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*Admitted in:* ME

Chair Tepler, Chair Doudera, and Honorable Members of the Environment and Natural Resources Committee;

My name is Elizabeth Frazier, and I am a partner at Pierce Atwood, LLP. On behalf of Poland Spring, I am testifying today Neither for Nor Against LDs 757 and 1696. Both bills broadly propose to look at the underlying legal landscape for groundwater use in Maine. We offer the following brief history of groundwater law and the attendant policy debate, in hopes it informs the committee's discussions on the proposed studies.

The Maine Legislature has a long history of review and oversight of Maine's groundwater law. In fact, the debate about Maine groundwater law has been ongoing since at least 1989. In 1989, the Legislature considered modifying the ownership framework for Maine's groundwater – regulated absolute dominion. Specifically, the legislature received a report from the Water Resource Management Board, which was created by the legislature as a result of the recommendations furnished by a previous study commission, the Water Supply Study Commission. With respect to water rights, the Water Resource Management Board report recommended that the Legislature extend the reasonable use rule to groundwater resources, thereby abandoning regulated absolute dominion. The legislature chose not to adopt that rule.

In 1999, the Maine Law Court issued a holding in the case of *Maddocks v. Giles*<sup>1</sup> (*Maddocks*), reaffirming that Maine's groundwater law is based on a system of "absolute dominion," in which the landowner owns the groundwater under its property, sometimes and hereinafter referred to as "regulated absolute dominion." Regulated absolute dominion is a more accurate term because it recognizes the robust statutory and regulatory framework already in place that protects Maine's environment and groundwater from unsustainable groundwater usage. In *Maddocks*, the Law Court declined to abandon the settled absolute dominion rule for groundwater ownership in Maine for three reasons.

- First, the Court acknowledged that the absolute dominion rule was developed at a time when the movement of groundwater was not well understood scientifically but recognized that "for over a century landowners in Maine have relied on" it and that it still functioned well in Maine.
- Second, the Court noted that such policy changes would be better made in the legislature.

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<sup>1</sup> *Maddocks v. Giles*, 1999 ME 63, ¶ 11, 728 A.2d 150, 152 (1999): ("groundwater is the absolute property of the owner of the land, just like the rocks and soil that compose it.").

- Third, the Court stated that the Legislature had recently voted down a proposal to abandon absolute dominion, making clear that the issue had been squarely presented to the Legislature and rejected, referencing several recent actions taken at the legislature which declined to change groundwater law.

Since Maddocks, the legislature has repeatedly considered, and rejected, attempts to change the ownership of groundwater by abrogating regulated absolute dominion with some other form of ownership, such as a public trust. The following measures to amend, revise, or eliminate regulated absolute dominion have been considered and rejected by the legislature over the past twenty years.

- 2005 - LD 1489, An Act to Establish Citizen Ownership of Maine's Groundwater. FAILED. Proposed to convert Maine's groundwater to a public resource owned by the citizens of the State.
- 2005 - LD 1643, An Act to Clarify and Harmonize State Policy on Groundwater Management. Led to report entitled Review and Recommendations Regarding Ground Water Regulations, minor regulatory changes recommended.
- 2007 - LD 1267, An Act to Establish a Groundwater Withdrawal Program and to Recognize Groundwater as a Public Trust Resource. FAILED. Proposed to convert Maine's groundwater to a public trust owned by the citizens of the State.
- 2009 - LD 1310, Resolve, Relating to a Review of International Trade Agreements and the Management of Groundwater Resources. Led to report on trade agreements, urging caution on changes to Maine groundwater law in the context of existing international trade agreements.<sup>2</sup>
- 2017 - LD 422, "An Act to Facilitate the Creation of the Maine Water Trust to Regulate and Protect Maine's Water Supply and To Ensure the Quantity and Quality of Maine's Drinking Water. FAILED. Proposed a working group to study the conversion of Maine's groundwater to a public resource owned by the citizens of the State.
- 2019 - LD 197, An Act to Convene a Working Group to Authorize a Public Trust for Maine's Groundwater and to Impose a 2-year Moratorium on Large-scale Groundwater Extraction. FAILED. Proposed to convert Maine's groundwater to a public resource owned by the citizens of the State.
- 2019 - LD 413, "An Act to Ensure the Rights of Citizens to Groundwater in the State. FAILED. Concept draft, no language presented.
- 2019 - LD 1358, An Act to Further the Public Interest in All Maine Waters. FAILED. Proposed to convert Maine's groundwater to a public resource owned by the citizens of the State.
- 2023 - LD 306, An Act Related to Water (2023). WITHDRAWN. Concept draft, no language.

In addition to these bills, the legislature recently 1) established a permanent groundwater oversight committee (the Water Resources Planning Committee)<sup>3</sup> and 2) conducted a legislative study on the role of water as a resource in Maine. The Water Resources Planning Committee, which continues to operate,

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<sup>2</sup> *The Potential Impact of International Trade Agreements on Ground Water Withdrawal Regulations*, Report to the Joint Standing Committee on Natural Resources by the Water Resources Planning Committee and the Citizen Trade Policy Commission 4 (Feb. 2010), available at <http://www.maine.gov/legis/opla/WRPC-CTPC%20final%20report.pdf>.

<sup>3</sup> Public Law 2019, Chapter 67.

oversees Maine's groundwater quality and quantity, reviews aquifer sustainability, and responds to citizen inquiries. In 2019, the legislature authorized a study on The Role of Water as Resource in the State of Maine, charged at looking at, among other things: the extent of water resources available in the state, legal principles regarding the ownership of water resources in the state, the sustainability of aquifers within the state, and the extent to which water resources will be needed in the state and the nation in the future for household, government, business, commercial and other purposes. The study reported back to the ENR Committee, but no substantive action was taken on Maine's groundwater statutes or regulations. In short, the Maine legislature has many times since Maddocks, and as recently as 2020, considered and rejected making substantial changes to Maine's groundwater law of regulated absolute dominion.

Though no changes were made to the legal framework of regulated absolute dominion, in the years since, the legislature has continued to strengthen and amend the statutory and regulatory framework that limits groundwater withdrawals and protects the quality of Maine's groundwater and prevents harmful impacts from groundwater usage to other natural resources and other groundwater users.

Recently, the legislature has taken two actions related to groundwater law and oversight. In 2019, the legislature established the Water Resources Planning Committee, which is currently responsible for groundwater oversight, aquifer inspection, and the overall sustainability of Maine's groundwater resources. The Water Resources Planning Committee is comprised of experts in water management, including the State Geologist, members of the DEP, DACF, PUC, Drinking Water Program, and more.

Additionally, in 2022, the Commission to Study on the Role of Water as a Resource in the State of Maine was tasked with examining, among other things: the availability and quality of Maine's water resources; legal principles regarding water resource ownership; anticipated water needs in future decades; aquifer sustainability; the nature and use of water withdrawal in Maine; and the relationship between climate change and water resources in the State. That study issued a report, which was presented to the ENR Committee with authority to report out legislation in the 131<sup>st</sup> Legislature and is linked or attached to our testimony.

The report concluded in the fall of 2022, that:

*Maine is an incredibly water-rich state, receiving on average 45 inches of precipitation per year, which is the equivalent of roughly 26 trillion gallons of water. By contrast, much of the midwestern and southwestern United States receives less than 20 inches of precipitation per year, with some areas seeing less than 10 inches annually. Groundwater monitoring over time has consistently shown that the levels of groundwater in Maine are stable. Given the current human demands on the State's groundwater resources and the robust annual recharge of those resources through precipitation, Maine is not anticipated to face water availability issues in the future in the same way many other areas in the country do.<sup>4</sup>*

These findings illustrate the strength of Maine's groundwater resources and provide context for understanding Maine's groundwater resources in contrast to other states or parts of the country. We

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<sup>4</sup> *Report of the Commission to Study the Role of Water as Resource in the State of Maine*, December 2022, 5, available at: <https://legislature.maine.gov/doc/9405>. See also, Ryan Gordan, Maine Geological Survey, 9/12/2022, "Introduction to Groundwater Resources" available at <https://legislature.maine.gov/doc/8855>.

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would encourage this committee to review the findings in the report generally, as they provide extensive technical and historical background into Maine's water resource abundance and previous examination of these issues.

On behalf of Poland Spring, we appreciate the committee's careful consideration of these two bills. We hope to serve as a resource and look forward to answering any questions you may have – now, or in the future.

Elizabeth Frazier

On behalf of Poland Spring