



# ***CORPORATE PROFILES***

## **AQUAFARMS 93 EXPOSED:**

*The private company behind the bottled water at  
Wal-Mart, Shoppers Drug Mart and Loblaws*

## Executive Summary

In the Spring of 2006, the Ontario government gave the bottled water company Aquafarms permission to take 11.9 billion litres of water over ten years for their operations in Feversham, Ontario.

The company is relatively unknown to consumers, but is among the top-four bottled water companies in Canada along with Coke, Pepsi and Nestlé. Its obscurity is due to its status as a privately owned company and its position as a private label bottler. Some of its customers include, Loblaws, Wal-Mart and Shoppers Drug Mart. Aquafarms also has operations in British Columbia, and North Carolina and is in the process of expanding into Tennessee and Massachusetts.

Aquafarms, owned by the Gott family in Feversham, Ontario, began operations in the 1970s as a trout farm and moved exclusively to bottled water in 1998. Since then, Aquafarms has grown rapidly to become a major player in the North American bottled water industry.

While bottled water does have an important role to play during emergencies when municipal water systems are temporarily disrupted, it has become part of daily diets in Canada and the United States. Close to 20 percent of Canadians and Americans now depend exclusively on buying bottled water for their daily hydration.

Aquafarms is part of an environmentally damaging industry. The bottled water industry takes water from municipal, ground and surface sources, bottles it in plastic bottles made from fossil fuels and toxic chemicals, which, in turn, are thrown away in landfill sites contributing to greenhouse gas emissions.

Water is Aquafarms key ingredient. It is also probably one of the cheapest inputs the company needs to produce bottled water. At its operations in British Columbia the company pays nothing for the right to take millions of litres of water a day from the ground. In Ontario, the company paid only \$3,000 for its latest 10-year permit to take millions of litres a day of this precious resource.

To maintain the weak regulation of our water resources, Aquafarms – like its bigger multinational competitors – pays lobbyists to put pressure on government to maintain their nearly free access to water.

The province of Ontario and Aquafarms have, however, met with some resistance from Feversham residents who insist that the company's water-takings are having a negative impact on water levels in the area.

This report profiles Aquafarms' operations and highlights efforts to limit their water-takings in Ontario. Aquafarms' status as a private company allows them a certain level of anonymity. This profile exposes the company and its owners as major players in an industry that takes the essence of life, bottles it and sells it for huge profits.

## Introduction

Aquafarms 93, Ice River Springs, 1359629 Ontario Inc. are companies you probably have never heard of. These three companies, along with close to a dozen more, are actually one privately held bottled water/plastics company based in Feversham, Ontario. This company (referred to in this report as Aquafarms) happens to be one of the largest bottled water companies in Canada<sup>1</sup> (Nestlé is number 1), and is a rapidly growing player in the North American market.

Aquafarms' strong position in the Canadian bottled water market, despite its relative obscurity among consumers is due to its status as a privately owned private label company. This means that they bottle water for various clients who then market and sell the product, with their own labels, in their own retail outlets.

Loblaws/President's Choice, Wal-Mart, Shoppers Drug-Mart and Cott are just some of its better known customers.

Aquafarms also has its own brands – Ice River Springs, Canadian Essence, and Canadian Mountain Springs – but none of these are household names.

Their anonymity is also due to the fact that they are a privately held company, owned by the Gott family in Feversham, Ontario. As a private company they are not required to disclose any financial information to regulatory bodies leaving them virtually hidden from public scrutiny. Their status as a private company has let them operate under almost everybody's radar except for a few neighbours in Feversham who must live with their massive daily water-takings.

This profile will expose Aquafarms as an emerging big player in the North American bottled water industry which is dominated by four multinational corporations – Coca-Cola, PepsiCo, Danone and Nestlé. Aquafarms is part of the growing private label bottled water sector of the industry which now holds close to 30% of the total market share in the United States.

Unlike the big-four bottled water companies, private label bottlers have until now been able to escape criticism for their part in this environmentally destructive industry. This profile will put one of the largest players in the private label bottled water industry and the second largest bottled water company in Canada under the microscope. It will focus on Aquafarms' operations and environmental track record in order to expose who this company is, what they are doing and how they get away with taking millions of litres of water every day virtually for free and reaping huge profits off environmental resources.

---

<sup>1</sup> Aquafarms has been called the second largest bottled water company in the country by various sources, however, given that Coke and Pepsi are huge players in bottled water industry but do not disclose how much water they take, this position is most likely 4<sup>th</sup>.

## **Organizational Profile**

Officially Aquafarms operates as a corporate partnership. The corporate partners are Aquafarms 93 Inc. and 1459449 Ontario Inc.<sup>2</sup> Aquafarms is also a related corporation of Ice River Springs Water Co. Inc. Essentially, all of these names are the same privately held company owned by a small group of people including, and most likely exclusively, the Gott family.

As a privately held company, Aquafarms does not trade on a stock exchange or sell shares to the general public. In addition, privately held companies are not required by regulatory bodies to publicly disclose any financial or organizational information. Because of its status as a private company, exposing a company like Aquafarms is very difficult. Simply weeding through its many corporate entities is perplexing. This investigation has uncovered at least twelve different corporate names used by Aquafarms for its water bottling business.

Aquafarms' financial situation is also unclear without the existence of public financial records. It is possible to estimate from its level of investment in its various projects and its ranking in the industry that the company is financially successful and rapidly expanding.

This section will profile what Aquafarms does and where they do it.

## **History**

Aquafarms began operations in Feversham, Ontario in the 1970s as a trout farm owned by Sandy Gott's parents. Sandy Gott and her husband Jamie Gott purchased the property in 1993 and began researching the bottled water business. In 1994, Aquafarms began selling tankers of water to bottlers in Toronto and started its own bottling business in 1995. In 1998 the Gotts closed the fish farm to focus exclusively on the bottled water operation.<sup>3</sup>

## **Corporate Names<sup>4</sup>**

Aquafarms

Aquafarms 93 (business name registered under Ontario's Business Name Act)

Aquafarms 93 Inc. (one half of business partnership with 1459449 Ontario Inc.)

Blue Mountain Plastics (Aquafarms' plastic company)

Ice River Springs

Ice River Springs Group

Ice River Springs Inc.

---

<sup>2</sup> Environmental Review Tribunal, Case No. 06-040, Affidavit of Alexandra Gott.

<sup>3</sup> *ibid*

<sup>4</sup> This list is not exhaustive

Ice River Springs Mississauga  
Ice River Springs Morganton, LLC (Aquafarms' registered business in North Carolina)  
Ice River Springs Water Co.  
Ice River Springs Water Co. Inc. (Aquafarms' registered companies in New Brunswick and British Columbia)  
Fifteen-O-Five West Housatonic LLC (Aquafarm's registered business in Massachusetts)  
1359629 Ontario Inc. (Aquafarms' formerly registered company in New Brunswick)  
1459449 Ontario Inc. (second half of business partnership with Aquafarms 93 Inc.)

### **Contact information**

Website: <http://www.iceriversprings.ca/>

Email: [info@iceriversprings.ca](mailto:info@iceriversprings.ca)

### **Addresses:**

#### **Ontario**

- Ice River Springs Water Co. Inc. (Headquarters and production facility):  
Grey Road #2  
Feversham, Ontario  
N0C 1C0  
T: (519) 922-3303  
F: (519) 922-1320  
[info@iceriversprings.ca](mailto:info@iceriversprings.ca)
- Ice River Springs  
3363 Masthead Crescent  
Mississauga, Ontario  
L5L 1G9  
T: (905) 828-5060
- Ice River Springs Water Co. Inc.  
620 Burning Bush Road  
Waterloo, Ontario  
N2V 2A4  
Contact: Mark Hill

#### **British Columbia**

- Ice River Springs Water Co. Inc. (Production facility)  
900 Ind. Road 1  
Cranbrook, British Columbia  
V1C 4C7

Contact: Kelly Stanley  
T: (250) 417-4663

The company owns land south of Cranbrook, near Lumberton, where they extract water from a well.

### **New Brunswick**

- Ice River Springs Water Co. Inc  
c/o Barry Spalding Richard (a New Brunswick Law Firm,  
www.barryspalding.com)  
85 Charlotte Street 3<sup>rd</sup> Floor  
PO Box 6010 Stn A  
Saint John, New Brunswick  
E2L 4R5  
Agent: Deirdre L. Wade  
T: (506) 633-4205

Ice River Springs Water Co. Inc. is a registered extra-provincial corporation in the province of New Brunswick. The company has filed an Annual Return with the government of New Brunswick as recently as October 2006. In 2003, the company applied to the province to waive regulatory conditions in order to build a bottling plant in Lindys, Kings County, N.B. From the time when the Ministry dismissed the application in November 2003, the company's intentions in the province are not clear.<sup>5</sup>

### **North Carolina**

- Ice River Springs Morganton LLC (Production facility)  
100 Ceramic Tile Drive  
Morganton, North Carolina 28655  
USA  
Contact: James Dickinson  
T: (828) 391-6900  
F: (828) 391-6980

### **Employees**

The company employs approximately 270 workers at all of three of its production facilities. This number will grow when the company begins operations in Tennessee and Massachusetts.

---

<sup>5</sup> 1359629 Ontario Inc. v. New Brunswick (Minister of Environment and Local Government), No. S/M/44/03, New Brunswick Court of Queen's Bench Trial Division – Judicial District of Saint John, Judgment, November 25, 2003

## **Executives:**

James Gott – President

Sandy Gott – Vice President

Michael R. Rowe – VP Finance and CFO of the Ice River Springs Group

Jennifer Lougheed - Community Relations

James Dickinson -- North Carolina operations

Kelly Stanley – Cranbrook, B.C. operations

## **Labour issues:**

- On November 16, 2005 a female employee at Aquafarms' Feversham plant was injured when her arm became trapped in a piece of machinery.<sup>6</sup>
- In November 2003, a man's leg was crushed in an accident at Aquafarms/IRS' Feversham plant. The man was doing maintenance on a bottle-sorting machine.<sup>7</sup>

## **Operations**

Aquafarms has three production facilities in North America and one more under construction in Tennessee.

**Feversham, Ontario:** Water extraction, water bottling, plastic bottle production (Blue Mountain Plastics) – In 2004, Sandy Gott said that \$55 million has been invested in their Feversham bottling project. In July 2006, Gott stated that in the last two years the company had invested approximately \$36 million to build and equip a 500,000 square foot production and warehouse space.<sup>8</sup> The plant employs approximately 170 employees in low season and up to 220 during high volume summer months. The company gets its water from three wells located on plant property.

**Oro-Medonte Township, Ontario:** Water extraction, water bottling – The Gotts own a controlling 50% of Gold Mountain Springs, a Barrie based bottled water company.<sup>9</sup> Water is extracted from a well in Oro-Medonte Township and bottled in Barrie and Gravenhurst.

**Grafton, Ontario:** j

---

<sup>6</sup> "Woman injured in industrial mishap", The Fountain Pen, November 26, 2005, [www.thefountainpen.com/cgi-bin/showstory?id=4225](http://www.thefountainpen.com/cgi-bin/showstory?id=4225)

<sup>7</sup> "Colorado man's leg crushed in bottling plant industrial accident", The Canadian Press, November 14, 2003.

<sup>8</sup> Environmental Review Tribunal, Case No. 06-040, Affidavit of Alexandra Gott

<sup>9</sup> Tenszen, M., "Bottling plant had support: OMB", Packet and Times, January 24, 2001

**Cranbrook, British Columbia:** Water extraction, water bottling, plastic bottle production – The plant employs 50 people and gets its water from a well south of Cranbrook near Lumberton.

**Morganton, North Carolina:** Water bottling, plastic bottle production – In the Spring of 2006, Aquafarms, under the name Ice River Springs, purchased an old ceramic factory in Morganton, North Carolina and set up a water bottling operation. While the company has been selling bottled water in the United States for some time, this is their first move to expand production into the United States. Aquafarms' US expansion was financed with help from a number of public and private sector grants in North Carolina. The grantors include: AdvantageWest, the City of Morganton, The Burke Partnership for Economic Development, the Governor of North Carolina's One North Carolina fund, Duke Power and the North Carolina Department of Commerce.<sup>10</sup> The One North Carolina Fund alone used \$100,000 of North Carolina taxpayer's money to help Aquafarms with its \$12 million (US) expansion in the State.<sup>11</sup>

**Campbellsville, Tennessee:** In October 2006, Aquafarms, using the name Ice River Springs, signed a letter of intent to build a water bottling plant in Campbellsville, Tennessee.<sup>12</sup> In August 2006, The Giles County Commission voted in favour of selling 20 acres of land known as 'the spring property' to the Giles County Industrial Development Board, which in turn agreed to lease the land to Ice River Springs/Aquafarms. The company is planning to build a 99,000 square foot facility in the county beginning in the Spring of 2007.<sup>13</sup> According to discussion on a blog dedicated to issues in Giles County Tennessee, the water bottling plant has caused a division in the community between residents who are for and against the development.<sup>14</sup> Aquafarms is expected to invest \$20 million US into the project.<sup>15</sup>

**Claremont New Hampshire/Stockbridge Vermont:** In October 2007, Ice River Springs (Aquafarms) announced a plan to build a 273,000 square foot water bottling plant in Claremont, New Hampshire. The new facility will manufacture plastic bottles and caps and bottle water. Reportedly, 75% of its water will come from a source in Vermont, and the rest from Claremont's municipal water supply. Ice River Springs will be buying its water from a bulk water business located in Stockbridge, Vermont known as Pristine Mountain Springs. For a detailed description of Ice River Springs' planned operations in

---

<sup>10</sup> "AdvantageWest Grant Helps Bring Jobs to Burke County", <http://www.awnc.org/about-news.mv?command=readnews&news=155>

<sup>11</sup> "Gov. Easley Announces 53 Jobs In Burke County", North Carolina Office Of The Governor Press Release, May 2, 2006, Gov. Easley Announces 53 Jobs In Burke County, [http://www.nccommerce.com/publicaffairs/releases/20060502\\_53jobs\\_BurkeCo.htm](http://www.nccommerce.com/publicaffairs/releases/20060502_53jobs_BurkeCo.htm)

<sup>12</sup> "A Done Deal", <http://www.wksr.com/wksr.php?rfc=src/article.html&id=11839>

<sup>13</sup> *ibid*

<sup>14</sup> Giles Free Speech Zone, <http://gilesfreespeechzone.blogspot.com/2006/08/e-mail-topic-spring-deal-good-or-bad.html#c116035725252736088>

<sup>15</sup> "A Done Deal", <http://www.wksr.com/wksr.php?rfc=src/article.html&id=11839>

New Hampshire please refer to the Polaris Institute's November 2007 [NewsBytes](#) on this topic.<sup>16</sup>

**Kentland, Indiana:** Two weeks after the New Hampshire plant announcement, Ice River Springs announced the construction of a \$20 million 273,000 square foot facility in Newton County, Indiana. This plant is scheduled to open in the spring of 2008.

The plant will be located in Kentland and like the Claremont NH plant, will take 20% of its water from a source in Kentland and the remaining 80% will come from a spring 60 kilometres (38 miles) south of town. Kentland Town Council President Dave Smart said the company will extract 100,000 gallons (378,514 litres) of water per day. For a detailed description of Ice River Springs' planned operations in New Hampshire please refer to the Polaris Institute's November 2007 [NewsBytes](#) on this topic.<sup>17</sup>

## **Expansion**

Since it started bottling water, Aquafarms has grown very rapidly. In 2006 and 2007, Aquafarms has expanded its production into the United States with the development of four facilities in Tennessee, North Carolina, New Hampshire and Indiana. In May 2008, Ice River Springs has stated that it will be opening a new plant in southern Alberta.

The company's plans in New Hampshire/Vermont and Indiana are virtually identical. The company locates plants in small rural communities that are desperate for economic development and jobs. This strategy aims for quick approval and inadequate deliberation by local authorities on the long term environmental and resource management concerns.

Focusing on economically depressed communities often adds up to a water taker benefiting from a speedy approval process. In a State of Indiana [Press Release](#) Ice River Springs' President Jamie Gott (husband of Sandy Gott) said that, "the entire process from conception to excavation was smooth and expedited."

In both plans, the company's strategies for acquiring its main ingredient are very similar.

The company has announced that it will take a small percentage of its water from local municipal systems where the plants are located, and truck the majority of the water from 'springs' in other locations. How this percentage will break down, as well as what fees will be paid to the municipalities and what limits there will be on water taking from municipal systems, are questions that remain unanswered.

This expansion South also shows that Ice River Springs Aquafarms wishes to have production facilities close to one of its clients. Aquafarms has a contract to supply bottled

---

<sup>16</sup> Girard, Richard, "Southern Exposure: Private Canadian bottled water company moves south", The Polaris Institute, November 14, 2007, <http://www.polarisinstitute.org/files/Nov2007newsbytes.pdf>

<sup>17</sup> Ibid.

water to Lipsey Mountain Spring Water, the United States' Federal Emergency Management Associations one and only supplier of emergency bottled water.<sup>18</sup>

## **Brands**

Aquafarms has three main in house brands and over 60 different clients. Some of the brands Aquafarms bottles include:

### **Aquafarms' in house brands:**

Canadian Essence  
Canadian Mountain Springs  
Ice River Springs

### **Some of Aquafarms' clients and their brands include:**

Aquara Spring Water  
Camelot Products  
Corner Bakery (restaurant chain in US)  
Cott  
Gold Mountain Springs  
Indigo books  
Life Brand  
Lipsey Mountain Springs (FEMA)  
Natural Spring Water (President's Choice)  
Ontario Gold  
Sam's Club  
Second Cup  
Sunshine Joe's (Mac's Co.)  
Table Rock Mountain Spring Water  
Wal-Mart  
Weis (supermarket chain in Eastern US)

## **Marketing**

Aquafarms has no visible marketing campaign for its house brand bottled water. The company's clients do their own marketing.

Regardless of Aquafarms' lack of marketing, their product, bottled water, is mass marketed by the four leading multinational bottled water companies, Coke, Pepsi, Danone and Nestlé. These four companies spend billions of dollars on highly visible marketing of their bottled water products.

---

<sup>18</sup> The United States Army Corps of Engineers awarded Lipsey the contract worth up to \$146 million (US) in March 2003. The contract expires March 31, 2007. The United States Department of Defense audited Lipsey's performance in 2006 after the company's performance was questioned. Source: Malone, J., "Feds criticize water supplier: Lipsey chief disputes audit findings", The Atlanta-Journal Constitution, August 30, 2006

This level of marketing not only advertises the individual companies' bottled water products, but also promotes bottled water in general to the masses. This means that smaller companies, like Aquafarms, can 'piggy back' on this type of mass advertising of bottled water.

### **Lobbying**

Like its bigger multinational bottled water competitors – Coke, PepsiCo, Nestlé, Danone – Aquafarms/Ice River Springs uses paid lobbyists to put pressure on politicians to push for or against policies that effect the company's profits.

Former federal Liberal Member of Parliament for Simcoe-Grey, Paul Bonwick, is a registered lobbyist for Ice River Springs.<sup>19</sup> Bonwick is listed on both the federal and Ontario lobbyist registries as a paid lobbyist for the company. On the federal registry he has been a registered lobbyist for Ice River Springs since February 2005 and continues to be listed as a company lobbyist as of June, 2008. On the Ontario registry his initial filing date is from November, 2005.

Bonwick has been lobbying Queen's Park in Ice River Springs' name with the hopes of preventing the Provincial Government from imposing a fee or tax on water-taking. In a February 2005 Hill Times article Bonwick stated that "My clients are asking me to make sure that those who make the decisions, namely the legislators, have a clear understanding of how the business works, and that it is a pennies business, and any tax could have a huge impact."<sup>20</sup>

It is clear that Aquafarms' will fight any legislation that threatens their ability to take a precious natural resource from the ground virtually for free.

### **The Province of Ontario's Source Protection Committees**

In October 2007, Ice River Springs owner Sandy Gott was appointed to the Saugeen, Grey Sauble, Northern Bruce Peninsula Source Protection Region's Source Protection Committee.

Ontario's Source Protection Committees are a function of Ontario's new Clean Water Act which came into effect in late 2007. The 21 committees throughout the province are responsible for preparing assessment reports, terms of reference, and source protection plans for their region. Each Committee

---

<sup>19</sup> Government of Canada Lobbyist Registration, [https://strategis.ic.gc.ca/app/secure/ec/lrrs/registrationSummary.do;jsessionid=0000\\_6VHDsy-FK7gyezGwPkTg-P:10hc5g1ed?browse=1&language=eng&regId=12148](https://strategis.ic.gc.ca/app/secure/ec/lrrs/registrationSummary.do;jsessionid=0000_6VHDsy-FK7gyezGwPkTg-P:10hc5g1ed?browse=1&language=eng&regId=12148)

<sup>20</sup> "Bonwick and Goldenberg are now registered lobbyists", The Hill Times, February 21-27, 2005.

Committees have fifteen representatives and a Chair. One-third of the representatives are from the municipal sector, one-third represents agriculture, industrial and commercial sectors, and one-third represent other interests. An additional two representatives may be nominated by First Nations communities.

Sandy Gott is the industry representative for the Saugeen, Grey Sauble, Northern Bruce Peninsula Source Protection Committee.

While Ice River Springs is a legitimate industrial operator in this region, Gott's position on the Source Protection Committee is a conflict of interest. The Gotts private business interests are in direct conflict with sustainable watershed management. Instead holding seats on watershed planning committees, Ice River Springs, which profits from water use, should submit audited reports of their water-takings to the Source Protection Committees.

### **Industry Associations**

**Canadian Bottled Water Association (CBWA)** – The CBWA is the trade association for bottled water in Canada. Aquafarms is a member of the CBWA and Vice President Sandy Gott sits on the Board.

The CBWA actively promotes the Canadian bottled water industry in the media and lobbies different levels of government for legislation friendly to the interests of the bottled water industry. The CBWA is listed on the Ontario lobbyist registry as employing lobbyists from the Sussex Strategy Group to lobby members of Provincial Parliament, the Ministry of Economic Development and Trade, the Ministry of Finance, and the Ministry of the Environment on issues concerning a moratorium on water-taking permits, water source protection framework, fees on water taking, and taxation.

The CBWA's lobby efforts in Ontario directly benefit its members.

**International Bottled Water Association (IBWA)** – The IBWA is the international industry association for the bottled water industry. It is based in the United States. The IBWA looks after the interests of bottled water companies at all levels of state and federal government in the United States. Some of the campaigns the IBWA has worked on include, lobbying state governments to stop taxing bottled water and promoting bottled water as safer than tap water.<sup>21</sup>

In the U.S., the IBWA relentlessly advocates that the quality of bottled water is superior to tap water. As one IBWA "fact sheet" puts it: "Quality is in every container of bottled water. It's consistent and it is inspected and monitored by governmental and private laboratories. Unfortunately, tap water can be inconsistent – sometimes it might be okay

---

<sup>21</sup> Clarke, T., "Inside the Bottle", The Polaris Institute, 2005

while other times it is not.”<sup>22</sup> The association claims that water bottlers must comply with three regulation levels: federal, state, and their own association’s code of conduct.

## Company finances

Aquafarms is a privately owned company and is not required by regulatory bodies to disclose its financial situation. This makes it very difficult to find information on the company’s earnings and profits. What is clear, however, is that Aquafarms has become one of the biggest bottled water companies in Canada, behind only Nestlé, Coke and Pepsi.

The size difference can be estimated by looking at the volume of water each company is permitted to take from the ground by regulatory bodies. In this respect, Aquafarms is second only to Nestlé in Ontario, where individuals taking more than 50,000 litres of water a day from groundwater sources (wells) are required to acquire a permit from the province. From its three wells in Feversham, Ontario, Aquafarms is permitted to take 3,273,120 litres per day. Nestlé, which has two permits, is allowed to take 4,713,000 litres per day from its two wells in the Guelph area.

Coke and Pepsi, who take their water from municipal sources, are not required by the province to have a permit. However, based on sales and U.S. market share<sup>23</sup>, it is possible to estimate Coke and Pepsi’s position in the top four bottled water companies in Canada.

Another way of estimating Aquafarms’ position in the bottled water industry in Canada is by looking at their known clients. The company says that it bottles water for over 60 different brands. The names of each of these brands are unavailable. However, the Aquafarms clients that we do know include such retail heavyweights as Loblaws (PC Spring Water), Wal-Mart, Sam’s Place and Cott. The fact that they count Wal-Mart as one of their clients, alone makes Aquafarms a big player in the business.

From various news articles and affidavits we can see how much money Aquafarms has invested in some of their operations over the past few years:

<b>year</b>	<b>investment</b>	<b>location</b>
2007	\$4.1 million US <sup>24</sup>	Massachusetts
2007	\$20 million US <sup>25</sup>	Tennessee
2006	\$12 million <sup>26</sup>	North Carolina

<sup>22</sup> ibid

<sup>23</sup> 2005 U.S. Market share: 1) Nestlé Waters NA, 29.2%; 2) Coke, 9.7%; 3) Pepsi, 6.4%. Source: Beverage Marketing Corporation

<sup>24</sup> Dobrowski, T., “West Housatonic St. windfall”, Berkshire Eagle, February 10, 2007

<sup>25</sup> Tennessee radio station WKSR reported in October 2006, that Ice River Springs intends to invest \$20 million US in its future bottling operation in Tennessee. “A Done Deal”, WKSR

2005-2006	\$36 million <sup>27</sup>	Ontario
Up to 2004	\$55 million <sup>28</sup>	Canada

## Related Companies

### Gold Mountain Springs

The Gotts bought a controlling interest in this Barrie based bottled water company in July 1999.<sup>29</sup> According to the Ontario Ministry of Consumer and Business Services, the Companies and Personal Property Security Branch, the Gotts are directors of the company<sup>30</sup>, however it was reported in 2001 that the Gotts owned a controlling 50% of Gold Mountain Springs.<sup>31</sup> Gold Mountain has a 2-year permit to take 872,640 litres of water a day (expires November 2007) from their pipes in Oro-Medonte Township, south of Horseshoe Valley Road near Orillia, Ontario.

Gold Mountain Springs sells Gold Mountain Spring Water in smaller bottles and Ontario Gold in large home and office deliver (HOD) sizes. Ontario Gold is extracted from the Oro-Medonte well and shipped to Barrie, Ontario where it is bottled and distributed. Some of Gold Mountain Springs' smaller bottles of water are bottled at Muskoka Springs' bottling facility in Gravenhurst, Ontario.

In early 2000, Gold Mountain Springs sought approval from Oro-Medonte Township to amend the official plan and zoning bylaw in order to build a 150,000 square foot (later changed to 100,000 square feet) water bottling plant on land adjacent to their well-site south of Horseshoe Valley resort near Orillia in early 2000.<sup>32</sup> At this size, the plant would have been the largest industrial building in the township.<sup>33</sup> For the plant to go ahead zoning for the area would have to change from agricultural zoning to industrial.

From the beginning the bottling plant was opposed by a large number of township residents who feared the plant would deplete or possibly contaminate ground water resources, send hundreds of trucks rumbling along Horseshoe Valley Road each week and set a dangerous precedent of abandoning rural values for industrial development.<sup>34</sup>

---

<sup>26</sup> "Gov. Easley Announces 53 Jobs In Burke County", North Carolina Office Of The Governor Press Release, May 2, 2006, Gov. Easley Announces 53 Jobs In Burke County, [http://www.nccommerce.com/publicaffairs/releases/20060502\\_53jobs\\_BurkeCo.htm](http://www.nccommerce.com/publicaffairs/releases/20060502_53jobs_BurkeCo.htm)

<sup>27</sup> Environmental Review Tribunal, Case No. 06-040, Affidavit of Alexandra Gott

<sup>28</sup> Loopstra, David, "Water permit levels needed", Enterprise Bulletin, September 14, 2004

<sup>29</sup> Tenszen, M., "Council burst bubble, hearing told", Packet and Times, January 25, 2001

<sup>30</sup> Province of Ontario, Ministry of Consumer and Business Services Companies and Personal Property Security Branch, Corporation Profile Report, Ontario Corp No. 1580531, Gold Mountain Springs Inc.

<sup>31</sup> "OMB told water operation is pure", Barrie Examiner, January 24, 2001.

<sup>32</sup> In 1994 Gold Mountain Springs had a similar plan rejected.

<sup>33</sup> Ontario Municipal Board Decision/Order No. 0287, February 14, 2002, <http://www.omb.gov.on.ca/e%2Ddecisions/pl000560%5F%230287.pdf>

<sup>34</sup> Blauer, A, "Bottling plant uncorks emotions", Orillia Packet and Times, May 11, 2000

Residents rapidly mobilized in opposition, writing dozens of letters to the Township and presenting petitions with over 1,000 signatures.

While Gold Mountain originally thought that the township would agree with their plan, they quickly realized that they were in for a fight from residents. Reading the political writing on the wall, Gold Mountain Springs took their case to the Ontario Municipal Board – an independent, adjudicative tribunal that hears appeals and applications on land use disputes – before the proposed plant was rejected by Oro-Medonte township council in June 2000. Township council unanimously rejected the proposed rezoning for the plant out of concern for the noise, traffic and disruption to a quiet agricultural area.

The OMB hearing, which began January 23, 2001, lasted several months and heard testimony from dozens of rural residents, environmental experts, professional planners, municipal employees, water experts and lawyers.<sup>35</sup> On February 14, 2002, OMB Chair, Susan Fish rejected Gold Mountain's proposal saying that it was "not reasonable, appropriate, or in the public interest."<sup>36</sup>

Fish's decision highlighted the impact the plant might have on water levels and the plant site, and agriculture. One of the main points of Fish's decision, however, was about Gold Mountain's need to build a plant on the site in order to market their products as bottled at the source.

Oro-Medonte township planner Andrea Leigh testified on behalf of Gold Mountain that she supported the company's application based on the need to bottle water at the source.<sup>37</sup> The Township's witness, rural planner Margaret Walton of Muskoka, told the hearing that the application was totally market driven and that the plant would only serve the marketing interest of the company.<sup>38</sup>

Fish was not persuaded that there was a solid reason to support the idea that the business advantage of bottling on site was sufficient to warrant rezoning the area from rural/agricultural to industrial.<sup>39</sup>

Gold Mountain Springs' attempt to rezone part of Oro-Medonte Township is a clear example of the Gotts/Aquafarms' desire to exploit rural residents and the environment for their personal gain.

## **Environmental track record**

---

<sup>35</sup> Tenszen, M., "Bottling plant plans dry up", Packet and Times, February 19, 2002

<sup>36</sup> Ontario Municipal Board Decision/Order No. 0287, February 14, 2002,  
<http://www.omb.gov.on.ca/e%2Ddecisions/pl000560%5F%230287.pdf>

<sup>37</sup> *ibid*

<sup>38</sup> Tenszen, M., "Rural planner pans bottling factory", Packet and Times, July 19, 2001

<sup>39</sup> OMB Decision

Aquafarms is part of an environmentally damaging industry. The bottled water industry takes water from municipal, ground and surface sources, bottles it in petroleum based plastic bottles, ships its products to market in CO2 emitting trucks, and contributes to growing landfill sites with discarded plastic bottles.

## **Plastic**

Aquafarms manufactures polyethylene terephthalate (PET) bottles at its plastic bottle plants in Feversham, Cranbrook and Morganton North Carolina. PET is created from terephthalic acid (TPA) and ethylene glycol (EG), both made from crude oil.<sup>40</sup> During the production process, catalysts are used to promote the chemical reaction. Some of these catalysts, which include antimony, titanium, germanium, cobalt, manganese, magnesium and zinc, leach into the water over time causing a potential health risk.<sup>41</sup>

A professor at the University of Heidelberg recently discovered that some bottled water contained elevated levels of the cancer causing heavy metal antimony. The six month study tested 132 brands of bottled water from 28 countries for antimony. The study concluded that when bottled water is stored at room temperature for six months, many brands come very close to reaching 2000 ppt (parts per trillion). In comparison, the groundwater from Springwater and Tiny Townships in Simcoe County, southern Ontario, contain an average concentration of only 2 ppt of antimony.<sup>42</sup>

## **Recycling**

The Ice River Springs website claims that the company “is dedicated to being environmentally friendly and to recycle, conserve, and protect the environment.” The reality is that the bottled water industry creates a huge amount of garbage.

According to the Container Recycling Institute, PET bottle recycling rates in the United States dropped from a high of 39.7% in 1995 to 19.6% in 2003.<sup>43</sup> The remaining 80% of the US’ plastic bottles most likely end up in landfill sites or incinerators whose emissions include harmful climate change causing greenhouse gases.

As for the PET plastic that is recycled in the United States, only 14.3% of recycled PET is used to produce food and beverage containers.<sup>44</sup>

---

<sup>40</sup> Wancid, L., “Have you Bottled It: How Drinking Tap Water Can Help You Save the Planet”, Sustain, December 2006, [http://www.sustainweb.org/pdf/bottled\\_it.pdf](http://www.sustainweb.org/pdf/bottled_it.pdf)

<sup>41</sup> *ibid*

<sup>42</sup> “Is bottled water safe?”, Polaris Institute Press Release, December 16, 2006, [http://dev.polarisinstitute.org/ottawa\\_is\\_bottled\\_water\\_safe](http://dev.polarisinstitute.org/ottawa_is_bottled_water_safe)

<sup>43</sup> Bakshi, N., “Waste and Opportunity: U.S. Beverage Container Recycling Scorecard and Report”, As You Sow and the Container Recycling Institute, October 2006, <http://container-recycling.org/assets/pdfs/reports/2006-scorecard.pdf>

<sup>44</sup>

Aquafarms says that it is dedicated to recycling, but there is no indication on their website that they use anything but virgin plastic to produce its bottled water.

### **Transportation**

Aquafarms contributes to environmentally damaging CO<sub>2</sub> emissions during the shipment of their products across North America. The company is part of an industry that encourages people to purchase a bottle of water that has been shipped from far away instead of simply taking water from the nearest tap. In contrast to the high environmental costs of bottling and shipping bottled water, tap water is provided by a less damaging system of underground pipes and plumbing.

### **Water-takings**

Without water, Aquafarms has no business. This is their key ingredient. It is also probably one of the cheapest inputs the company has to acquire to produce bottled water. Only in Ontario does the company have to pay a fee (to acquire a permit) for the right to take millions of litres each day of this precious resource.

At its production facilities in Ontario, British Columbia and North Carolina, the company is subject to different kinds of regulation from the provincial and state governments.

### **British Columbia**

In British Columbia, only individuals or companies taking surface water (stream, river etc.) need licenses from the provincial government. Because Aquafarms takes its B.C. water from a well, it requires no license and pays no fees. The company can take as much water as it wants and there is no way for the public to know how much it is taking. The company then bottles it and sells it to the public at huge markups.

### **Ontario**

Since the company began operations as a trout farm in the mid-1970s, it has relied on the ability to take large amounts of water from three wells located on its property in Feversham. In order for Aquafarms to get permission to take large amounts of water, it is required by law to obtain a permit to take water (PTTW) from the Ontario Ministry of the Environment (MoE). Any business or individual who is taking 50,000 litres of water a day must apply to the province to acquire a PTTW. The fee for this type of PTTW, regardless of length, costs \$3,000.<sup>45</sup>

---

<sup>45</sup> Ministry of Environment. "Guide to Permit to Take Water Manual"  
<http://www.ene.gov.on.ca/envision/water/pttw.htm>

Over the years, Aquafarms has been granted a number of different PTTWs for their fish farm and bottled water operations. Their latest PTTW<sup>46</sup>, issued in the Spring of 2006, gives the company permission to take 3,273,120 litres<sup>47</sup> of water a day from three wells on the property for the next ten years. This adds up to 11.9 billion litres over the 10-year period. At a cost of \$3,000, Aquafarms is essentially being given this water for free.

It is not clear how much of this 3.2 million litre daily permit Aquafarms uses. In a June 24, 2003 article, Sandy Gott said that on an annual basis, the company takes between 15 and 20 percent of what they are allotted.<sup>48</sup> In a complete contradiction, Gott told the Environmental Review Tribunal in 2004, that to remain competitive her company needs to use every drop of water that the Ontario Ministry of the Environment allows them to take. She said: “that amount is what is required by the facility.”<sup>49</sup> Her comments do nothing to clarify how much the company actually takes.

The issuance of this latest PTTW is being appealed by a local resident who is challenging the monitoring data upon which the granting of the permit is based, including whether water-taking has resulted in a reduction in water flow from a regional bedrock spring.

The appeal has exposed a number of inaccuracies and bizarre behaviour on behalf of both the Ministry of the Environment who issued the license, and Aquafarms, who provided the province with the hydrogeological study upon which the issuance was based.

The current appeal will be heard beginning February 2007 and will continue through the Spring.

This is not the first time that an Aquafarms PTTW has been appealed. In 2003 local residents sought Leave to Appeal the company’s PTTW saying that the company’s water-takings were drying up their wells. The decision on this appeal finally came down in April 2006 and relied on data that has now been discredited by Aquafarms itself.

The following summarizes the 2003 and 2006 appeals of Aquafarms’ PTTWs.

### **Resistance by local residents – Leave to Appeal**

On February 27, 2003, Aquafarms was issued a two-year PTTW<sup>50</sup> by the Ministry of the Environment to take 1.3 million litres of water from three wells. This PTTW was a renewal of a previous permit. Under the Ontario government’s Environmental Bill of Rights (EBR), residents of Ontario are allowed to ‘seek leave to appeal’, or ask permission to appeal, the decision to grant PTTWs.

---

<sup>46</sup> Read the PTTW: [http://www.ene.gov.on.ca/envision/env\\_reg/er/documents/PTTW/2006/IA04E1179.pdf](http://www.ene.gov.on.ca/envision/env_reg/er/documents/PTTW/2006/IA04E1179.pdf)

<sup>47</sup> To put this amount of water into perspective, an Olympic sized swimming pool (50 metres long, 2 metres deep) holds 2.5 million litres of water.

<sup>48</sup> Punch, Rachel, “Water-taking permit draws concerns”, Enterprise Bulletin, June 24, 2003

<sup>49</sup> Loopstra, David, “Water permit levels needed”, Enterprise Bulletin, September 14, 2004

<sup>50</sup> See the PTTW, [http://www.ene.gov.on.ca/envision/env\\_reg/er/documents/pttw/2003/IA02E1174.pdf](http://www.ene.gov.on.ca/envision/env_reg/er/documents/pttw/2003/IA02E1174.pdf)

It was under this system that on May 9, 2003, Jessie Davidson, Russell and Pamela Smith, Garry and Jennifer Brewster, Frank and Enid Weiner and Fred and Naureen Zinn (the Grey Association for Better Planning was added as a party to the appeal in August 2004) filed their Leave to Appeal with the EBR. The group of residents all live in close proximity to Aquafarms' wells, and were concerned with the amount of water that the company was taking. The group also said that close to 18 wells in the region had dried up and that proper hydrological studies had not been conducted prior to issuing the PTTW.<sup>51</sup>

In February 2004, Ontario's Environmental Review Tribunal (ERT) – whose role it is to adjudicate applications and appeals under various environmental and planning statutes including the EBR – granted the group leave to appeal. The decision was granted based on the fact that no sub-watershed ground-water study had been done and many wells and springs in the local area had gone dry. The ERT ruled that it was not reasonable for the Ministry of the Environment to have issued a PTTW and that the issuance of a PTTW could have resulted in significant harm to the environment.<sup>52</sup>

The hearing began on September 13, 2004 in Markdale, Ontario. After two days of testimony the hearing was adjourned until September 29 to allow Aquafarms, the Ministry of the Environment and appellants the opportunity to meet with a mediator. Mediation resulted in a settlement between Jessie Davidson, Frank and Enid Weiner and the Grey Association for Better Planning (GABP) and Aquafarms.<sup>53</sup>

During mediation Aquafarms and the other neighbours agreed to a third party hydrogeological assessment of the watershed, in order to evaluate the impact of the company's water-takings on surrounding wells. The settlement signed by all parties set up a committee to oversee the hydrogeological assessment.<sup>54</sup> Golder and Associates was chosen to perform this assessment and their report, known as the Golder Report, was released in June 2006.

As a result of the settlement, Davidson, the Weiners, the Zinns and the GABP dropped their appeals of the PTTW. The Smiths eventually dropped their appeal in March 2005, leaving only the Brewsters to continue the appeal.<sup>55</sup> The assessment of the watershed was expected to finally answer questions about the impacts of Aquafarms' water-takings.

The hearing of the Brewsters' appeal continued on April 4, 2005. The issues that were heard included:

1. What should be the amount of water-takings allowed under the PTTW?
2. Was the PTTW issued without adequately considering the impact and cumulative impact of the water-taking on users and on the ecosystem?

---

<sup>51</sup> Punch, R. "Water-taking permit draws concerns", Enterprise – Bulletin, June 24, 2003

<sup>52</sup> Environmental Review Tribunal, Case Nos.: 03-203/03-204/03-205/03-206/03-207, [www.ert.gov.on.ca/pdfs/ERT\\_0607\\_Apr04\\_03-203-204-205-206-207\\_Decision.pdf](http://www.ert.gov.on.ca/pdfs/ERT_0607_Apr04_03-203-204-205-206-207_Decision.pdf)

<sup>53</sup> *ibid*

<sup>54</sup> Crosby, D., "Some compromise in water-taking fight: Year-long study will look at impact on watershed", Sun Times, September 30, 2004

<sup>55</sup> ERT, Case Nos.: 03-203/03-204/03-205/03-206/03-207

3. Should the MOE have required a sub-watershed study?
4. Were the hydrogeological reports submitted to support the PTTW adequate?
5. Were the MOE regulations and policy with respect to the issuance of permits for water, including the precautionary principle, properly applied?
6. Were the conditions of the permit adequate to protect the environment and users?

In its April 2006 decision of the appeal, the ERT found in favour of the MNR on each of the issues, and dismissed the Brewsters' appeal.<sup>56</sup>

For the first issue, the ERT found that Brewsters only provided hearsay evidence and speculation that the amount of water-takings was having an adverse effect on area wells. For issues numbers 2, 3, and 4, however, the ERT based its decisions on testimony by Edward Rannie, who ostensibly performed a hydrogeological study on groundwater availability in 1996 and did a pump test in 1999 for Aquafarms. At the time, Rannie was working for Middle Earth Hydrogeology Inc. who was working as Aquafarms consultant.

For issue 2 the ERT found that based on evidence provided by Middle Earth, the impact of Aquafarms' water-takings was adequately considered. For issue 3 the ERT agreed with Rannie that a sub-watershed study would not yield any more information that would challenge the MoE's decision to issue the PTTW. For issue 4 the ERT found that Middle Earth's hydrogeological reports were adequate.<sup>57</sup>

Jamie Gott commented on the ERT ruling saying "our neighbours now have conclusive evidence that our operation has no impact on the surrounding farms."<sup>58</sup> Vice Chair of the ERT, Knox Henry, stated in the media that "the totality of the evidence confirms that the water-taking has not and will not have any significant impact on the environment, or the wells in the area."<sup>59</sup>

Since the ERT's ruling of this appeal the Middle Earth studies that featured so prominently in decisions to grant PTTW have been cast into doubt, to the possible detriment of the company's reputation and bottom line.

To see how these studies have been discredited and the company's reputation put into question, we must first look at the latest appeal of an MoE issued Aquafarms PTTW.

### **Davidson v. Director, Ministry of the Environment**

A number of things happened in rapid succession in the Spring of 2006: in March the draft Golder Report was released; on April 4 the ERT dismissed the Brewsters' appeal of Aquafarms 2003 PTTW; on May 19, the Ministry of the Environment issued Aquafarms a new 10-year PTTW; on June 9, Jessie Davidson applied to the ERT for Leave to

---

<sup>56</sup> *ibid*

<sup>57</sup> *ibid*

<sup>58</sup> Crosby, Don, "Ruling upholds MOE decision for permit to take water", Sun Times, April 18, 2006

<sup>59</sup> *ibid*

Appeal Aquafarms' 10-year PTTW; and the final Golder Report came out on the 21<sup>st</sup> of June<sup>60</sup>

Despite Jamie Gott and Knox Henry's belief that Aquafarms is having no impact on the environment, Jessie Davidson, who lives close to the company's operations and who been a part of the appeal of Aquafarms 2003 PTTW, decided to appeal the latest PTTW issued to the company.

She submitted five grounds on which the Leave to Appeal should not have been granted: 1) uncertainty of monitoring data upon which the granting of the PTTW is based, including whether water-taking has resulted in a reduction in water flow from a regional bedrock spring; 2) the issuance of a 10-year instead of a two-year PTTW; 3) the issuance of the PTTW prior to the release of the final hydrogeological report (Golder Report); 4) flaws in pump test technology; and 5) the limited nature of the monitoring network required by the PTTW.<sup>61</sup>

On grounds 1, 2 and 3, the ERT found that "there was good reason to believe that no reasonable person, having regard to relevant law and government policies, could have made the decision", to grant the PTTW, and that the decision to issue the PTTW "could result in significant harm to the environment."<sup>62</sup> On Grounds 4 and 5, the ERT found that Davidson did not provide enough evidence. Nevertheless, the ERT granted Davidson the right to appeal the decision by the MOE to issue Aquafarms its latest PTTW.

The ERT's decisions on Davidson's first two grounds cast major doubt onto Middle Earth's hydrogeological studies. This is the same data held up by the ERT to dismiss the 2003 appeal by the Brewsters. The ERT's decisions on the first two Grounds, also highlights how the company is capable of manufacturing or altering data for its own financial gain.

### **Ground #1: Middle Earth's studies in doubt**

On 1<sup>63</sup>, Davidson submits that there is evidence that water flow from a regional bedrock spring declined significantly between 1996 and 2005. Davidson holds that this evidence actually comes from Aquafarms' own consultants, Middle Earth.<sup>64</sup>

When she compared the data from Middle Earth's 1996 and 1999 reports with results of the Golder Report, Davidson found that flow rates reported in Golder were up to 90%

---

<sup>60</sup> Environmental Review Tribunal, Davidson v. Director, Ministry of the Environment, Case No.: 06-040, [http://www.ert.gov.on.ca/pdfs/ERT\\_0607\\_Sep01\\_06-040\\_Decision.pdf](http://www.ert.gov.on.ca/pdfs/ERT_0607_Sep01_06-040_Decision.pdf)

<sup>61</sup> *ibid*

<sup>62</sup> *Ibid*, pg 19

<sup>63</sup> Issue one: "Uncertainty of monitoring data upon which the granting of the PTTW is based, including whether water taking has resulted in a reduction in water flow from a regional bedrock spring"

<sup>64</sup> Environmental Review Tribunal, Davidson v. Director, Ministry of the Environment, Case No.: 06-040, [http://www.ert.gov.on.ca/pdfs/ERT\\_0607\\_Sep01\\_06-040\\_Decision.pdf](http://www.ert.gov.on.ca/pdfs/ERT_0607_Sep01_06-040_Decision.pdf)

smaller than those found in the 1996 and 1999 Middle Earth studies.<sup>65</sup> Surprisingly, Aquafarms and the MOE did not dispute these findings, instead maintaining that the Middle Earth report is wrong and should not be used to evaluate the flow of the spring on the Aquafarms property.

Shockingly, the reason for this assertion by the company and the MoE is that Middle Earth did not actually ever measure the spring flow, but instead relied on rough visual estimates provided by the company owner, Jamie Gott.<sup>66</sup> Sandy Gott, in her affidavit, states that “at no time did Middle Earth collect or record flow data from the licensed bedrock spring on the property.”<sup>67</sup>

Sandy Gott and Edward Rannie’s admission that the Middle Earth reports are wrong and based on estimates by one of the owners of Aquafarms is outrageous, given that previous PTTWs and the ERT’s dismissal of the 2003 appeal are based on this inaccurate data.

Even more troubling is the explanation given by Aquafarms for the use of this fabricated data. The company says that the flow rate was estimated by Jamie Gott and accepted by Middle Earth so that the US Food and Drug Administration would approve labeling the well water as ‘spring water’ by showing that the spring had a very large discharge.<sup>68</sup> On this point, the ERT in its decision granting Davidson Leave to Appeal states:

“Aquafarms essentially argues that its own consultant produced an expert report that contains misrepresentations...Aquafarms says that its own report included a statement that, at best, was an exaggeration and at worst, was a misrepresentation, namely that Middle Earth measured the stream flow to be a certain amount. The reason for the statement was to satisfy a U.S. government department’s requirements. This suggests that Aquafarms is willing to have its professional consultants bend or misrepresent the truth in order to satisfy regulatory requirements. Aquafarms places its own credibility and integrity, and that of its professional consultants, in question.”<sup>69</sup>

Aquafarms offered a second explanation saying that Middle Earth could not measure the flow of the spring because it was too difficult. Edward Rannie in his affidavit stated that the rough nature of the stream-bed makes it difficult to accurately measure flow. In contradiction to Rannie’s claim, the ERT points out that Golder, in its final report, had no problems measuring spring flow. To this the ERT stated that either Aquafarms is wrong when it says measuring the flow is too difficult, or that the Golder report’s findings are

---

<sup>65</sup> The Golder Report was commissioned as part of a settlement in the 2003 appeal. Golder Associates Inc. was chosen by a steering committee made up of the GABP, Jessie Davidson, Jim Dickson (Aquafarms), Sandy Gott, Frank Weiner, Fred Zinn and the MOE to conduct a new hydrogeological assessment.

<sup>66</sup> ERT Case No.: 06-040, [http://www.ert.gov.on.ca/pdfs/ERT\\_0607\\_Sep01\\_06-040\\_Decision.pdf](http://www.ert.gov.on.ca/pdfs/ERT_0607_Sep01_06-040_Decision.pdf)

<sup>67</sup> *ibid*

<sup>68</sup> *ibid*

<sup>69</sup> *ibid*

misrepresented as accurate measurements of flow.<sup>70</sup> “In either case,” according to the ERT, “the reliability of the expert evidence submitted is put into question.”<sup>71</sup>

For its part, the MOE says that a one page November 2003 letter from an MNR biologist (not a hydrogeologist or an engineer) is a better source for measuring flow from the spring. The ERT dismisses the MOE’s suggestion as questionable.

In its decision to grant Davidson Leave to Appeal, the ERT concludes that “since the validity and reliability of spring flow measurements in these reports [Middle Earth, Golder, MNR letter] have been put into question, it is uncertain whether spring flow has diminished over time or not. In the face of such uncertainty, the Tribunal finds that there is good reason to believe that no reasonable person could have issued the PTTW. Since changes to spring flow are unknown, the Tribunal finds that it appears that the decision could result in significant harm to the environment.”<sup>72</sup>

It is clear that Aquafarms will need to answer some difficult questions when the appeal hearing begins in late February 2007.

### **Ground #2: Why does Aquafarms need a 10-year PTTW?**

Aquafarms’ 2006 PTTW was issued for 10 years instead of its usual two-year permit. In her Leave to Appeal, Jessie Davidson submitted that due to uncertainties and inaccuracies surrounding Aquafarms’ water-takings and the MoE’s established practice of issuing 2-year permits; it was unreasonable for the MOE to issue a 10-year PTTW.

In its defence for issuing an extended license the MOE submitted that a 10-year term is currently the MOE business practice for “low-risk” water-takings.<sup>73</sup> The ERT rejected the MOE assertion saying that the MOE failed to produce any documentation stating that this was the current business practice and found that without this documentation “it appears that there is good reason to believe that no reasonable person could have issued a PTTW with a 10-year limit.”<sup>74</sup> The ERT emphasized the point, saying that a 10-year rather than a 2-year PTTW heightens their concern for the environment mentioned in their findings under Ground 1.<sup>75</sup>

For Aquafarms, a longer license is simply a business matter. The company says that it will be easier to secure financing for their operations with a 10-year license. In response to this position, the ERT says that “it would be poor environmental practice indeed if the term of PTTWs was determined by the requirements of lending institutions.”<sup>76</sup>

---

<sup>70</sup> ibid

<sup>71</sup> ibid

<sup>72</sup> ibid

<sup>73</sup> ibid

<sup>74</sup> ibid

<sup>75</sup> ibid

<sup>76</sup> ibid

### **Ground #3: Why did the MOE issue a PTTW before the release of the Golder Report?**

The MoE issued Aquafarms' latest PTTW before the final Golder report was published. Jessie Davidson submitted that the draft Golder Report contained a mathematical error that showed that Aquafarms was taking 10 times less water than they actually are. While Golder acknowledged and corrected the mistake, Davidson was still concerned that the MoE's decision to issue the PTTW was partly based on the incorrect and understated figures in the draft Golder report.<sup>77</sup>

The ERT concluded that it appears that there is good reason to believe that no reasonable person could have issued the PTTW without considering correct and most current calculations. In addition, the ERT found that the decision could result in significant harm to the environment.<sup>78</sup>

### **What do these all mean?**

The ERT's decisions on Davidson's first three grounds have the cumulative effect of raising a number of important questions about Aquafarms' previous PTTWs, and the position of the ERT in its dismissal of the Brewsters' 2003 appeal of the company's earlier PTTW.

Davidson has effectively discredited Middle Earth's reports and cast doubt on the validity of the Golder Report which concluded that Aquafarms' operations has no impact on neighbouring wells, the sustainability of the aquifer, or the natural ecosystem.

Also, Davidson's submissions have forced Aquafarms' to discredit its own consultant, Middle Earth and uncover how the company fudged environmental data in order to have their products approved by US food regulators.

### **Settlement**

In May 2007, Jessie Davidson settled her appeal of the PTTW. As is often the case when a single individual decides to fight a large corporation in the courts, Davidson did not have the funds to continue with the appeal.

As a result, a number of Davidson's main concerns with the veracity of hydrogeological data went unanswered.

Jessie's email:

Anyhow - the positive: 5 new monitoring wells, 2 of them close to the northern boundary of the Gotts farm (adjacent to mine) Data to be distributed to all parties every 6 months, final report in 18 months. The peer reviewer will be from MoE but from a different regional office. Permit expires in 5 yrs instead of 10. (not clear on time gap between final report on study and permit expiry but they wouldn't accept a 3 yr permit. Monitoring will continue to end of permit.

---

<sup>77</sup> *ibid*

<sup>78</sup> *ibid*

But: the 4 objectives of the study which we labelled crucial, the yardstick against which the reviewer judges the report, were deleted. The mantra is that no one can instruct the regulator. Leaves one foaming right? dummies, if MoE accepts the objectives as logical and necessary then they are not being instructed are they? They simply are requiring Aquafarms to preface the work to the consultant with the objectives - and passing on the objectives to the reviewer. But announced my lawyer brightly, You have the right to pass on the objectives to the reviewer with your comments. (I refrained from asking what weight that might carry). On the last day of negotiations when the groups were all in caucus (spent most of the time there with the mediator running back and forth) I quoted from my appeal the 2 bases upon which the bulk of it elaborated.

1) insufficient and unreliable data

2) irresponsible activities of the regulator

and reminded them that the ERT had accepted this. Long pause - then back came the mantra from the mediator (excellent but a lawyer). You will get more from negotiations than from the panel who don't understand the technicalities and order at best generalities, plus you can't dictate to the MoE. Kafka through Orwell to us.

Moreover, during the construction of the wells we have the right to criticise if we judge they are not following the plan as written - and who is the deciding authority - MoE of course.

Their consultant is the same guy who perjured himself re the first supporting study (Middle Earth Hydrogeology 96) by stating several times "measured flow" when referring to their spring from which they first bottled water - and later in his affidavit for this case, dutifully followed the aquafarms line that the spring was never measured till Golder did it in 2005 (and found it up to 90% reduced from 96) but instead the only measurement was an estimation by Jamie Gott.

MoE's only supporting studies for this permit (apart from annual reports) are the Middle Earth study with its pumping study annexed to it 3 yrs later at public request, and the 2005 Golder study - the subject of this case.

I asked what if: we settle and withdraw from the hearing, will the Golder report remain untarnished as a supporting doc for the permit? Mediator decided we should go talk with MoE and show them a few details which we did (among a legion of errors, all the water level figures for their 2 monitoring wells were incorrectly attributed to the wrong well, at the time of application for hearing we had pointed out that their arithmetic was wrong, that aquafarms had a permit to pump 14% of the available water in the subwatershed, not 1% as they stated - that was corrected but the list goes on...) Greg Powers said they'd send it back to Golder for revision.

## Conclusion

This profile has shown that Aquafarms has become a major player in the North American bottled water industry. It also shows how the company is beginning to flex its muscles through the use of a paid lobbyist, membership in powerful industry associations and rapid expansion to the United States. Its actions and position in the industry are quickly putting the company into the same category as its multinational competitors, Coke, Pepsi and Nestlé.

Other than overall size, the main difference between publicly traded multinational bottled water companies and Aquafarms is that the Ontario company's is privately owned. This status makes it very difficult to monitor company activities and finances. This profile has provided a snapshot of Aquafarms' operations and environmental track record as a water-taker. It is designed so water-activists engaged in ongoing actions and the general public can assess Aquafarms' strengths and weaknesses for their own purposes.

Hopefully this profile will raise awareness not only about Aquafarms, but will serve to inform people about the danger this industry poses to a precious natural resource that is at risk of being commodified and sold out from under us by greedy corporations and lax government bodies.

