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MWUA

MAINE WATER UTILITIES ASSOCIATION

Organized in 1925

April 29, 2025

Honorable Denise Tepler, Senate Chair
Honorable Victoria Doudera, House Chair
Joint Legislative Committee on Environment and Natural Resources
100 State House Station
Augusta, ME 04333

*Re: LD 757, Resolve to Study and Oversee Water in the State of Maine
LD 1696, Resolve to Study Main's Absolute Dominion and Beneficial Use Laws Relating
to Water Rights*

Dear Senator Tepler, Representative Doudera, and Members of the Committee on Environment and Natural Resources:

The Maine Water Utilities Association (MWUA) appreciates the opportunity to provide testimony in opposition to LD 757 and LD 1696. As drinking water professionals, our members spend every day committed to making sure there is safe and adequate drinking water to serve the people of Maine, and based on our longstanding experience, we firmly believe these bills reflect issues that have been exhaustively and sufficiently studied over many years, and that further study is unnecessary and potentially detrimental to the service we provide. Over decades, studies have repeatedly demonstrated that Maine's climate and hydrogeology ensures not only that our state has abundant water resources, but the climate and hydrogeology also justifies Maine's current legal and regulatory framework related to the ownership of groundwater. Continued study is highly unlikely to produce new information on either topic, but since the current system does work, the only potential outcome of more study would be to undermine the legal structures water utilities rely on to ensure access to underground water supplies. For this reason, we strongly urge this Committee to reject both bills.

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 consists of approximately 86 utility and 60 associate members. Maine's water utilities provide service to approximately 700,000 Maine residents, thousands of Maine businesses and public institutions, and millions of visitors to Maine every year.

The science is clear: Maine has an abundance of water supply. As noted above, water utilities are on the front lines of preserving and supplying drinking water to Maine people. That is what we do and think about every single day. It is what we plan for years in advance. As part of that work, we work very closely with hydrogeologists who support our systems and who advise state regulators at the Maine Drinking Water Program, the Maine Department of Environmental Protection, and the Maine Geological Survey. These experts in water supply agree that Maine is very fortunate – we are blessed with an abundance of high-quality groundwater. They also agree that Maine's hydrogeology creates aquifers that are largely segregated from one another due to impermeable soils such as till,

granite and clay deposits under the surface. This means that when water is extracted from one aquifer, it tends to have very little, if any, impact on adjacent aquifers. By contrast, in many other states, withdrawal of water in one area will have impacts for great distances underground.

A Study of Water Resources was conducted in 2022 which found no issues with groundwater availability. Our earlier observations about Maine’s climate and hydrogeology were borne out in 2022 as part of the work of the *Commission To Study the Role of Water as a Resource in the State of Maine*, which was a legislatively-created study group charged with reviewing a wide range of issues related to Maine’s water supply and uses. The Commission was comprised of a diverse array of 16 stakeholders of which MWUA was a part. After five public meetings and extensive research and debate, the Commission published a Final Report in December 2022¹ summarizing the work and recommendations of the Commission. The Commission’s work provided substantial information indicating the following:

1. Overall, Maine has abundant supplies of water, although there are isolated areas in the state where there may be shortfalls. Moreover, the use of such supplies for drinking water is a tiny fraction of Maine’s overall supply.
2. Predictions regarding climate change suggest an increase in water availability in Maine, not a reduction.
3. Maine’s underground water ownership doctrine is known as “absolute dominion” which allows a property owner has the absolute right to extract and use water found directly underneath their property. This is a relatively unique doctrine not followed in most other states and predated Maine becoming a state. However, this doctrine has been modified over time by state regulations governing the bulk transportation of water, the size and scope of water withdrawals, and the safe use of such water. This ownership doctrine protects Maine’s water resources and landowner rights

The experiences of water utilities in Maine mirror what these experts presented to the Commission. While there are pockets of water quantity concerns in Maine, overall, water utilities continue to have access to ample supplies of water to meet the needs of their customers.

Water extraction agreements with bottled water providers ensure important revenues to sustain public drinking water systems in Maine. One of the areas highlighted for study – again – relates to the so-called “extraction” of water and the potential to add new regulations related to such extractions. However, it is important to state up front that water extractions by private companies for bottled drinking water have been a significant benefit to water utilities, not the opposite. Not only do wholesale long-term water extraction contracts between private companies and water utilities provide revenue to the utility that would otherwise need to come from ratepayers, but these agreements are also tightly overseen by state regulators and monitored by utilities to ensure there is no impact on their water supplies. The revenues derived from these agreements lower the cost of drinking water for ratepayers. How does this work? Very simply, most of the costs of maintaining and operating a water system are fixed costs, so if a water utility can sell more water without expanding its system, then those fixed costs get spread among more users, lowering the cost of water for everyone. When a private company agrees to buy surplus water from a water utility for the long term, those additional revenues go right to the bottom line of the utility and thus reduce the revenues needed from all other

¹ The final report of the Commission is available here: <https://legislature.maine.gov/doc/9405>

customers. If Maine were to take action to reduce or eliminate this important source of revenue for water utilities, customers of water utilities will need to bear the full cost of utility operations. Please be aware there are only a handful of utilities with these agreements. They are not common.

Maine's water utilities rely on the current law governing groundwater ownership to ensure access to drinking water supplies and the right to protect them. Maine's water utilities have legislatively granted rights to water resources in designated geographies which we rely on to extract and distribute drinking water to our customers around the State. These rights are grounded in the centuries-old "absolute dominion" rule inherited from England which gives property owners the right to extract resources under their land. Maine's doctrine is outlined in greater detail in a memorandum from Dennis J. Harnish, Assistant General, dated April 15, 2005.² Notably, however, Maine does not have a strict "absolute dominion" rule, but rather it has a hybrid system where landowners own the water under their land, but their ability to extract groundwater is limited by a regulatory overlay administered by the state. The following excerpt from the 2022 Water Resources Council Report (p.8) explains the difference:

The absolute dominion rule in Maine, however, has been modified over time through the enactment of a number of laws that may affect a property owner's use of the groundwater below their land. In particular, the Legislature in 1987 established an exception to the absolute dominion rule as part of the Ground Water Protection Program by providing liability when a person withdraws groundwater in excess of the "beneficial domestic use" for a single-family home and when the withdrawal interferes with a preexisting use by a landowner or lawful occupant. The term "beneficial domestic use" is defined in statute to mean "any ground water used for household purposes essential to health and safety, whether provided by individual wells or through public supply systems." This law accordingly does not apply to non-domestic uses and does not protect a domestic user whose withdrawal does not preexist the other groundwater use that is interfering with the domestic user's groundwater use.

Importantly, Maine's groundwater ownership and use laws differ from what is found in many states where water resources are rationed by the government. Maine's current regulatory system for groundwater withdrawal and use is overseen by technical experts. By contrast, a water trust governed by political appointees would conflict with the current scientifically based regulatory system and give political appointees authority to allocate groundwater rights.

For water utilities, the current approach ensures that the water below the surface can be used by the utility to provide water to their customers. Restrictions on such access could mean that competing uses might impede the ability of the utility to access its underground supplies for delivery to the public.

Overall, this is a clear case where Maine's current legal doctrine for groundwater ownership works. It ensures that our public water utilities have the supplies needed to make water available for its highest and best use: drinking water. Efforts to further study this doctrine are simply not needed and could only serve to undermine a system that works.

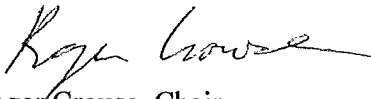
² This memorandum was provided to the 2022 Water Resources Commission and is available here: <https://legislature.maine.gov/doc/8856>

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Conclusion. Maine's water utility professionals are the people whose job it is to protect and deliver safe drinking water to the people of Maine, and we believe both LD 757 and LD 1696 are unneeded and potentially risky bills for the health of Maine's drinking water supplies. First, these two bills seek to repeat studies and analyses which have been undertaken repeatedly over the years and drawn the same conclusion: Maine's climate and hydrogeology combine to ensure an abundance of potable groundwater, and Maine has a regulatory regime that ensures sustainability and protection of water resources. Second, these bills create risk to the legal doctrine that water utilities rely on to access and protect sufficient supplies of water for their customers. For these reasons, we urge the committee to reject both bills.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Roger Crouse", written in a cursive style.

Roger Crouse, Chair

MWUA Legislative & Regulatory Affairs Committee

cc: James I. Cohen, Verrill Dana, LLP, Legislative Counsel