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GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LANSING



LIESL EICHLER CLARK  
DIRECTOR

VIA E-MAIL

TO: Members of the Michigan Legislature  
Gary L. Randall, Clerk of the House of Representatives  
Margaret O'Brien, Secretary of the Senate

FROM: Liesl Eichler Clark, Director 

DATE: March 22, 2019

SUBJECT: Report on the Aquifer Protection Revolving Fund and Recommendations for Modifications to Part 317, Aquifer Protection and Dispute Resolution

In accordance with Sections 31711(1) and 31711(2) of Part 317, Aquifer Protection and Dispute Resolution, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, attached is the Michigan Department of Environmental Quality's (MDEQ) report on the Aquifer Protection Revolving Fund and recommendations for modifications to Part 317 for April 2, 2017, to February 12, 2019, and an evaluation of effectiveness of the dispute resolution process from the effective date of June 28, 2013, to the present.

If you need further information, please contact James Milne, Supervisor, Great Lakes Shorelands Unit, Surface Water Assessment Section, Water Resources Division, at 517-284-5559; or you may contact me at 517-284-6710.

Attachment

cc/att: Chris Harkins, Director, Senate Fiscal Agency  
Mary Ann Cleary, Director, House Fiscal Agency  
Chris Kolb, Director, State Budget Office  
Greg Bird, Legislative Director, Governor's Office  
Emily Laidlaw, Policy Director, Governor's Office  
Abbey Frazier, Senate Fiscal Agency  
Austin Scott, House Fiscal Agency  
Jacques McNeely, State Budget Office  
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Aaron B. Keatley, Chief Deputy Director, MDEQ  
Amy Epkey, Administration Deputy Director, MDEQ  
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MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY

**Legislative Report**

# **AQUIFER PROTECTION AND DISPUTE RESOLUTION**

**Report Period:  
April 2, 2017, to February 12, 2019**

**Authority:  
MCL 324.31711**

Overview:

Part 317, Aquifer Protection and Dispute Resolution, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, created the Aquifer Protection and Dispute Resolution Program as a way to resolve disputes between owners of small-quantity wells and owners of high-capacity wells without resorting to civil litigation. The directors of the Michigan Department of Agriculture and Rural Development (MDARD; for agricultural high-capacity wells) and the Michigan Department of Environmental Quality (MDEQ; for all other high-capacity wells) have the authority to declare a groundwater dispute if the small-quantity and high-capacity well owners are unable to resolve the dispute on their own. That authority includes the ability to require the provision of an adequate supply of potable water and restricting the operation of the high-capacity well. To date, the directors of the MDARD and the MDEQ have not had to declare a groundwater dispute because the small-quantity and high-capacity well owners have been able to resolve their disputes on their own.

Program Costs:

The MDEQ incurred the following costs related to implementation of the program between April 2, 2017, and February 12, 2019:

Salary	\$ 8,414.87 (as of 2/12/2019)
Fringe Expense	\$ 3,275.58 (as of 2/12/2019)
Travel	\$ 0.00 (as of 2/12/2019)
Civil Service	\$ 197.00 (as of 2/11/2019)
Total	\$11,887.45 (as of 2/12/2019)

Groundwater Dispute Complaints:

Resolved Complaints:	13
Invalid Complaints:	2
Complaints Pending Resolution:	<u>1</u>
Total	16

Complaints Received by County:

Clinton County	4
Muskegon County	2
Saginaw County	1
Tuscola County	7
Van Buren County	2

A total of 16 of the 16 complaints received involved high-capacity agricultural wells. These complaints were forwarded to the MDARD for investigation. The MDEQ covered MDARD staff costs pursuant to an interdepartmental Memorandum of Understanding. The MDEQ also assisted the MDARD in the complaint evaluations by providing hydrogeological data analyses and two-dimensional computer modeling studies.

## Evaluation of the Effectiveness of the Dispute Resolution Process (Pursuant to MCL 324.31711[2]):

During the 5 years since June 28, 2013, the effective date of the dispute resolution process, a total of 36 aquifer dispute complaints have been received by the MDEQ. Thirty-four were referred to the MDARD as they involved the potential impact on a small-quantity well by a high-capacity agricultural withdrawal. Following a review of the complaint details and timelines, 5 of the 34 MDARD-related complaints were determined to be invalid submittals. One aquifer dispute complaint submitted in 2018 is still pending final resolution. Water availability has been restored, and the final reimbursement to the residential owner is still being negotiated.

During this time frame, the MDEQ also received two aquifer dispute complaints related to potential impact to small-quantity wells by high-capacity, non-agriculturally related withdrawals. One was determined to be invalid, and the other was successfully resolved.

Therefore, to date, the aquifer dispute resolution process has successfully resolved all 29 valid complaints, thus avoiding the need to declare a groundwater dispute. As such, the program has successfully restored potable water to the small-quantity wells verified as being impacted by a high-capacity withdrawal in a timely fashion.

See the below section for two recommendations that would increase the effectiveness of Part 317 in resolving aquifer disputes that are subject to the MDEQ's jurisdiction.

### Recommended Statute Modifications:

The aquifer dispute resolution process is an effective way to resolve aquifer use conflicts at lower costs while avoiding exacerbating the already overloaded court dockets. The following recommended modifications would improve the overall effectiveness of Part 317:

#### 1. Eliminate Opt-Out Option

Repeal the option for high-capacity well owners under the MDEQ's jurisdiction to opt out of the aquifer dispute resolution process in Section 31702(3) of Part 317. If the high-capacity well owner opts out of the dispute resolution process, the only recourse available to impacted small-capacity well owners is to pursue civil litigation.

High-capacity well owners under the MDARD's jurisdiction do not have the option to opt out of the Aquifer Protection and Dispute Resolution Program. The MDEQ did not receive any aquifer dispute complaints during this reporting period that were under its jurisdiction.

#### 2. Repeal Exemption

Repeal the exemption for dewatering wells in Section 31709(a) of Part 317. High-capacity wells for gravel mining, quarries, and construction dewatering have been responsible for impacts to many small-capacity wells statewide. Small-capacity well owners impacted by the operation of high-capacity dewatering wells have no recourse other than to pursue civil litigation if the high-capacity well owner does not voluntarily address the small-capacity well owner's concerns.