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April 10, 2023

Honorable Henry Ingwersen, Senate Chair
Honorable William D. Pluecker, House Chair
Joint Legislative Committee on Agriculture, Conservation, and Forestry
100 State House Station
Augusta, ME 04333

Re: Testimony to LD 1441, Neither for Nor Against An Act to Enhance State Oversight of Water Use and Water Resources

Dear Senator Ingwersen, Representative Pluecker, and Members of the Committee on Agriculture, Conservation, and Forestry:

The Maine Water Utilities Association (MWUA) appreciates the opportunity to provide testimony regarding LD 1441. MWUA testifies *neither for nor against* LD 1441. We hope that our comments add value to this discussion.

About MWUA. The Maine Water Utilities Association is a nonprofit association based in Augusta that provides support for water works professionals throughout the State of Maine in advocating for safe drinking water through educational and technical programming as well as advocacy on the local, state, and national level. The Association was formed in 1925 and counts approximately 109 water utilities in Maine as members.

LD 1441: As noted in the bill title, this bill seeks to “enhance” state oversight of water use and water resources. Currently, numerous state agencies play a statutorily defined role in regulating water resources and water use in Maine. These laws and regulations are very effective in ensuring the sustainability of these renewable resources.

The Water Resources Planning Committee (WRPC), which was created in 2007, dismantled in 2012 and resurrected in 2019, has been very effective in fulfilling its mission, which is to *plan for the sustainable use of water resources*. This bill contemplates that, in addition to the annual WRPC report to the Department of Agriculture, Conservation and Forestry, reports would also have to be provided to four joint standing committees of the Legislature. Each of those committees would in turn have the option of reporting out legislation to implement any recommendation included in the annual report.

While these proposed amendments may be well intentioned, the existing effective regulatory process will not be well served by new statutory requirements which are overly prescriptive. It has been our experience that regulatory agencies are better situated to establish prescriptive standards rather than the Legislature. We cite an example below.

We note a particular concern regarding the proposed definition of “low flow” in Section 5 of the bill. As it turns out, Maine DEP Chapter 587 In-stream Flows and Lake and Pond Water Levels includes definitions for *Natural Drought Condition, Natural Variation of Flow, and Seasonal Aquatic Base Flow*. These definitions were proposed by some very competent staff scientists at the DEP at the time that rule was enacted. The views and concerns of water users were respected and thoughtfully considered during this process. Chapter 587 and the associated definitions struck an appropriate

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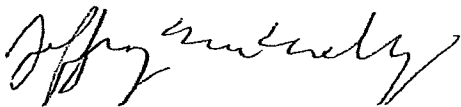
balance between the needs of water users like water utilities, who utilize water sources for public drinking water, and protection of the aquatic ecosystem itself. Creating a definition of “low flow” by statute could create a conflict with the above mentioned definitions. These definitions were established by a credible regulatory process which included, among other things, a consideration of the consequences of these definitions, which are, in and of themselves, standards.

We are compelled to provide a quick history. We know that there were droughts in the 1920’s and in the 1940’s, and in the 1960’s, the impact of a year’s long drought provided the data which engineers utilized to create design criteria for the selection and development of new water supplies in the Northeast. More recently, 2001 was dry, as was 2016. In 2016, when we saw it coming, water utilities were asked to report to the Maine Public Utilities Commission (MPUC) on the status of their water resources. A database was developed which allowed water utilities and the regulatory community to work collaboratively on continuing assessments and prioritizing short and longer term solutions, as and where necessary.

State agencies that have in role in the sustainable management of Maine’s water resources maintain websites that contain a wealth of water resources information. We would encourage anyone to access this information. One that we feel is particularly relevant to what we do is the MPUC website. Find the Water section and click on Maine Drought Information.

Conclusion: Water users in Maine have an inherent stake and interest in utilizing and appropriately managing water resources, for the benefit of our population. Regulatory oversight by numerous state agencies is effective in helping to ensure that an appropriate balance between the needs of the water using population and the aquatic ecosystem is maintained. Any statutory amendments which could serve as an impediment to this existing effective process should be viewed with caution.

Respectfully,



Jeffrey McNelly, Liaison
Maine Water Utilities Association

cc: Bruce Berger, Executive Director, MWUA
James I. Cohen, Verrill Dana, LLP, Legislative Counsel