

5. Is it fair to the community if an individual refuses payment and blocks a socially useful project? Putting legal issues aside, are there situations in which it would be morally permissible for government to seize private property for the public good with less than full compensation or even with no compensation at all?
6. Assess the concept of eminent domain, in general, and the plight of Susette Kelo and her neighbors, in particular, from the point of view of the different theories of justice discussed in this chapter. Is it possible to square the government's exercise of eminent domain with a libertarian approach to justice?



### CASE 3.2

## Battling over Bottled Water

**WATER IS THE LIFEBLOOD OF THE EARTH**, but by 2025, according to the U.N., two-thirds of the world's population could face chronic shortages of water. In fact, some countries are already importing huge supertankers of freshwater from other countries. But one place that's definitely not short of water is the state of Michigan, which has 11,000 lakes and is surrounded by Lakes Michigan, Huron, Superior, and Erie. So it came as a surprise to some that the Nestlé company's new Ice Mountain bottled-water plant in Mecosta County, Michigan, dredged up so much controversy when it began pumping water from a local spring.<sup>80</sup>

Nestlé's willingness to invest \$100 million to build a new 410,000-square-foot bottling plant in Mecosta reflects the fact that bottled water is big business, with annual sales of \$6 billion (up 35 percent since 1997). Many county residents, in fact, are thrilled about Nestlé's being there. The Ice Mountain plant employs about a hundred people at \$12 to \$23 per hour, significantly more than many local jobs pay. And the company shells out hundreds of thousands of dollars in local taxes. Township supervisor Maxine McClellan says, "This is probably the best project we've ever brought into Mecosta

County." She adds that she wants "a diversified economy where our kids don't have to move away to find jobs."

The problem, as some local residents see it, is that Nestlé has also built a 12-mile stainless steel pipeline from the plant to Sanctuary Spring, which sits on an 850-acre private deer-hunting ranch and is part of the headwaters of the Little Muskegon River, which flows into the Muskegon and then into Lake Michigan. The company started pumping 130 gallons of water every minute from the spring, with plans to increase that to 400 gallons per minute, or about 262 million gallons a year. But whose water is Nestlé pumping? That's the question being asked by Michigan Citizens for Water Conservation (MCWC), a local Mecosta group that has filed suit contesting Nestlé's right to the spring's waters. Although the company has a ninety-nine-year lease on the land, MCWC contends that the water itself is a public resource. As Jim Olson, MCWC's lawyer, explains it, under the doctrine of "reasonable use" the owners of a stream can use its water for drinking, boating, swimming, or anything else "as long as it's in connection with their land." But, he argues, "this does not include the right to

transport water to some distant land for [some other] use. We're arguing that the same is true with groundwater—you can't sever it from the estate."

Michigan State Senator Ken Sikkema, who chaired a task force on Michigan water issues, rejects that argument: "A farmer pumps water out of the ground, waters potatoes, and sends the potatoes to Illinois—there's no real difference. The water in those potatoes is gone." This reasoning hasn't assuaged the fears of three American Indian tribes who have joined the fray. Citing an 1836 treaty that protects their fishing and hunting rights in the Great Lakes region, they have brought a federal lawsuit against Nestlé and the state of Michigan to stop what they see as a massive water grab. "Our fear," says a spokesperson for the Little Traverse Bay Bands of Odawa Indians, "is that the export could significantly and permanently damage the fishery."

However, David K. Ladd, head of the Office of Great Lakes, argues that bottled water is a special case. Legally, he contends, it's a "food," regulated by the Food and Drug Administration. "There's no difference between Perrier bottling water, Gerber making baby food, or Miller brewing beer. When you incorporate water from the basin into a product, it's no longer water per se." And Brendan O'Rourke, an Ice Mountain plant manager, adds that the 262 million gallons it wants to pump are less than 1 percent of the annual recharge rate of the local watershed, equivalent to just 14 minutes of evaporation from the surface of Lake Michigan.

For their part, scientists opposed to the project argue that Nestlé's pumping has already lowered the local water table and that northern pike are having trouble spawning in a stream fed by Sanctuary Spring. Jim Olson argues that the Ice Mountain plant should reduce its water consumption to 100 gallons per minute or less, not increase it to 400 gallons. "Every gallon removed is needed for the stream to sustain itself," he states. "The right to withdraw groundwater does not include the right to diminish . . . existing or future uses."

To the surprise of many, Michigan state court judge Lawrence Root bought that argument and upheld the MCWC's

lawsuit. Ruling that the environment is at risk no matter how much water Nestlé draws out, he ordered the pumps turned off. Two years later, an appellate court reversed Judge Root's decision, and MCWC and Nestlé subsequently entered an agreement limiting Nestlé's withdrawals from Sanctuary Spring to 250 gallons per minute—although there has been some legal skirmishing between the two antagonists since then. In the meantime, however, the political tide has turned against Nestlé. Small towns in Maine and California have opposed its building new bottled water plants in their jurisdictions; Congress has held hearings into the diversion of groundwater by bottled water companies and other businesses; and Michigan has passed legislation that, among other things, makes it virtually impossible for operations such as the Ice Mountain plant to remove more than 100,000 gallons of groundwater per day.

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### DISCUSSION QUESTIONS

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1. Should people in Michigan be concerned about how, and by whom, the state's ground water is used? In your view, what issues of justice does this case raise?
2. Would Nestlé's pumping 262 million gallons of water per year from Sanctuary Spring constitute "reasonable use"? Is the company treating either local residents or the Native American tribes unfairly, or would it be unfair to restrict Nestlé's use of water from the spring?
3. Is groundwater a public resource, the use of which is appropriate for society to regulate? Or is it the property of those who own the land to use as they see fit? Who has the strongest claim on groundwater—the owners of the land from which it is pumped, the original inhabitants of the area (that is, the local Indian tribes), local residents, citizens of the whole Great Lakes region, or all Americans?
4. Assess this case from the perspective of the utilitarian, libertarian, and Rawlsian theories of justice. How would each address the case? Which theory's approach do you find the most helpful or illuminating?