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October 14th, 2022

Senator Benjamin Chipman

Representative Lori Gramlich

Members of The Maine Water Resource Commission

Thank you for inviting members of the Commission to offer our thoughts and recommendations to the entire Commission.

My observations based on the excellent presentations offered to the commission are as follows:

- We are a water rich state with a few exceptions.
- Water supply issues in other states do not exist here, presently, or into the future.
- Our ground water basins and aquifers differ from the underground geological structure of other states, especially western states. The withdraw impact of pumping groundwater in Maine impact other wells within a few hundred feet. In other areas, groundwater pumping may affect groundwater supplies for thousands of feet even miles.
- Groundwater supply and large extractions withdrawn is currently regulated by several state agencies. Because of their oversight there is a system that works well based on our unique geology and supply. Because of these unique geological circumstances, we have a unique regime unlike other states that serve us well. I ask where are the gaps within the present oversight?
- Although several questions have been raised about the ownership of groundwater it appears based on legal opinion that the present ownership issue is clear and not an issue at all.
- If change in present ownership of groundwater is attempted, the change would be challenged in court. Currently owners of groundwater are responsible for maintaining water quality, if the state takes ownership of supplies, do they also become responsible for maintaining water quality?
- The scope, objectives and mission of this commission is remarkably like the existing water resource committee that already exists and is very active. I find this redundant.

Based on my observations I recommend that this commission allow the existing agencies and committees already empowered to oversee water quality and regulated withdraw continued to do so without adding another layer of oversight. I certainly understand that our water sources are precious but also feel both former and current legislative bodies have done an amazing job making sure that oversight is place to assure their protection and the rights of others to obtain water . Absolute dominion in its current form for our unique circumstance is working well for the State of Maine and no changes are needed to that law.

Thank you for the opportunity to share my observations with the commission. I believe our review of current supply and regulatory oversight for our precious groundwater supply has been most helpful. It is a strong testimony of our former and present legislative bodies and their firm commitment to protect this resource presently and into the future within our State.

Respectfully,

Bruce Berger Executive Director

Maine Water Utilities Association

and

Maine Water Environment Association

AAG Scott Boak

DRAFT potential Commission findings for discussion:

1. Maine has abundant groundwater resources and is projected to continue to have an abundance of such resources;
2. Current State data on Maine's groundwater resources is not centralized and is generally maintained in different forms by different entities;
3. Additional State resources to expand monitoring and the collection of data on Maine's groundwater resources, centralize the maintenance of such data, and engage in increased analysis of such data, would increase understanding of the nature of Maine's groundwater resources, including, among other things, the amounts and quality of such resources, the connectivity between groundwater aquifers and between groundwater and surface waters, and the effects of climate change and drought on Maine's groundwater resources;
4. Increased State severance taxes and/or fees on the extraction of groundwater, which are levied by many other jurisdictions, are a potential source of revenue that could be used to fund the expansion of Maine groundwater monitoring and data collection, the centralization of Maine's maintenance of such data, and additional analysis of and reporting on such data; and
5. The State Geologist and Maine Geological Survey within DACF are, subject to available resources and funding, well situated to analyze data and report on Maine's groundwater resources.

DRAFT potential Commission recommendations:

1. Consider draft legislation to authorize and fund (potentially through from increased State severance taxes/fees) the expansion of Maine monitoring and data collection with respect to groundwater resources, the centralization of the maintenance of such data, and the State's analysis of and reporting on such data, possibly through the State Geologist and the Maine Geological Survey.
2. Consider the resumption of Water Use Reporting, discontinued in 2010, by an appropriate State agency.

Commission To Study the Role of Water as a Resource in the State of Maine Input Penny Jordan (10/14/2022)

I have a few takeaways from our two meetings:

- Maine has used statute to address and mitigate implications of Absolute Dominion
- Water source identification, tracking, analysis, and management are spread across a lot of people/departments.
- There appears to be an entity in place connecting the disparate dots – Water Resource Planning Committee. It appears to cross departments and involve members of the public and industry – they meet infrequently.
- Ryan Gordon, the state Hydrogeologist’s work on the Maine Geological Survey along with work with the Water Resource Planning Committee is extremely valuable to continually monitoring and planning water use – this needs to be highlighted as a priority.
- Drought is on everybody’s radar – some mitigation strategies have been identified. Programs need to be put in place to address drinking water and agricultural water needs during low flow and high usage times. Everybody feels we have the water – it just isn’t always in the right place at the right time.

THOUGHTS

That the commission shall study issues associated with the role of water resources in the State and the nature and extent of infrastructure involved in the use and delivery of water resources including:

- *The extent of water resources available in the State;*
 - It Appears Ryan Gordon’s work covers this base along with work of many of the other presenters.
 - Key is water isn’t always where needed during drought/low-flow – this was continually mentioned, there needs to be strategies put in place to eliminate not accept it as the way it is.
 - Extraction of large amounts of water should not be allowed in the problem areas.
- *Legal principles regarding the ownership of water resources in the State;*
 - Understand Absolute Dominion is the underlying premise for “ownership” and that title 38 provides protection for parties.
 - Significant groundwater well – are these mapped to other wells – so potential impacts are known upfront
- *The extent to which water resources will be needed in the State and nation in the future for household, government, business, commercial and other purposes;*
 - It is recognized that agriculture’s need for water will increase as irrigation has become more important to farm businesses as a result of trends of drought. The following could be considered:
 - Identify areas and opportunities to leverage high water flow times to create irrigation water sources (above and below ground)
 - Make it easier to create water sources for irrigation – at the municipal level is

**Commission To Study the Role of Water as a Resource in the State of Maine
Input Penny Jordan (10/14/2022)**

straightforward, Land Use Commission more cumbersome.

- Take action regarding known low-flow areas and make them more drought resilient. Assume drought, not rain.
 - Capture water during rain events to add to reservoirs
 - More farms are purchasing irrigation equipment they need access to water
 - Create mechanisms to notify pertinent growers that flows are below the minimum levels
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- The quality of available water resources and the need for measures to protect water quality;
 - Continue to identify water sources impacted by PFAS
 - Ensure citizens have access to clean potable water that are not impacted by low-flow events
 - Continue to manage runoff from neighborhoods, construction sites, industry, and agricultural

 - The extent of transportation of water within the State and exportation of water from the State;

 - The sustainability of aquifers within the State;

Mark Dubois

Thank you for the opportunity to share my thoughts as part of this Maine Water Study Commission to inform the commission's findings and recommendations. The first 2 meetings held have been informative and thoughtful in laying out the overall landscape of water quality and quantity in Maine, the state of Maine's current and future supply of groundwater, Maine's extensive regulatory environment, water as a rapidly renewable resource as well as where there may be opportunities to improve Maine's coordination of this regulated resource.

Under Findings – I suggest the Commission acknowledge that

- New challenges lie ahead with respect to water-management as rainfall is expected to increase as a result of climate change.
- Maine will be a water-rich state for decades overall.
- Maine's water resources are well-regulated through the DEP, the DACF, and DHHS, that complex system of regulation and environmental protection is not always obvious to the public. Maine's groundwater laws have developed over time to ensure an adequate environmental protection, health and safety.
 - Maine residents always have the right to dig a residential well;
 - While larger-scale withdrawers are not free to act without receipt of proper permits and due consideration of the use by our regulatory agencies.

Under Recommendations – In light of what we have learned thus far, it may be worth focusing on improving the coordination between the various agencies responsible for groundwater use in Maine, specifically enhancing the charge of the existing Water Resources Planning Committee. Better coordination across agencies could ensure:

- Maine's future groundwater security;
- Adequate quality and quantity of groundwater in Maine
- Timely and appropriate policy changes, as necessary, for water management as climate change occurs; and
- Trust and transparency between Maine's groundwater users and the public.

Thank you again for the opportunity to include our suggestions. Looking forward to tomorrow's discussion.

Nickie Sekera

Mandatory PFAS testing

Before the state considers taxation on exports, tightening up our current legal infrastructure is necessary to prioritize resource protection, cooperation and transparency..

With the signing of LD 129 on June 21, 2021 by Governor Janet Mills, all community public water systems and non-transient, non-community schools and daycares are now required to sample finished (treated) water for PFAS before December 31, 2022. An interim standard of 20 ppt for six PFAS chemicals (alone or in combination) is in effect. (Please note that there are apparently over 4,000 known PFAS chemicals.)

LD 129 - Resolve, To Protect Consumers of Public Drinking Water by Establishing Maximum Contaminant Levels for Certain Substances and Contaminants

<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0064&item=1&num=130>

Fryeburg's municipal water source recently tested positive for PFAS contamination. The first attachment below is a letter to the Fryeburg Water Company (FWC) from the state that outlines a public notification process and resolution requirements pursuant to state law. Additionally, the system will be put on quarterly testing for PFAS.

The Maine Drinking Water Program is apparently working with Fryeburg to potentially identify the source of the contamination.

Attachment 2 & 3 is the notice that the FWC sent out to its ratepayers. (Renters received no notice.)

Attachment 4 & 5 are the initial test results and the confirmation test results of FWC well #2.

Attachment #6 is the map of the wells in Fryeburg, where you can see the close proximity of well #1 (where Poland Spring extracts bulk water) and well #2.

The concern is how bulk water exports may be compounding the conditions of drawing non point source pollution into a public water supply, since these wells are not far from each other. See page 29 & 30 of Maine Geological Survey Ryan Gordon's presentation given to this Commission on September 12, 2022 for another reference.

Here is BlueTriton's official response to media inquiries on the matter:

"Like the residents of Fryeburg and ratepayers of the Fryeburg Water Company, BlueTriton Brands, Inc. owner of the Poland Spring brand, has learned of the recent report that a public water well in Fryeburg, that is not used for Poland Spring product offerings, has elevated per-and poly-fluoroalkyl substances (PFAS) levels that exceed Maine's drinking water standard for PFAS. The borehole used by Poland Spring in Fryeburg is not similarly impacted by PFAS. "Poland Spring has for many years used standard filtration of its water before bottling that would also protect against any issue with PFAS. We routinely test for PFAS and our bottled water products have no detectable level of PFAS. "BlueTriton Brands will continue to monitor

and test for PFAS, just as the public would expect. Consumers can be confident that Poland Spring products meet all state and federal health, safety and quality standards."

The choice of words "not similarly impacted" in the first paragraph raises interest. It seems to imply that the well they take from is not absent of PFAS chemicals.

Under Maine law, [water bottling companies are currently not obligated to report](#) PFAS / PFOA test results to the state. The Maine CDC / Drinking Water Program has requested data from the Fryeburg well but to date, Poland Spring has not offered it.

Recommendation: to have mandatory reporting from water bottlers and exporters on the water source levels of PFAS/ PFOA as well as the water post treatment for each well site. This data will also be beneficial to the state in assessing the extent of PFAS contamination.

Recommendation: bottled water labels should list the water source origin that the bottle contains, not multiple sources, for consumer protection and potential recall purposes.

Contract and Permit Capping

Before the state considers taxation on exports, tightening up our current legal infrastructure is necessary to prioritize resource protection, transparency and assure accountability.

Attached you will find a contract between the Fryeburg Water Company and Poland Spring's then parent company Nestle Waters North America (now doing business as BlueTriton Brands / BlueTriton Holdings), who secured water rights to the Wards Brook Aquifer for a total of 45 years. This contract is said to be precedent-setting in the United States for water bottling. Nestle had previously attempted to secure a 50 year contract for their bottling business in California, but were challenged with successful community resistance to such long term contracts. Nestle then tried a different approach here in Maine, so they went for a contract of 20 years, with 5 renewable 5 year extensions (45 years). It was approved by the Maine Public Utilities Commission in 2012 and the local community fought this- in the public hearing only a couple of people spoke in favor of the contract. The residents did not consent, but the contract was between 2 private entities so concerns were not considered. All the MPUC commissioners had conflicts of interest with Poland Spring and it took about a year and a half to push them all to recuse themselves from this case. The case was taken up to the Maine State Supreme Court in Taylor v. MPUC, where the court ultimately ruled in favor of the contract, and also stated that *it is not within the purview of the MPUC to consider environmental impacts when approving such contracts*. The precautionary principle was not applied.

This contract allows Poland Spring to extract 603,000 gallons per day. In 2017, Poland Spring bought land from a Fryeburg Selectman that held a small bottling facility (WE Corp) and came with a permit for an additional 400,000 gallons per day.

603,000 gallons per day
+ 400,000 gallons per day

= 1,003,000 gallons per day

Though the records don't indicate extraction totals to that upper end, would permits that give a water exporter access to 175,000,000 or 366,095,000 gallons per year qualify as reasonable or beneficial use where surface waters, the environment, or residents' wells show signs of impact? Is stockpiling permits or contracts for this much water reasonable or beneficial? Is there cross-state agency data collection on this and a central place where this data can be found, to be accountable to the public for exporting a public resource?

Poland Spring extracts the "sustainable yield" of Fryeburg's aquifer, or what they sometimes call "excess". This aquifer is part of a larger aquifer system that many towns rely upon, as aquifers do not adhere to political boundaries. When water bottling businesses secure the "sustainable yield" of an aquifer for export, it has the potential to limit other users or uses, or over extend the water supply.

Attached are two examples of surface waters that have been negatively impacted in Fryeburg. Additionally, Round Pond is in an ecologically unique / rare habitat / protected area. An additional attachment is of Long Pond, which is located near the Poland Spring extraction site in Denmark, ME.

- Recommendation: review and investigate the current groundwater levels from the pumping sites where bulk water exporters are taking more than (50 million?) gallons annually. Are they all recharging to normal levels prior to bulk water extraction activity? Are surface waters as in Fryeburg and Denmark negatively impacted, which are supposedly protected under the Natural Resources Protection Act: Natural Resources Protection Act, 38 M.R.S.A.§480-A ?

- Recommendation: a cap of 2 years maximum for all bulk water permits or contact renewals from all state agencies to help maintain an accountable relationship, especially since it's not within the purview of the MPUC to consider environmental impacts.

*** There are currently NO water contract caps for the length of time bulk water exporters can take from a public water utility (privately or publicly owned) or from a town.**

- Recommendation: all groundwater bulk extraction permits or MPUC approved contacts with water utilities that are issued are not transferable in a sale or transfer of property.

- Recommendation: cross-agency coordination in reporting all extraction permits obtained by water bottlers to be added to the GIS well database and exclusively color coded for watershed impact assessments, water budgeting, and community planning purposes.

- Recommend research:

- How many gallons of bottled water or drinking water are exported from Maine annually?

- How many bottled water businesses are there in total?

- What percentage of bottled water or water for bottling exports from Maine does BlueTriton control?

- **How many water bottling companies has Poland Spring (Nestle/ BlueTriton or subsidiary) acquired over time in Maine?**
- **How many permits has Poland Spring additionally acquired through land purchases or other acquisitions?**

GIS well map reporting compliance

Before the state considers taxation on exports, tightening up our current legal infrastructure is necessary to prioritize resource protection, and ensure transparency.

Recommendation: mandatory reporting for all bottling companies. Require all well locations to include GPY, GPM, depth, etc. to DEP / ME Geological Survey for their GIS mapping to be updated annually with any changes.

Question: Does the state require test well and monitoring well data to be reported in addition to ones used for extraction? Are these collected and stored on a centralized mapping system?

Examples attached for Hollis and Poland, ME. Only one well appears on the map of several wells at each of these Poland Spring locations.

Rob Wood

Here are recommendations from The Nature Conservancy in Maine:

- Consolidate all reporting of groundwater and surface water use into one annual publication, housed at Maine Geological Survey (MGS).
- Require more regular publication of the MGS Watershed Risk Assessment (e.g., biannual) and expand the assessment to include projections of how future economic, demographic, and climate trends will impact medium- and long-term groundwater and surface water sustainability in Maine.
- Require third-party monitoring of water levels near Significant Groundwater Wells (especially those in at-risk watersheds/basins). To the extent third-party monitoring requires additional funding, consider increasing DEP permitting fees to cover this cost.
- Update the Site Law and Significant Groundwater Well statutes to allow the DEP to consider future groundwater needs in a given watershed/basin, as well as future climate trends, when determining whether to permit groundwater extraction activity today.
- Clarify that water used for household/community food production qualifies as a “beneficial domestic use” of groundwater under Title 38 section 404.
- Provide state funding for residential drought preparedness and relief to supplement federal drought relief programs (similar to the state’s Farmers’ Drought Relief Program).