems, wells for houses, farm irrigation wells, and similar uses, such assertion is simply incorrect. The current situation is much more analogous to directly pumping water out of a lake or stream and removing the pumped water from the watershed of its origin.

Second, the bottler in the current case is harvesting water for use outside of the watershed from which the water is drawn. In essence, the water is being diverted or removed entirely from the watershed. Again, this is different than the situation where a well draws water for use for a dwelling, farm, golf course, ski resort, or municipality which is located within the same watershed. Where withdrawal of groundwater<sup>1</sup> occurs for a use or uses within the same watershed as where the water originated, it is likely that some or much of the water involved will eventually find its way back to the groundwater or surface bodies of water located within the watershed. Groundwater withdrawn for uses such as farming, on-site residential wells and septic systems and similar uses, or local industries is ultimately discharged and will find its way back into the ground or surface bodies of water (at least some of it) within the original watershed, which does not have the same adverse effect on water flow and levels as does complete removal from the watershed.

Finally, the facts of this case center upon a diversion of water for purely consumptive use elsewhere—the bottled water is essentially used up by the end use, which is human consumption, out of the watershed.

Given the concerns which ML&SA and its members have for maintaining the natural wa-

---

<sup>1</sup> At various times and places throughout the trial and in numerous locations in the briefs on appeal, the parties refer to the underground water reservoir at issue as a “spring aquifer,” “shallow aquifer,” “shallow spring aquifer,” “shallow unconfined aquifer,” and in other fashions. All the parties appear to agree that there is a direct connection (or direct hydraulic connection) between the aquifer at issue and certain surface bodies of water.

ter levels for inland lakes, wetlands, rivers, and streams throughout Michigan, ML&SA believes that Judge Root's decision (particularly the part of the decision which discusses common law riparian rights and obligations) rests on a base of common sense, sound common law principles, valid science and reasonable protection for Michigan's water resources.

### **III. DISCUSSION.**

In this brief, *amicus curiae* Michigan Lake & Stream Associations, Inc. will concentrate only on the portions from Judge Root's and the Court of Appeals' opinions which deal with common law riparian rights—this brief will not address the regulatory or other issues involved, unless the Michigan Supreme Court desires to have ML&SA address those issues. ML&SA believes that the decision of the Michigan appellate courts regarding the common law riparian rights issue (and the proper test to apply thereunder) will likely have the biggest impact upon its members.

#### **A. The Relevant Portion of the Trial Court Opinion and the Court of Appeals' Decision Regarding Riparian Issues.**

In its November 25, 2003, Opinion Following Bench Trial, the trial court expressly recognized that both the owner of groundwater and the owner of land adjoining a lake, river or stream are riparian property owners, and that when there is a conflict between the use of groundwater and surface bodies of water, common law riparian use doctrines apply.

However, given that the appellate courts in Michigan had never directly addressed what standard applies in a situation where a withdrawal of groundwater directly impacts a surface body of water (such as a lake, stream or wetland), the trial court had to determine what specific test or standard would apply. The crux of the trial court's opinion regarding how to apply the common law riparian rights doctrine in the current situation is found on page 48 of the trial court's opinion as follows:

Distilling (I gave up long ago trying to avoid aquatic analogies and metaphors) all of this discussion to a rational, and enforceable, rule of law, I have reached the following conclusion. In cases where there is a groundwater use that is from a water source underground that is shown to have a hydrological connection to a surface water body to which riparian rights attach, the groundwater use is of inferior legal standing than the riparian rights. In such cases, as here, if the groundwater use is off-tract and/or out of the relevant watershed, that use cannot reduce the natural flow to the riparian body. This is not a pure *per se* rule in that it does require a showing that the flow to/in the surface water body has been affected to a degree that there is a level of confidence that the effect(s) are not part of the natural forces at work on the surface water(s). I accept Plaintiffs' counsel's suggestion that, in this case, a showing of effects in the range of three to five percent would be sufficient to exclude the natural 'background' in the system such that effects in excess of that range satisfies the requisite showing. The next step in the rule is in cases where, again as here, the groundwater use is shown to have measurable and proven negative impacts on the riparian body/bodies, with the analysis not having any component regarding whether the use is off-tract/out of watershed. The reader will note that the phrase 'material diminishment' has not been used. I have perceived that the phrase 'material diminishment' has been a source of confusion in that there has never been a good definition, or even analysis, of what is or is not 'material'. For those intent on using the phrase I suggest that it be used in the second scenario above, using the phrase 'measurable diminishment' for the first. Both are harms for which a remedy will be. This is not inconsistent with my rulings before trial in that I reserved ruling on the question of whether what then was being referred to as material diminishment, but really a request that I find as a matter of law that a certain measurable level of loss of flow and/or stage, was enough to warrant relief to the Plaintiffs.<sup>2</sup>

Judge Root reached his conclusions regarding which test to apply under the Michigan common law riparian rights doctrine to the current situation after analyzing four Michigan appellate cases, which, while helpful, are not directly on point. Overall, Judge Root held that where there is a groundwater use that is from a water source underground which is shown to have a hydrological connection to a surface body of water involving riparian rights (such as a lake, river or stream), the groundwater use is of inferior legal standing to the riparian rights attendant to the surface body (or bodies) of water.

---

<sup>2</sup> Tr. Op. at p 48.

Where a conflict exists in such a situation between groundwater use and surface riparian rights, and the extracted groundwater is ultimately to be used *outside* of the watershed involved, the test to be applied regarding whether or not the groundwater extraction can occur (or can continue to occur) is the “effect on flow” test where there is a level of confidence that such an effect is not due to “background” fluctuations.<sup>3</sup> If the same situation occurs, except that the groundwater will be used within the watershed where the groundwater originated, the proper test to utilize is the “measurable and proven negative impacts” or “material diminishment” of flow, level or volume of the riparian water body.<sup>4</sup>

In its decision in *Michigan Citizens for Water Conservation v Nestlé Waters North America, Inc.*,<sup>5</sup> the Court of Appeals generally upheld Judge Root’s findings of fact with regard to the riparian rights issue, but held that Judge Root applied the wrong common law riparian rights doctrine or test. However, the Court of Appeals rejected the trial court’s hybrid rule but also refused to completely adopt the test contained in 4 Restatement Torts, 2d, § 858. Ultimately, the Court of Appeals set forth a reasonable use balancing test for riparian rights similar (but not identical) to the Restatement’s rule. The Court of Appeals’ summary of the test is as follows:

What constitutes a reasonable use must be determined on a case-by-case basis. *People v Hulbert*, 131 Mich 156, 170; 91 NW 211 (1902). However, diversions of water from a lake or stream that do not benefit riparian lands were generally considered unreasonable *per se*. In addition, natural water uses are preferred over artificial uses. *Thompson v Enz*, 379 Mich 667, 686; 154 NW2d 473 (1967) (plurality opinion of Kavanaugh, J.). Hence, under Michigan’s riparian authorities, water disputes between riparian proprietors are resolved by a reasonable use test that balances competing water uses to determine whether one riparian proprietor’s water use, which interferes with another’s use, is unreasonable under the circumstances.<sup>6</sup>

---

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> 269 Mich App 25 (2005).

<sup>6</sup> *Id.*, at 57-58 (footnote omitted).

Although the Court of Appeals found that the trial court erroneously applied a hybrid rule, the Court of Appeals also held that the trial court correctly determined that the water withdrawals unlawfully interfered with Plaintiffs' riparian water uses. In other words, although the trial court applied the wrong test, the right result issued.<sup>7</sup>

**B. The Proper Common Law Test to Apply.**

Like the Plaintiff-Appellant in this case, ML&SA respectfully asserts that the trial court applied the proper standard or test in this matter, drawing on common law riparian doctrine, and properly halted the hydraulically connected groundwater diversions at issue. In everyday parlance, the trial court held that where water is withdrawn from the ground and is diverted out of the watershed involved, the proper test to apply is whether or not such pumping and diversion results in a *measurable diminishment* of the flow, level or size (any impairment) of an existing lake, river or stream on the earth's surface. This is a refinement of the longstanding Michigan common law doctrine regarding riparian rights for a heretofore uncommon fact situation that is, the trial court held that where an out of watershed groundwater diversion directly impacts a surface body of water, such diverted use is not reasonable if it results in a measurable diminishment of the flow, level or size of an existing stream or lake on the surface.

How did the trial court decide that the "measurable diminishment" test is the proper standard to apply in the current case? The trial court correctly pointed out that there are three separate and distinct categories of conflicts or disputes which can occur regarding water usage as follows:

1. Conflicts between different riparian landowners who own property or frontage on a lake, stream or river;
2. Conflicts or disputes between different groundwater users; or

---

<sup>7</sup> *Id.*, at 82.

3. Conflicts or disputes between a groundwater user and a riparian landowner who owns property with frontage on a surface body of water such as a lake, river or stream.

In its opinion, the trial court noted that the existing Michigan case law normally deals with two competing parties in more or less equal positions—for example, two different groundwater users or two different surface riparians (i.e., situations 1 or 2 above). In an attempt to ascertain the proper standard or test to apply in the current case which involves competing parties in substantially different positions or situations—a well water user versus surface riparian landowners—the trial court examined four Michigan appellate decisions. First, the case of *John B. Dumont v John G. Kellogg*,<sup>8</sup> involved a dispute between two commercial riparians on a stream regarding one property owner's interference with the flow of the stream to the detriment of the other property owner. Both parties were of roughly equal standing. The Michigan Supreme Court held that the reasonable use doctrine applied.

The next common law case cited by Judge Root was *Schenk v City of Ann Arbor*.<sup>9</sup> That case involved two competing well-water claims. The Supreme Court held that one property owner cannot utilize a well in such a way that it would unreasonably affect the water flow to the well of an adjoining property owner.

The third case was *Hoover v Crane*,<sup>10</sup> which was a dispute between riparian property owners in which one of the riparians was using water from the lake for irrigation purposes for his fruit orchard.

The last of the common law riparian cases mentioned was *Maerz v US Steel Corp.*<sup>11</sup> In that case, the Michigan Court of Appeals dealt with a situation where a quarry operator was mak-

---

<sup>8</sup> 29 Mich 420 (1874).

<sup>9</sup> 196 Mich 75; 163 NW 109 (1917).

<sup>10</sup> 362 Mich 36; 106 563 (1960).

<sup>11</sup> 116 Mich App 710; 323 2d 524 (1982).

ing use of groundwater in a way that adversely affected area water wells.

Defendant-Appellee Nestlé Waters North America, Inc. (“Nestlé”) has asserted that the trial court applied the wrong standard or test in this case and that a more general reasonable use standard should apply. Nestlé rejects any differentiation between (1) the use of groundwater versus surface water, or (2) situations involving water diverted from a watershed versus water used within its originating watershed. Nestlé argues that the proper standard to apply in the current case is whether or not the pumping and diversion of the groundwater would result in a “substantial and direct injury or harm” to surface bodies of water. Of course, if this Court were to apply the standard requested by Nestlé, it would put the rights associated with withdrawing groundwater (even for consumptive use in far-away places) at roughly the same (or even superior) standing as riparian rights associated with lakes, rivers and streams. The test advocated by Nestlé would make groundwater harvesting for consumptive uses in far away places much easier and more common, even where such groundwater diversion diminishes the flow, level and/or size of an existing lake, river and/or stream. The test applied by the trial court (and supported by the Plaintiff-Appellant and ML&SA) is more protective of surface bodies of water in Michigan such as lakes, rivers and streams.

ML&SA respectfully asserts that if one carefully analyzes the existing relevant Michigan appellate case law, as well as analogous common law from other states, it should become clear that the trial court correctly determined that the “measurable diminishment” test is the proper test to apply in the current case.

### **C. The Trial Court Reached a Narrow Decision.**

Nestlé has not only asserted that the trial court applied the wrong test (or standard) and also reached the wrong decision in this case, but also recites the full “parade of horrors” which

will supposedly occur if the trial court decision in this case were to stand. In fact, a much greater risk of detrimental impact to Michigan's water resources will occur if the decision of the trial court remains reversed and the weaker test specified by the Court of Appeals stands.

In fact, the trial court's decision in this case is actually quite narrow, a fact recognized by the trial court. The "measurable impact" test<sup>12</sup> applies only where:

1. There is a direct conflict between a groundwater user and the riparian rights of one or more landowners as to an existing surface lake, river or stream; and
2. An unconfined aquifer is involved, and the aquifer is hydraulically connected to the surface body or bodies of water; and
3. The pumping and removal of the groundwater directly diminishes the flow, level and/or size of an existing lake, river or stream; and
4. The groundwater being withdrawn is diverted and, sold outside of the watershed where the water originated.

If a case involves only the facts and circumstances listed in items 1 through 3, above, then the proper test to apply is the "measurable and proven negative impacts" test. Thus, for those who use water within a watershed, such as farms, municipalities, or local industries, the test is less rigorous, because it takes into account the fact that some of the water returns or is discharged to or within the watershed of origin.

**D. The "Superiority" of Surface Bodies of Water Over Groundwater.**

Nestlé appears aghast at the notion that the trial court would view the riparian rights attached to a surface body of water as being deemed legally superior to the rights attached to groundwater. The trial court did not quite put it that way, but application of the "measurable diminishment" test or standard in the current case does, in some fashion, implicitly recognize the supremacy (or "superiority" if you will) of the rights of the general public and riparian owners as to existing surface bodies of waters such as lakes, streams

---

<sup>12</sup> T. Ct. Op. at 48.

and rivers over that of groundwater rights. Even though the Plaintiff seems somewhat reluctant to refer to the trial court decision as standing for the proposition that surface water rights are “superior” to groundwater rights, that distinction appears entirely logical. ML&SA believes that an objective analysis of the long-standing case law in this area, when combined with practicality and common sense, dictates that such a superiority be recognized as to surface bodies of water, at least with regards to the test to be applied when groundwater is extracted for diversion and consumption outside of the watershed in a fashion which diminishes or adversely impacts existing surface bodies of water.

Why should extraction of groundwater and its diversion out of the watershed have to yield if such extraction will cause any adverse diminishment or impacts regarding the volume, level or flow of an existing surface body of water? There are multiple reasons.

First, except for artificial bodies of water, most lakes, rivers, streams and creeks have existed on the surface in Michigan since at least the last Ice Age. Resting or flowing on the surface of the earth is their natural state. Conversely, groundwater, in its natural state, lies below the surface in an unseen state. With the exception of artesian wells or springs, the act of extracting or artificially bringing groundwater to the surface is apart from nature. That is also true where water is being diverted artificially from a spring or artesian well (prematurely or in a reduced volume or flow) and the natural flow to the surface is altered. With all other factors equal, it seems only logical and pure common sense that a body of surface water in its natural state should not be diminished or adversely affected by artificial underground tinkering when a conflict arises.

Second, this is not a case where the water being artificially extracted or diverted from underground remains in the watershed. The uses made of surface lakes, rivers and streams are rarely consumptive (for example, swimming, boating, fishing, etc.). Where extraction has his-

torically occurred from surface bodies of water, in most cases the water remains in the watershed and usually finds its way back to the very body of water involved (for example, agricultural irrigation, home water wells, watering out of a lake for yard or golf course purposes, etc.). In fact, much of the water drawn from surface waters or even groundwater for municipal systems remains within the watershed involved, and such waters are usually withdrawn from water sources that are either not directly hydrologically linked to the surface waters or do not diminish the flow, volume or level of such surface bodies of water or adversely impact them.

Third, the use proposed by Nestlé is completely consumptive so that none of the water will return to the watershed involved. This is contrary to most other uses of water drawn out of a particular watershed where the water remains within the watershed. The test advocated by Nestlé would open up surface waters and a watershed to a whole set of users who compete for use of the water shared under reasonable use rules by those within the watershed.

Fourth, Nestlé is drawing the water at issue for purely commercial and non-essential purposes. This is not a situation where the only source of groundwater for a particular house in the country is involved or where water is being drawn so that people can grow agricultural products for food or livestock. While Nestlé will no doubt point out that water is an essential component for life, non-spring water (whether from municipal water systems, home wells and similar sources, all of which can also be put into a bottle) is a ready (and often cheaper) substitute.

Fifth, ML&SA has already referred to the adverse impacts upon tourism which likely result if Nestlé prevails in this case. Tourism certainly has a bigger economic impact on Michigan than the minimal number of jobs provided by Nestlé or water bottling in general.

Finally, although Michigan certainly is not a “prior appropriation” state, there seems to be something improper about permitting a new non-essential use (such as the drawing of ground-

water for bottling in this case) to diminish a long-standing, existing and highly visible surface water resource such as a Michigan lake, river or stream. For example, to permit the owner or lessee of one groundwater well to drop a lake by 1/2 inch, 1 inch or even more (which is entirely conceivable under the test advocated by Nestlé) to the detriment of hundreds of riparian property owners (and, potentially, members of the public if a public access site is involved) seems incredible.

**E. Impacts on Commerce and the Economy.**

While not a true legal issue, the potential impact on jobs, commerce, and the economy keeps creeping into the discussion of this case by the media, state agencies, and Nestlé. To the extent that this “commerce” issue might be relevant (particularly in the area of the “balancing test” which must be utilized for temporary and permanent injunctive relief, ML&SA believes that some very important matters have been overlooked.

Depending upon how one categorizes the economic dollar figures, tourism in the state of Michigan (which includes water sports, fishing, and hunting) is either the second or third largest industry. A good deal of that tourism is based upon the pristine character, recreational potential, and “draw” of the many lakes, rivers, and streams in Michigan. Few tourists travel to Michigan to view our state’s abundant strip malls, housing subdivisions, or manufacturing plants. In addition to direct tourism, Michigan’s lakes, rivers, and streams also boost our state economy with such tangential benefits as dollars generated pursuant to hunting and fishing, boat manufacturing, resorts, and similar outdoor activities. To the extent that water levels in Michigan lakes, rivers, or streams are dropped artificially due to the drawing out of water by certain limited commercial interests, tourism and other water related commerce which support our state economy will be diminished.

**F. The Importance of Common Law Riparian Property Rights.**

Some view this case as a situation whereby state environmental statutes or common law case law have the potential to (a) thwart the property right of an owner or lessee of property to draw water from a well, and also (b) to cause people to lose jobs. However, ML&SA believes that the more important issue involved in this case is whether a user of groundwater can significantly interfere with and damage basic common law property rights associated with what appears to be a higher priority-surface riparian rights. Riparian rights are a basic property right. To ML&SA, the basic proposition in this case is whether a limited right to draw groundwater for diversion outside of the watershed for profit should be permitted to “trump” the long-standing property rights of riparian landowners and the general public as to existing lakes, rivers and streams. In that sense, this case is primarily about property rights.

## CONCLUSION

ML&SA respectfully asserts that the so-called “hybrid test” adopted by the trial court in this matter below should be reinstated and the portion of the Michigan Court of Appeals’ opinion that struck the hybrid test and instituted a modified balancing test for riparian rights should be overturned. If this Court affirms the riparian rights test specified by the Court of Appeals, such a precedent could have a devastating impact upon long-established riparian rights as to inland lakes, rivers, and streams in Michigan. Confirmation of the Court of Appeals’ modified test (and the continued rejection of the trial court’s hybrid test) could open the door to countless destructive water withdrawals from Michigan’s lakes, rivers, and streams (whether directly from such a body of water or by intercepting groundwater sources that supply and replenish such surface bodies of water). Given the tremendous statewide importance of these issues, it is particularly important that the Michigan Supreme Court affirm the values of traditional common law related to riparian rights and reverse the Court of Appeals.

Respectfully submitted,

Dated: May 15, 2006

---

JoAnn R. Kirtland (P88990)

---

Rhonda W. Angle (P78899)

Attorneys for *Amicus Curiae*  
Michigan Lake & Stream Associations, Inc.

Colfax, Austin & Martin, PC  
333 Main St.  
Three Rivers, MI 49093  
(269) 273-7777