

LD 1696 Resolve, to Study Maine's Absolute Dominion and Beneficial Use Laws Relating to Water Rights

HEARING ON TUESDAY, APRIL 29, 2025 1:30pm

Environment and Natural Resources Committee- Cross Building, Room 211

Bill Summary:

This resolve establishes the Commission to Study Maine's Absolute Dominion and Beneficial Use Laws Relating to Water Rights and directs the commission to develop findings and recommendations, including any suggested legislation, for policy and statutory changes to the legal status of groundwater rights and ownership in Maine to promote the equitable and sustainable management of water resources in the State. The commission must submit a report by December 3, 2025 to the Joint Standing Committee on Environment and Natural Resources, which may report out related legislation.

https://legislature.maine.gov/legis/bills/display_ps.asp?LD=1696&snum=132

Dear Senator Tepler, Representative Doudera, and the Environment and Natural Resources Committee,

My name is Nickie Sekera and I urge you to support LD 1696, Resolve, to Study Maine's Absolute Dominion and Beneficial Use Laws Relating to Water Rights.

Humanity continues to be affected by our own man made laws that defy natural law. The Absolute Dominion Rule, although an affront to natural law and the cultural moral code that existed prior to colonial times, was a tool by which the colonial courts could resolve disputes in the 1800s prior to an understanding what was going on with water contained beneath the surface of the earth.

Gradually, as the demand for groundwater grew, pumps to withdraw groundwater came into use and became commonplace, which allowed more severe impacts on neighbors or other water users; and the more that was learned about groundwater, states realized the need to move away from the simplistic Absolute Dominion Rule to better regulate human use of this critical resource. In many states the courts have given modern scientific knowledge as the basis for fully abandoning the Absolute Dominion Rule.

This Rule (also known as "absolute capture"), essentially means a landowner has the right to use as much groundwater as they wish on their property, with less concern of the impact on neighboring wells or users. In the [Maddox v. Giles](#) case (1999), Maine's Supreme Judicial Court affirmed the outdated "absolute dominion" of groundwater. The case involved a dispute where a landowner's gravel pit extraction activities allegedly caused a neighboring spring to dry up. While the Court ruled in favor of the "harm-causing" landowner, the Maddocks family appealed arguing that the absolute dominion rule should

be abandoned. **The court upheld the absolute dominion rule, due to the legislature not acting upon its own commission work and recommendations to change the law to a “beneficial” or “reasonable use” law.**

This court action should have the legislature and all domestic users taking pause, and be concerned with addressing this legal “warning sign” that has not been replaced, over 25 years later.

While there have been some legislative attempts to replace “absolute dominion” with protecting groundwater under a “public trust” ([similarly as surface waters](#)), large water exporters and other industrial users have managed to disrupt movement in that direction. There has been no legislative effort to date to replace “absolute dominion” with “beneficial use” law, nor a specific study as LD 1696 proposes to do. This is a step in the direction that the Maine Supreme Court Judge Calkins encouraged the legislature in 1999.

“Beneficial Use” doctrine aims to reconcile the two extremes by focusing on the reasonableness of water use and its impact on others. It considers factors like the nature of the use, the need for the use, and the impact on other water users.

Allowing “absolute dominion” law to stand as part of our legal infrastructure offers protection to water-heavy industries over the local ecology and domestic users. Under the Absolute Dominion Rule, large water users can evade responsibility in court for dewatering neighbors’ wells or taking water from under their land, unless they are guilty of “intentional malice” or “wanton waste,” both of which are very difficult to prove. One exception to this rule is that a landowner may not “unreasonably” divert an underground “watercourse” to the detriment of his or her neighbor.

Maintaining this out-of-date legal doctrine creates a vulnerability with domestic water users, small farmers, and most businesses that need a consistent water supply. With a rise in [water privatization](#) being [pushed by Wall Street](#) to replace locally owned and managed water systems for and by the public, and with water exports expanding significantly since the Maddox v Giles ruling in 1999, we are overdue to update the law to protect future use for our upcoming generations. Coinciding with this review of our groundwater laws is an increase of high water-use industries taking interest in Maine, and especially concerning now that [groundwater is being depleted](#) in other parts of the country. Although Maine brands itself as being “water rich”, we have a complex geology that sometimes creates scenarios of “not enough water being in the right place, at the right time” as one hydrologist stated. Additionally, scientists warn of prolonged periods of drought with heavier rain events in Maine, which could mean a diminished groundwater recharge rate in the years to come. Changing this law could be an example of good resilience planning. Both Ohio and Wisconsin have either formally adopted or shown a preference for the “Beneficial Use Doctrine” (Restatement of Torts) approach, recognizing its ability to balance any competing interests of water users. [According to the University of Montana](#),

the Restatement of Torts rule has been characterized as a combination of the “absolute dominion” and “beneficial use” rules. The “beneficial use” legal doctrine has not harmed water utilities nor businesses, who have been able to operate unimpeded and ensures a more accountable relationship.

The best time to change this law is yesterday- and the second best time is today. Modernizing our groundwater laws are imperative to better protect the health of our aquifers, the human population, local economy, and our ecosystems from being over-extracted or harmed. There are benefits to establishing a Commission designed to specifically study and report on this matter and to renew our social contract, by making recommendations to increase protections and ensure equitable relationships with our groundwater use and each other, within our ecosystem that also depends upon these sources.

Groundwater in Maine: A Time for Action

Beth-Ann F. Gentile Sept 2006

<https://legislature.maine.gov/doc/8858>

Notes for Talk on Groundwater Law

Peggy Bensinger

May 1, 2020 meeting of the Water Resources Planning Committee

https://www.maine.gov/dacf/mgs/explore/water/wrpc/wrpc_presentation_20200501_bensinger.pdf

Inside Poland Spring's Hidden Attack on Water Rules It Didn't Like

When Maine lawmakers tried to tighten regulations on large-scale access to water, the brand's little-known parent company set out to rewrite the rules.

<https://www.nytimes.com/interactive/2023/10/24/climate/maine-water-laws-blue-triton-poland-spring.html>

Wall Street to roll out water futures as privatization spreads global thirst

<https://balkangreenenergynews.com/wall-street-to-roll-out-water-futures-as-privatization-spreads-global-thirst/>

Uncharted Waters: A series on the causes and consequences of disappearing water

<https://www.nytimes.com/series/uncharted-waters>

A Summary of Existing Water Rights Laws: Who Owns The Water? Updated 2016

<http://nationalaglawcenter.org/wp-content/uploads/2017/03/Who-Owns-the-Water-2016-Update-FINAL.pdf>

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