

## Groundwater Availability, Ownership, and Rights in Maine

- **Maine is water rich; water utility and bottled water extraction from groundwater is minimal.** An average of 24 trillion gallons of water falls on Maine every year (an average of 65 billion gallons per day). Of that, approximately 12 trillion gallons runs off into streams and rivers, about seven trillion gallons are evaporated and between two and five trillion gallons percolate into the groundwater table and provide recharge. Assuming the more conservative two trillion gallons percolating into the groundwater, less than 0.4 percent (about eight billion gallons) is utilized by water utilities and less than 0.05 percent (about one billion gallons) is used by water bottlers. For perspective, this (one billion gallons) is about equal to the amount of water in 1.1 inches of Sebago Lake.
- **Water is a renewable resource, continually replenished by precipitation.** Water is continually replaced in a matter of days, weeks or months; it is simply intercepted from within the ongoing hydrologic cycle. An average of 32 billion of gallons of water flow into the oceans from Maine's rivers and streams every day.
- **Maine's scientifically-based regulatory regime better protects groundwater than a politically appointed trust.** Maine's current regulatory system for groundwater withdrawal and use is overseen by technical experts. By contrast, a water trust governed by political appointees, without regulatory staff, would transform groundwater withdrawal rights into a political rather than scientific exercise.
  - Maine Department of Health and Human Service's Drinking Water Program, Maine Department of Environmental Protection, and Maine Public Utilities Commission each play a statutorily defined role in regulating groundwater withdrawal and use in Maine.
  - The Maine Geological Survey compiles water use information across multiple categories including commercial, agricultural, and for public water systems, and has conducted detailed studies of water supply and demand in select watersheds.
  - Instituting a Public Trust would conflict with the current scientifically based regulatory system and give political appointees authority to allocate groundwater rights.
- **Maine property owners (including water utilities and water bottlers) obtain groundwater rights through land ownership.** Under the common law in Maine, an owner of land also owns the groundwater beneath the land. However, these rights are not absolute; one cannot extract water from their land in a manner than negatively affects one's neighbors right to the water under their property. This rule has defined property rights in Maine for generations. Like other property owners, water utilities have relied on this common law to gain rights to groundwater for their customers and to protect groundwater through land ownership. Changing this long-standing doctrine would greatly affect existing property rights and interfere with the ability of water utilities to protect the groundwater they provide their customers.
- **A public trust system could disrupt the ability of water utilities to serve their customers.** Water utilities currently have a duty to serve all customers, and to meet their consumption needs. The cost of expansions can be allocated to new customers, but utilities cannot refuse to serve customers who comply with the terms of service. Instituting a public trust adds a layer of uncertainty around the future ability of utilities to serve their customers since the trust would assume the ability to limit groundwater rights to water utilities and/or their customers. Even more troubling is the fact that, under a groundwater trust, the duty to serve would become a political decision rather than a scientific, regulatory decision. For example, public water systems in states with a public trust system are often held to a per capita consumption limit, regardless of the sustainability of their withdrawals.
- **Transferring Ownership of Groundwater to the State carries a risk of an unconstitutional taking.** A system that allocates water rights to some property owners also can deny water rights to other property owners. When a governmental denial of property rights removes or "takes" value of a property, it becomes an unconstitutional taking. This is not even an issue under Maine's current absolute dominion rule where the right to use groundwater belongs to the owners of the land above it.