

Senator Mark Lawrence, Representative S. Paige Zeigler, and members of the Energy, Utilities, and Technologies Committee (Senators Grohoski & Harrington, and Representatives, Babin, Boyle, Dunphy, Foster, Geiger, Kessler, Paul, Runte, and Warren)

I represent no agency or entity, only myself as a resident, taxpayer, voter, and property owner in full support of **LD1111** as it is written. This committee and the legislature have the power over this problem; **“exceptions shall be subject to future legislative limitations of the right to transport water”** (*Title 22 section 2660-A subsection 3A*).

Some folks at Maine Municipal Association squabbled last week that this effort to *“reaffirm local control and community participation”*, will cause in-fighting and be a nuisance. Maybe, but we have not had this conversation for decades, and been restricted by the State from doing so. I tend to take a more active approach regarding **democracy, the rule of law, and integrity**. Without these three things, having a government really doesn't matter, does it?

Since the **1999 Maddux v. Giles** ruling nearly a generation ago, the State has still avoided: (1) defining this extraordinary and non-traditional water use (*bulk water extraction/export*), (2) studying regional impacts to communities outside of a nominal wellhead buffer, or (3) defining what the reasonable use of water is. After a flurry of private activity from 2000-2006 to gain complete dominance over the bulk water export market here in this State, Maine actually went in reverse and (4) proceeded to weaken our water protections from 2005-2013 (*122nd, 123rd, 124th, 125th, 126th legislatures*), in complete opposition to the 1989-1990 Maine Water Board Report findings and recommendations:

2005 public law, chapter 482 part A section 2 (*LURC/MEDEP permitting weakened, removed prohibitions on impacts to other regional land uses, eg. new farms, etc...*) – LD1643 (*122nd Legislature*)

2007 public law, chapter 399 sections 4, 5, 6, and 7 (*requirement for a water to be exported to a place or people in need was removed, exceptions from export law expanded*) – LD1743 (*123rd legislature*)

2009 public law, chapter 37 section 1 (*actions regarding water exempted from FOAA and local control undermined*) – LD238 (*124 legislature*)

2011 public law, chapter 682 section 38 (*LURC/MEDEP permitting weakened, requirement for community and area “need for the use” removed*) – LD1798 (*125th legislature*)

2013 public law, chapter 381 part B sections 2 and 31 – (definition of large-scale transportation of water and prohibition restriction exceptions from the transport of water law was broadened/expanded) - LD1392 (*126th legislature*)

Over the last five years or so I've heard or read the buzz phrase below from State legislators, various token committees, and even bulk water extractors/exporters: **“We need to assure economic and social equality and local priorities in development”**, but to me, talk is cheap and the actions (*and inactions*) of the State and private speculators over the past generation speaks volumes.

Sure, the State has created several token “Water” committees through legislation since the 1999 court ruling, but as noted above, they both have continued to kick-the-can on local impacts, figuring out what is reasonable use, or defining this use, and worked toward gnawing away at our protections that Water Board of 1989 made clear needed to be strengthened.

Until MDWP and BEP appointees are held to the standards of *M.R.S.A. 5 Sections 18 and 19*, **ANY** state-led effort regarding our water resources strains credibility and will continue to fail to meet the sniff test. Our financial disclosure and conflict of interest laws for executive appointees are weak, allowing those with substantial financial interests (*e.g. dictating the profit and risk of their mother company*) to sit on influential State boards that exerted heavy sway over the actions (*or inactions*) of the 2005 and 2022 water committees and shaped their recommendations and future legislation. Maine's financial disclosure requirements even conflict with Federal Law (**Section 402 of the Federal Pollution Control Act, 33 USC, Sec. 1342**), in regard to lax standards for appointments to several powerful entities that make and steer water decisions in Augusta. Let's get that taken care.

Regarding “*Absolute Dominion*”, it is construed that there is ample evidence of waste, neglect, and interference in the propagation and concealment of this undefined use over the past generation that justifiably nullifies any claim to that antiquated right. Mainers need to define what reasonable use is and move into the 21st century, as we’re a generation behind and getting fleeced because we are not keeping up.

The PUC-BEP-MDWP-Public Water Utilities have continued to skirt local land use reviews and approvals based on gaps and conflicts in our laws (**hence LD1111 with local approvals and a reasonable 3-year contract limitation**), and Maine even went so far as to then shield bulk water extraction/transport activities from FOAA transparency to the public (*See MRSA 35-A Section 6109-B subsections 5.A.1 and 5.B implemented in 2009*), completely concealing the actions of numerous State agencies and boards from view and accountability. The exemption from FOAA introduced in 2009 is extremely disturbing, and telling.

It’s quite clear that the PUC and other groups (*BEP/MDWP/Public Water Companies*) do not have the legal authority to evaluate impacts outside of their tiny wellhead or to administer and enforce a use that causes impacts on communities, and they admitted they wouldn’t even know where to begin. That is the legal requirement, duty, and authority of municipalities (*Maine Supreme Court Case Law (Taylor v. PUC - PUC 15-89 - 5.12.16) ruled that the MPUC does not have the authority to consider impacts beyond the immediate impacts on the facility when approving long-term contractual agreements for bulk water extraction export.*)

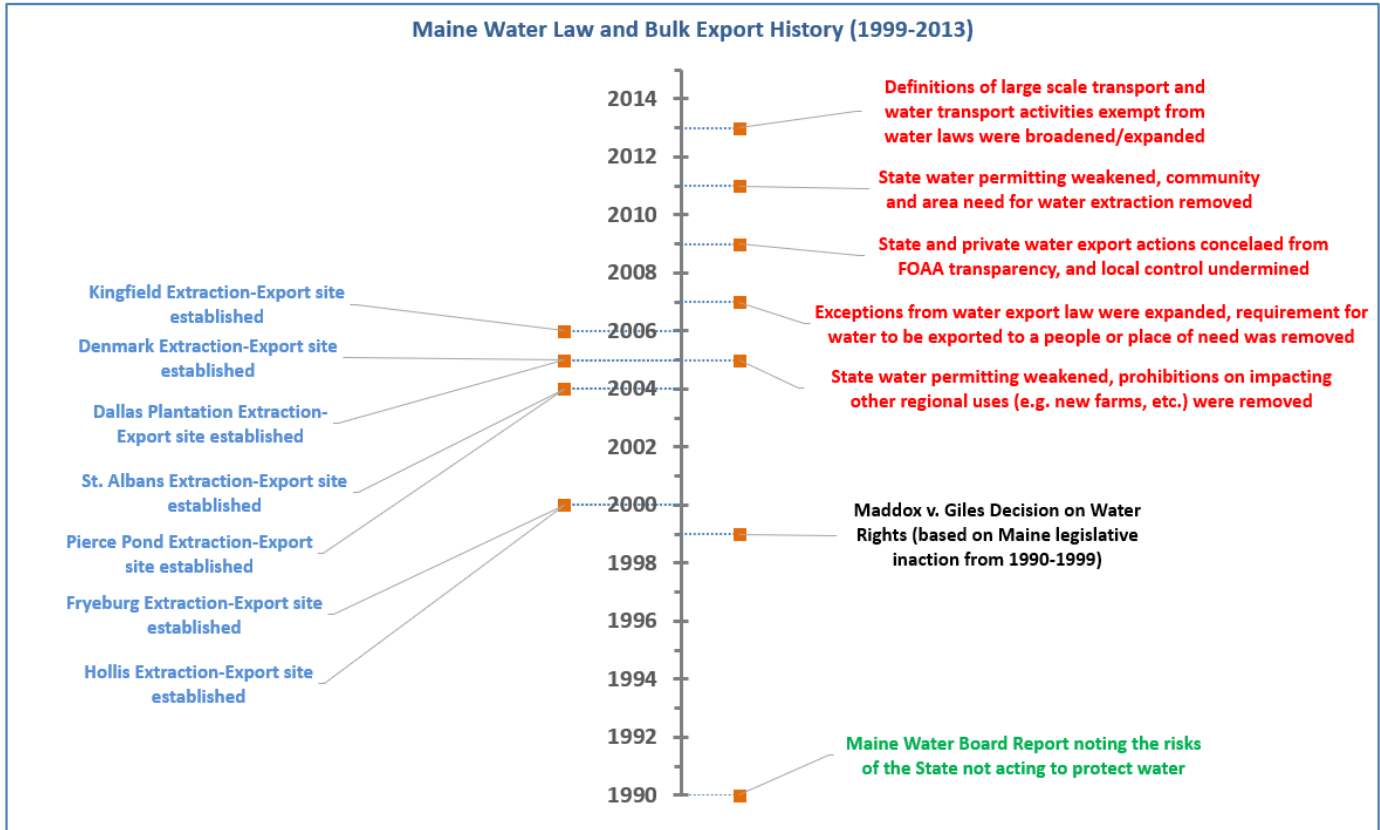
So if the PUC, BEP, MDWP, and Water Utilities don’t administer use permitting and long-term comprehensive planning for each and every town they impact, or even know how or where to begin (*as they have previously admitted*), then why have the statutory tools and obligations of political subdivisions been circumvented regarding bulk water export? (*examples below*):

*Size of use, size of development, percentage of impervious, percentage of impervious in relation to acreage, set-backs, screening, buffering, noise, infrastructure and traffic impact analysis, property tax rates (to address school and road tax burden increases), permitting (outlining evaluation facets and impact reviews), permit fees (to cover administration costs), impact fees (road degradation and violated truck routes), covering consultant-engineering-testing-monitoring-enforcement-public safety-legal labor costs, conflict of interest ethical standards for consultants, extraction volume metrics (defining Uses and priorities, which was **tabled/ignored by both the 2005-2007 AND 2022 Water Boards**), written approval from all municipalities sharing an affected watershed and aquifer for this use, additional testing, type of testing/monitoring, extent of reporting, and low-flow policies, are ALL under the authority and control of the municipalities, reinforced by the State of Maine legal construct, and implied to address current regulatory loopholes and assure economic and social equality.*

The PUC-BEP-MDWP-Water Utilities also mistakenly discount and even firesale “**time**”, which is possibly even the more valuable resource being given away in the bulk water extraction/export equation. Maine rates have still not been updated properly for this undefined extraordinary and non-traditional use, even after two decades, and this is a fundamental duty and responsibility of the PUC to appropriately manage. “**Time**” is the critical metric for humanity that we take for granted, and need we need to value it when we allow or have to clean up the problems that we create.

On a side note, since roughly two-thirds of the bulk water export extraction and export properties in Maine are in Tax Increment Financing (TIFs), it is even more critical that local use review and approval is not circumvented by the PUC-BEP-MDWP-Public Water Utilities, **hence LD1111**. Areas of a community who don’t have the political clout or savvy to nudge their way into “TIF inclusion zones” end up subsidizing it and eventually falling into disrepair themselves, just like the ring of decay and despair around, say, downtown Las Vegas. TIF has been found to predominantly exist for the benefit of a few at the expense of the remainder, and it is being phased out by other States that previously touted it.

Regarding Maine’s water resources, I tend to rely on the *1989 Water Board Report*, as it was prior to the flurry of water speculation, positioning, and lobbying from 2000-2006, or the dilution of our water protections from 2005-2013, and the findings in this report are in the best interest of all Mainers. I suppose a picture is worth a thousand words:



I’m not interested in being the next the San Joaquin Valley, Flint Michigan, Charleston West Virginia, or even the Passamaquoddy/Eastport area here in Maine, and no one can say with any certainty what our resources will look like in 40-50 years, no one, and it is even less certain now given the pervasiveness of PFAS that has been poisoning our soils, waters, and families for nearly two generations. Right now, if I wanted to start a farm in say Fryeburg Maine, I can’t, because the large-scale water contract already consumes so much of the aquifer that there is not enough capacity left for new agriculture. Let that sink in for a minute: **One of the oldest farming communities in Maine can’t even expand food production because of an undefined and uncontrolled water use.**

I’m not interested in any entity engaging in predatory and anti-competitive conduct that is unfortunately facilitated by Maine’s loose rules, any entity with intent to fully control the water export market here in Maine, and any entity that has a dangerous probability of success if we continue to do nothing.

I’m also not thinking about how to get as much of our water out of our state for as cheap and fast as possible to pad my investor’s stock values, while controlling the narrative here to salvage my reputation, long-term impacts be damned.

LD1111 is about local democracy, Home Rule, economic equality, social equality and long-term sustainability, which is why I support it.

In closing, over the past generation, Maine has inadvertently weakened public transparency as well as avoided social and economic equity regarding bulk water export speculation. The result has been an uncontrolled use that has not been defined, a use causing local and regional impacts that has not been quantified or evaluated, amounts of water moving out of state or wrapped in 3 layers of plastic that is unreasonable, and all occurring within complete obscurity, while Maine and the citizenry get near nothing in return and can't be assured of their future with water.

It is hopeful we will be willing to right the ship before things get more out of hand than they already are. I hope that you all will read the 1989 Water Board report in its entirety before rendering a decision, and schedule future workshops in order to drill down into the history of Maine's effort to weaken its water protections, and to explore the positions and people appointed who influenced that direction.

I urge the Committee to vote **Ought To Pass on LD1111**, as it is competent, reasonable, and a needed course correction that has been a long time coming.

Thank you.

Dan

Dan Davis
Porter
LD 1111
Attached.