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March 30, 2023

Honorable Mark Lawrence, Senate Chair  
Honorable Stanley Paige Zeigler Jr., House Chair  
Joint Legislative Committee on Energy, Utilities and Technology  
100 State House Station  
Augusta, ME 04333

RE: LD 1111 An Act Concerning Contracts and Agreement for Large-scale Water Extraction

Dear Sen. Lawrence, Rep. Zeigler and Members of the Energy, Utilities and Technology Committee:  
The Maine Water Utilities Association opposes this bill. Current law provides adequate oversight and protection for the public.

**About MWUA.** MWUA 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.

**Conclusion:** This bill looks to remedy a local issue with a state wide regulation. LD 1111 is in response to a handful of instances where consumer owned water utilities are selling water to Poland Spring. Municipalities have the power to regulate land use locally, and some do regulate water extractions. This bill would strip the authority of all water district trustees statewide to sell water to certain users, as well as the authority to enter into contracts that would benefit the customers that they represent. These local issues should be handled locally, by municipal ordinances, not with a statewide imposition on every district's home rule authority.

Not only should the terms of these contracts not be limited to 3 years, they should not be in State statute at all.

### **Protection of the Resource**

Maine Department of Environmental Protection (DEP), Land Use Planning Commission (LUPC), Maine Department of Health and Human Service's (DHHS) Drinking Water Program, and the Maine Public Utilities Commission (MPUC) each play a statutorily defined role in regulating groundwater withdrawal and use in Maine.

### **Maine DEP**

DEP's role is comprehensive and effective. 38 MRS § 480-B defines Significant Groundwater Well and the Standards set forth in 38 MRS § 480-D specify that operation of a significant groundwater well will not have an *“undue unreasonable effect on waters of the State, water-related natural resources and existing uses, including, but not limited to, public or private wells within the anticipated zone of contribution to the withdrawal. In making findings under this subsection, the department shall consider both the direct effects of the proposed withdrawal and its effects in combination with existing water withdrawals”*.

The permitting standard quoted appears in the Department's Site Law (38 M.R.S § 484 (3F), the NRPA (38 M.R.S. §480-D (10)), the Bulk Water Transport permitting program at DHHS's Drinking Water Program (22 M.R.S. § 2660-A, (3D)), and in LUPC's statutes (12 M.R.S. § 685-B, (4C)). By including this standard in each of these laws, no matter where a new significant groundwater extraction is proposed in Maine or which regulatory agency deals with the application, it will be required to meet the same regulatory standards to provide groundwater protection. The agencies involved also coordinate with each other to ensure the consistency of these reviews

### **Maine DHHS Drinking Water Program**

As noted above, the Maine Drinking Water Program regulates the transport of water in accordance with 22 MRS §2660-A: Restrictions on transport of water. The transport of water for commercial purposes by pipeline or other conduit or by tank vehicle or in a container, greater in size than 10 gallons, beyond the boundaries of the municipality or township in which water is naturally located or any bordering municipality or township is only allowed if the above referenced Standards, *quoted above*, are met. MPUC is a review agency under the Bulk Water Transport Permit program.

### **Maine Public Utilities Commission**

MPUC, under 35- A MRS §6109-B has oversight and approval authority relative to any contract or agreement between a consumer-owned water utility and another entity that involves the large-scale extraction of water and the large-scale transportation of water.

A public meeting is required, as is public notice to each of the utility's customers, the PUC, the Office of the Public Advocate, the municipality or municipalities where the source of water is located and in a newspaper of general circulation in the area served by the consumer-owned water utility.

### **A Case History: Rumford Water District Compliance with 35-A MRS § 6109-B and MPUC Docket 2018-00022 Request For Approval to Lease Property & Supply Groundwater to Nestle Waters North America Pertaining to Rumford Water District**

The MPUC process that Rumford Water District (RWD) followed to secure approval to sell groundwater to Nestle Waters North America is instructive, as it relates to discussion of LD 1111. There were two major aspects, which are summarized, with a synopsis of timetable and events, below.

**Compliance with 35-A MRS § 6109-B:** Prior to filing the Request For Approval to Lease Property & Supply Groundwater to Nestle Waters North America (MPUC Docket 2018-00022) RWD complied with the Water Agreement requirements under the following timetable:

- January 4, 2017 – RWD Trustees move to open negotiations with Nwana.
- March 1, 2017 Trustees held public meeting to update public on status of negotiations with Nwana, sought questions and comments from public.
- May 31, 2017 Trustees held second public meeting, and at this time provided notice pursuant to 35-A MRS 6109-B that public meeting on proposed Agreements would be held on July 12, 2017.
- July 12, 2017 meeting – Trustees present to public terms and conditions of proposed Agreements, provided opportunity for comment. A handful of people comment, some in favor and some opposed. In response to a comment, parties revised a provision in Agreement

pertaining to the redundancy project, designed such that each of the RWD wells could serve the entire customer base.

- August 15, 2017 – Trustees vote to sign Agreements with NWNA.

**The MPUC Docket 2018-00022 Process:** RWD filed this Petition application on January 22, 2018. The Commission order was issued on July 13, 2018. In the Petition RWD sought approval under 35-A MRS sections 703(3-A) and 1101.

Section 1101(4) authorizes the Commission to exempt transactions involving utility property “that do not materially affect the ability of a utility to perform its duties to the public” from review and approval under section 1101(1)(A). In the decision (Commission Order) the Commission certified, pursuant to 35-A M.R.S. § 1101(4), that the Amended and Restated Water Purchase and Facility Agreement (Water Agreement) between the Rumford Water District (District) and Nestle Waters North America Inc. (NWNA), filed on May 16, 2018, does not require Commission authorization under 35-A M.R.S. § 1101(1)(A).

Additionally, the Commission found that the Water Agreement satisfied the requirements of a Special Rate Contract under 35-A M.R.S. § 703(3-A), and that the District entered into the Water Agreement in compliance with 35-A M.R.S. § 6109-B.

The initial Petition application included the application for Significant Groundwater Well Permit under the Natural Resources Protection Act. On May 2, 2018 RWD filed a copy of its NRPA Significant Groundwater Well Permit, which had been issued by the DEP on May 1, 2018.

Processing of this application included a number of interactions among RWD, Commission staff, intervenors and others. There were 21 items in this docket. This process was thorough and rigorous.

### **LD 1111: Proposed Revisions to 35-A MRS §6109-B**

Consumer-owned water utilities are governed by trustees who are either directly elected or appointed by elected municipal officials. They are governmental entities operating in the public eye, subject to Maine’s Freedom of Access Act. Other governmental bodies in Maine are empowered to make decisions in the best interest of their constituents. Water utilities in Maine have prudently exercised this authority for over 100 years. This bill would strip trustees of their authority to enter into certain contracts by requiring a vote of municipal leaders throughout a supply’s watershed, place unreasonable limitations on such contracts, and quite honestly is an infringement on Home Rule. Currently the Statue requires a notification process and public meeting, which allows for public involvement and also various agencies’ review and approval, providing adequate oversight while maintaining the authority of trustees. We do not oppose transparency; we do oppose an infringement on the authority of duly elected or appointed trustees of a quasi-municipal entity chartered by the Maine Legislature.

Please note that the “watershed” of large water supplies such as Sebago Lake or Lake Auburn include vast areas and many municipalities. The same holds true for groundwater sources of supply that are associated with and recharged by rivers and streams. By way of example, the Rumford Water District well, which provides water to NWNA, has a 163 square mile watershed This would give veto power over a water district board of trustees, to any one of many legislative bodies that do not represent the

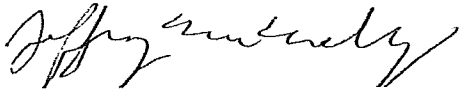
customers of the water supply, and would require an additional vote every 3 years as contracts would expire. This does not make sense and is very bad public policy.

Please be aware that there are numerous interconnections and long term contracts to sell water between several utilities in Maine. These include Kennebec Water District to Oakland, Bath Water District to Wiscasset Water District, and on Route One, except for a small gap between Freeport and Brunswick, the water systems are interconnected from Kittery to Edgecomb.

Contracts to sell water as defined in this bill, and contracts between interconnected water utilities, involve significant investment into both infrastructure and permitting. The terms of the contract reflect what is prudent to justify the agreement and to make the investment feasible. Water system managers and their trustees are best positioned and are the most qualified to develop and manage these agreements.

We urge the Committee to report out LD 1111 Ought Not To Pass.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeffrey McNelly".

Jeffrey McNelly, Liaison  
Maine Water Utilities Association

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