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June 17, 2021

Honorable Janet T. Mills
Governor of Maine
100 State House Station
Augusta, ME 04333

RE: ***Letter of Opposition to LD 1569, Committee Amendment "A" Creating a Water Resources Commission to Study Maine's Water Supply***

Dear Governor Mills:

Last month, the Maine Water Utilities Association provided testimony in strong opposition to LD 1569 before the Legislature's Joint Standing Committee on Taxation, which bill would have imposed a tax on water extraction. The Department of Economic and Community Development also opposed LD 1569. Late in May, the Committee voted out the bill on a divided basis with 5 members voting ONTP, and 8 members voting OTPA for Committee Amendment "A," which report converts the bill into a Resolve that would form a 16-member "Commission to Study Water as a Resource in Maine" with a report-back date of March 15, 2022. The final language of this study was officially reported out of Committee two days ago, on June 15. We write today to let you know that we strongly oppose Committee Amendment "A" of LD 1569.

➤ *We further note that the bill has a **General Fund Fiscal Note** of **\$20,000** to implement the study.*

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.

Our concerns with Committee Amendment "A." The Maine Water Utilities Association notes three key reasons for opposing Committee Amendment "A."

- **Duplication.** First and foremost, the immediately prior Legislature in PL 2019, ch. 67 established an ongoing "**Water Resources Planning Committee**" with membership from a range of state agencies and members of the public with expertise in agriculture, water utilities, water bottling, conservation, private domestic wells, and wastewater management. That committee meets quarterly and provides regular reports on the status of Maine's water supply and resources. By contrast, Committee Amendment "A" to LD 1569 creates a 16-member, politically-appointed "**Commission to Study Water as a Resource in Maine**" to undertake a one-time study of water supply and resources with a March 15, 2022 report-back date. There is substantial overlap in the duties of the LD 1569 study commission as compared to the ongoing Water Resources Planning Committee established 2 years ago as noted in the chart below.

LD 1569, Comm. Amendment “A”	PL 2019, Ch. 67 (LD 199)
<ul style="list-style-type: none"> • Quality of available water resources and the need for measures to protect water quality, including the sustainability of aquifers within the State; • Evaluate the extent of water resources available in State, including water resources needed in the State and nation in the future for household, government, business, commercial and other purposes; • Relationship between water resources and climate change in the State, including an analysis of what actions other states are taking on this issue; • Role of water resources in the State and the nature and extent of infrastructure involved in the use and delivery of water resources; • Extent of transportation of water within the State and exportation of water from the State; • Legal Principles regarding ownership of water resources; • Nature and use of natural resource extraction taxes in other states and the advantages and disadvantages of enacted natural resource extraction taxes in the State; 	<ul style="list-style-type: none"> • Plan for the sustainable use of water resources; • Identify watersheds at risk by refining most recent analysis of watersheds at risk performed by the Bureau of Resource Information and Land Use Planning, Division of Geology, Natural Areas and Coastal Resources, Maine Geological Survey; • Conduct appropriate water resources investigations in watersheds at risk; • Consider projected increased water use by population, agricultural irrigation, commercial users, industrial users and other users, including seasonal use; • Consider potential effects of climate change; • Considering the effects of anticipated future water quality classification changes on the availability of water for withdrawal; • Collecting and reviewing information regarding water withdrawal activities; • Establish priorities for further investigations, seeking input from the user community, from towns dealing with multi-municipal aquifers and from towns with significant local aquifers; and

- **LD 1569 calls for evaluation of solutions before a problem is identified.** As stewards of public water service in Maine, Maine’s water utilities closely monitor the protection and use of water in Maine. In our view, the resource is well-protected, and Maine has also been blessed with abundant supply. However, because climate change presents new risks, the Maine Legislature in 2019 established the ongoing Water Resources Planning Committee to closely monitor Maine’s water resources. At this point, the Committee has not identified a problem with Maine’s water resources justifying changes in Maine’s water resources system, including the imposition of water extraction taxes or changes in how Maine’s water resources are owned.
- **LD 1569 jeopardizes the ability of water utilities to own and operate public drinking water systems.** Maine’s water utilities have legislative 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 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

Attorney General, dated April 15, 2005.¹ Importantly, these extraction rights differ from what is found in a number of Western states where water resources are extremely limited, and water rights are therefore rationed by the government. Such scarcity of water is not present in Maine despite extensive evaluations and ongoing analysis, as noted earlier. Nonetheless, under the LD 1569 majority report, the politically-appointed, one-time Commission would be charged with evaluating the property rights associated with water withdrawal, which are the very rights water utilities rely on to supply drinking water. We think this is unwarranted absent a clear showing that water resources in Maine are sufficiently scarce to warrant rationing, which has not been shown. Otherwise, such an evaluation unnecessarily places at risk the water extraction rights that water utilities need to supply public drinking water.

Conclusion. Overall, Committee Amendment “A” to LD 1569 creates a redundant, one-time study of Maine’s water resources that not only overlaps with the ongoing work of the Water Resources Planning Committee established by the Legislature only two years ago, but also calls for a pre-mature and unwarranted evaluation of “solutions” that would jeopardize the water extraction rights relied on by water utilities to provide drinking water to the public. For these reasons, we urge the rejection of Committee Amendment “A” to LD 1569.

Sincerely,

Bruce Berger

Bruce Berger
Executive Director

cc: Tom Abello, Office of the Governor
Kate Foye, Maine DECD
Robert Marvinney, Maine State Geologist
Roger Crouse, Chair, Legislative & Regulatory Committee
James I. Cohen, Verrill Dana, LLP, Legislative Counsel

¹ <http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=165009>