STATE OF MAINE
114TH LEGISLATURE
FIRST REGULAR SESSION

FINAL REPORT OF THE MAINE WATER SUPPLY STUDY COMMISSION

FEBRUARY 1, 1989

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I. SUMMARY

Water is an essential condition for all life. Recognizing this fact, Maine has actively sought to protect water quality for many years. However, compared to other states, in Maine less attention has been directed to the quantity of our water resources, reasonably enough, since supplies of water have been more than adequate to meet demand for water. But in recent years, eastern states facing increased demand for water have begun to take a more active role in managing their water supplies. Even New England neighbors like New Hampshire, Massachusetts and Connecticut have been developing and maintaining sources of water supply to ensure availability.

Now, despite our abundant water resources, Maine is no longer exempt from conflicts over water use. Recent attempts by water utilities in Maine to develop new sources of water have led to conflicts with municipal, residential and recreational users and water speculators from other states are reportedly assessing Maine water resources. These issues were the initial concerns to which this Commission was addressed; however, it became apparent in the course of the Commission's work that the issues of water supply are much broader than originally conceived, ranging from uses of water for hydropower to the impact of the development and use of land on the continuing availability and reliability of water supplies.

It was within this context, that the 113th Legislature established the Water Supply Study Commission. The Study Commission was charged with investigating three broad policy questions:

- Does Maine have an adequate supply of water to meet residential and commercial needs now and in the future?
- Are current regulations adequate to ensure that the future needs of Maine residents will be met?
- What are the impacts of transporting water across municipal and state boundaries on Maine water resources?

The Study Commission, after study, recommends the following four actions.

RECOMMENDATION 1: State government should begin the process of developing a water supply resource management strategy in order to ensure adequate future supplies of water for domestic, commercial and industrial needs of the citizens of the State.

RECOMMENDATION 2: The Legislature should establish a multi-interest board to recommend the structure for Maine's future water management activities.

RECOMMENDATION 3: The Water Resource Management Board should analyze current state water management activities and issues of concern and make recommendations to the Legislature by January 1, 1991 regarding the appropriate State role in managing water supplies and the institutional structure necessary for efficient and effective State involvement. The Board should coordinate the collection of water use and supply information and catalog publicly granted water rights.

RECOMMENDATION 4: In order to begin identifying the role of state agencies in water resource issues, the Water Resource Management Board should request that copies of all applications for licenses or permits which have an impact on water supply filed with other agencies of state government be sent to the Board.

Legislation to implement these recommendations is included as Appendix 1.

II. BACKGROUND

A. Origin of the Study

The Water Supply Study Commission was established by Public Law 1987, Chapter 816 (Appendix 2) during a time of increased public interest and legislative activity involving water supply issues. News articles speculating on the potential for major exports of water from "water-rich" Maine appeared frequently and conflicts between municipalities and water utilities over water use were occurring in several locations throughout the State. Before establishing the Water Supply Study Commission, the 113th Legislature enacted legislation addressing some of these water supply issues.

B. Legislative Actions

In the First Regular Session of the 113th Legislature, three laws affecting water supply were enacted.

- Public Laws 1987, Chapter 491 provides protection for groundwater and includes procedures for a land owner to recover the cost of damages to a private water supply by public highway work of the state or a municipality. This law also establishes a right-to-sue for compensatory damages when a person who withdraws groundwater in excess of "beneficial domestic use" interferes with a preexisting domestic use of groundwater.

- Public Laws, Chapter 509 requires well contractors to provide information on location, construction and well yield to the Maine Geological Survey (MGS).

- In an attempt to limit the large-scale export of water from Maine, Public Laws, Chapter 531 included a section restricting the transport of more than 10 gallons of water for commercial purposes beyond the municipality or bordering municipality of the water's natural location. In the original law, water utilities were specifically exempted and all commercial transporters of water could appeal to the Commissioner of Human Services for a three year exemption. A Second Regular Session amendment to the law (Public Laws, Chapters 745, 816) expands the exemption to include a variety of commercial and public uses discussed in more detail below.

C. Public Utilities Commission Report

The First Regular Session of the 113th Legislature also directed the Public Utilities Commission (PUC) to study the allocation of water supply rights (Resolves 1987, Chapter 27). The report was developed with the assistance of personnel from

other state agencies, the United States Geological Survey (USGS)and the Land and Water Resource Center of the University of Maine, and was submitted in February, 1988 to the Joint Standing Committee on Utilities.

The PUC report discusses the common law of surface and groundwater in general and as affected by Maine statutory law. Current and potential cases of conflicts between water users in Maine are summarized. The report suggests a water resources management mechanism which contains comprehensive state regulation with input from local sub-basin management units. This or a similar system could provide a means for managing water resources including the resolution of water export questions. The PUC report further recommends that the Legislature establish a task force to review water management options and coordinate the development of a comprehensive State water management mechanism.

D. Legislative Response to the PUC Report

The Utilities Committee responded to the PUC report by reporting out L.D. 2497, RESOLVE, to Establish the Commission to Study the Management of Water Resources in Maine. This commission would have studied current State roles in water issues and the water management systems of other states with the goal of recommending a system to promote the comprehensive and optimal use, management and protection of the State's water resources. Action on L.D. 2497 was indefinitely postponed by the Legislature.

Subsequently, legislation establishing the Maine Water Supply Study Commission was incorporated into the supplemental budget and enacted in Public Law 1987, Chapter 816. (Appendix 2). The Commission's charge included, but was not limited to, a study of:

- the adequacy of the water supply for both commercial and noncommercial use relative to the current and projected population;
- impacts on the State from the exportation of water, including relevant transport issues;
- the adequacy of current regulation of the State's water supply relative to the future needs of the residents of the State; and
- a review of the appeals process regarding the restrictions on water transportation under 22 MRSA @2660-A, including whether the appeals process is located within the appropriate state department and whether that process is adequate to fairly address the needs of both the people of the State and those who would seek an exception or appeal.

III. STUDY

An 11 member panel consisting of 2 Senators, 2 Representatives, 3 public members, representatives of the State Planning Office, the Public Utilities Commission, the Department of Human Services, and the State Geologist were appointed to the Commission (Appendix 3). Representative Judith Foss of Yarmouth was selected by the Study Commission members as chair. The Study Commission reviewed their charge and began their work by identifying four areas of focus.

The Study Commission asked staff and the agencies for information on four topics. First, the Study Commission wanted to discover the impacts of the water transportation law. Second, information on a related topic, the exports of water across the State's borders was also investigated. Third, the Commission sought an understanding of the current responsibilities of state agencies, what water resource data existed, how data is being used, and what useful water resource data is not available. Finally, the Study Commission requested information comparing water management in Maine with the approaches used in other states.

A. The Water Transportation Law

The water transportation law (22 MRSA §2660-A) prohibits the transport of more than 10 gallons of water beyond the boundaries of a municipality or neighboring municipality for commercial purposes. Violation of §2660-A is a Class D crime, with punishment for individuals of up to a year's imprisonment and a fine not to exceed $1,000 and for organizations a fine not to exceed $5,000 (17-A MRSA, §§1252, 1301). A temporary exemption for emergency transportation of water is included.

Originally, water utilities were given a specific exemption from the Water Transportation Law, and commercial transporters of water could appeal to the Commmissioner of Human Services for a three year exemption if they met the following conditions:

- Transportation of the water would not constitute a threat to public health, safety or welfare;
- the water is not available naturally in the location to which it would be transported; and
- failure to authorize the transport would create a substantial hardship to the potential recipient of the water.

Exemptions to the water transportation law were broadened during the second regular session (Public Law 1987, Chapters 745, 816) and now include:

- water utilities
- well drilling
- construction
- concrete mixing
- swimming pool filling
- servicing portable toilets
- hospital operations
- aquaculture
- agriculture
- firefighting
- civil emergencies
- water distilled as a manufacturing by-product
- water from sources used exclusively for bottling.

The appeals process remains in place. The amended law is included as Appendix 4.

In response to committee inquiries, the Department of Human Services (DHS) reported that Poland Spring Bottling Co. filed the only formal appeal to section 2660-A prior to their exemption by chapters 745 and 816. Permission was granted to Poland Spring to transport tank trucks of water to a processing plant in New Hampshire. Several other companies and groups of companies requested information about the water transportation law and expressed their concern about the potential impact of the law on their business. None of these companies filed a formal appeal.

Concerns have been raised that the water transportation law may violate the Commerce Clause of the United States Constitution; however, no formal opinions on this question have been issued. The amendment passed during the Second Regular Session appears to exempt the concerned companies. No other adversely affected interests have yet appeared.

B. Exports of Water beyond State Borders

Three Maine communities, Fryeburg, Calais and Lebanon, share water supplies with cross-border communities. These communities, combined, import approximately 365,000 gallons of water daily from New Brunswick and New Hampshire, and export about 10,000 gallons of water per day. There may be other border communities with similar arrangements, but they are not known.

Poland Spring is the major exporter of bottled water from Maine. Their water exports, both bottled and via tank truck to a bottling plant in New Hampshire, are now approaching 80 million gallons per year. Other Maine bottlers sell primarily

within the state; however, the industry appears to be expanding and new markets are being sought. Still other firms bring bottled water into Maine for retail sale.

Ships in Portland and other ports take on fresh water for drinking, cooking and bathing, but the large oil tankers no longer use fresh water for ballast. The Portsmouth Naval Shipyard uses 2-5 million gallons of water daily, but information on whether use is for in-port activities or for shipboard use is not obtainable.

Currently, there are no large pipelines used for transporting water to or from Maine. Information on industrial and food processing uses was not obtained.

C. Agencies and Data

Maine currently splits state water resource responsibilities between 5 agencies and the State Planning Office. Agencies involved are: Department of Human Services; Department of Conservation (Maine Geological Survey and the Land Use Regulatory Commission (LURC)); Department of Environmental Protection (DEP); Department of Agriculture, Food and Rural Resources; and the Public Utilities Commission. The Office of Energy Resources, Department of Transportation, municipalities, various quasi-governmental bodies such as water and sewer districts, the federal government and the University of Maine are also involved in regulatory, operational or research activities which either affect water quantity and quality or provide data about water resources. Regulatory responsibilities of the agencies and the water data they collect are outlined in Appendices 5 and 6. In general, however, the DEP, LURC and the Department of Agriculture regulate activities affecting the quality of water, MGS provides maps and other data, the PUC deals with quantity and cost issues, DHS regulates and tests drinking water quality, and SPO coordinates groundwater protection and assists in municipal planning.

Most agencies involved in water resource issues maintain records which could be useful in making water management decisions. But, most agencies make decisions affecting water management on a case-by-case basis as part of their regulatory function. Since each agency has a different information management system and a different regulatory function, data from the various agencies are often not easily accessed or in compatible formats. The State intends to increase their data coordination by using groundwater data for a pilot project to develop the Geographic Information System (GIS) authorized by the Second Regular Session of the 113th Legislature.

The relatively narrow focus of each agency's responsibility results in a mass of information that contains significant gaps from a planning and management perspective. The new effort at data coordination will not, by itself, fill these gaps in water

resource data. For instance, although sand and gravel aquifers have been mapped and the mapping of bedrock aquifers is proceeding, the State still lacks information describing the quantity of water in our aquifers. In addition, Maine is the only state not participating in the USGS National Water-Use Information Program. Participants in the program design a coordinated approach to developing water resource data. In order to permit Maine to participate in the Water-Use Information Program, this Commission recommends that the Legislature provide funding to the Maine Geological Survey to provide a state coordinator and match program funds available from USGS.

D. Water Management Systems

The system of water management used by a state depends in part on the water law of that state. The status of water law in Maine and other states is discussed in Appendix 7. In short, however, surface water rights in the eastern United States developed out of the riparian system of English common law. The riparian system relies on the reasonable use of water by those who have access rights, gained primarily through the ownership of land. In recent years most eastern states have modified their riparian doctrine by adopting piecemeal legislation to address their more pressing problems. Some states, Connecticut, Massachusetts, New Jersey and Florida are examples, have taken a more comprehensive approach to management of water use.

There are several ways in which water rights can be obtained (see Appendix 7). The rights to use surface water and navigable rivers may be obtained from the State which holds those waters in trust for the people of the State. The rights of reasonable use of smaller bodies of water belong to the riparian owners who may grant those rights to others. The right to use groundwater belongs to the person owning the overlying land who may likewise grant that right to others.

Several management tools are available for use either within a comprehensive program or to address a specific concern. One common approach to water resource management is the adoption of a threshold level of use above which a use permit or registration of use is required. Use permits and registrations provide data needed for planning. Generally, use of more than 50,000 or 100,000 gallons per day triggers the permit or registration requirement. In areas with critical water competition problems New Jersey uses a 10,000 gallon per day limit for registration. Other management tools are use preferences or priorities. The use preference or priority can be applied generally or only during water shortages. Limiting water use to approved activities is an extension of the use preference concept. In states where regional water management groups are based on watersheds, permits for the diversion of water into another watershed may be required. Knowledge of

available supplies and of current and anticipated demands is an important prerequisite to making decisions on water diversion. Mandating the use of water conservation measures, as a matter of course or in emergencies only, is another management tool. Water conservation measures can be targeted at water utilities and large users, but especially during emergencies, some home uses may be prohibited.

In Maine, some water management measures have been enacted to protect the quality of the water. Ground and surface water legislation can be found throughout the environmental protection statutes. The Ground Water Protection Act, (38 MRSA, §§401-404) recognizes the public nature of groundwater. The Site Location of Development Act (38 MRSA §§481 et.seq.), the Underground Oil Storage Facilities law (38 MRSA §§561 et.seq.), and the groudwater classification sections of Title 38 (§§465-C, 470) are designed to protect groundwater.

Maine surface waters are protected by the water quality classification and discharge licensing program, 38 MRSA §464 et seq., the Natural Resources Protection Act (38 MRSA §§480-A et.seq.), the shoreland zoning law (38 MRSA §§435 et.seq.) and the oil discharge law (38 MRSA §543). Lake Watershed Districts are authorized (38 MRSA §2001) to "protect, restore and maintain the water quality of great ponds and to manage and conserve the land and water resources of watersheds of great ponds" within the districts. Although these laws protect water quality, the allocation of water resources in Maine is generally left to the court's interpretation of common law rights.

In addition, The Department of Environmental Protection (DEP) is required to consider the impact of certain activities on water sources when issuing water quality certificates under the federal Clean Water Act and under several other laws. DEP will also review and establish lake water level on petition of interested persons.

Currently, there are several regulatory constraints relating to water use. These include the Safe Drinking Water Act (22 MRSA §2611, et seq.), ensuring the safety of the water if it will be used as a public drinking water supply and public utilities law ensuring the financial adequacy of water utility plans for withdrawal of water.

Because of new federal Safe Drinking Water Act requirements, many water utilities may need to seek a new supply of water in the next few years. They may seek those supplies in rights that were granted by the Legislature many years ago when there were few, if any, competing demands to the water. The Study Commission believes that it is important for the State to be evaluating the impact of potentially large new uses of a source of water on existing and other reasonably foreseeable uses of the same source. Given the importance of the issues, it is important to push foward to facilitate the implementation of a more active and coordinated State role in water resources management.

IV. RECOMMENDATIONS

RECOMMENDATION 1: State government should begin the process of developing a water resource management strategy in order to ensure adequate future supplies of water for domestic, commercial and industrial needs of the citizens of the State.

Water is an essential condition for all life. Adequate supplies of usable water are a prerequesite for health, safety, recreation, preservation of the environment, and many commercial and industrial sectors of the economy.

Policy makers in Maine have, for many years, understood the importance of water to the State and have pursued an active posture for the State in the protection of the quality of our water resources. Several State agencies and lengthy portions of the statutes are devoted to a regulatory scheme which is intended to provide a detailed system of evaluation of land and water uses which would have an adverse impact upon the quality of water in the environment.

Unlike many regions of the United States, Maine has an abundance of water. Both surface and ground sources have generally been more than necessary to meet whatever needs have arisen. As a result, until recently, there has been relatively little attention paid to the relationship between the State's water supply and the ever increasing demands of the public. However, several events in recent years have focused attention on the issue of water quantity. Growth in many areas of the State has placed pressures upon existing sources of supply; several water utilities have sought new sources of water which have been perceived to be in conflict with recreational uses or domestic wells. Commercial activity among water bottlers is increasing rapidly and the availability of water supplies in Maine has come to the attention of prospectors from out-of-state. Water, in Maine, can no longer be taken for granted.

Most states throughout the nation have taken some role in the management of water quantity issues. State roles range from state control and allocation of all water rights in the arid West to data collection and technical assistance. Even in New England, states such as Massachusetts and New Hampshire have long been involved in developing and maintaining some sources of water supply in order to ensure availability. Maine has lagged behind in this effort.

Currently, several state agencies are involved in separate aspects of the water management issue. No one agency has been charged with overall responsibility for water management decisions. Each separate agency concentrates on its role in the structure without an overriding goal or direction for state

efforts. There is no one agency whose primary purpose is to advocate within state government for the pursuit of water management activities. The result of the fragmentation of water management responsibilities has been a system with significant gaps and a growing need for organization and coordination.

As demands for new sources of water increase, there will be increasing conflicts between existing users of water supplies and those who would use the supplies for a different purpose. If the State wishes to preserve and protect its water supplies for desirable purposes and avoid future conflicts over water use, it must begin now to take a more active role in managing the water supply. Water is a renewable resource only in the very long run. Once a source of water is used or its usefulness diminished by inappropriate use, it may take many years of expensive efforts to return it to a usable status.

RECOMMENDATION 2: The Legislature should establish a multi-interest board to recommend the structure for Maine's future water management activities.

This Study Commission and its predecessors have struggled with the decision of what form state water management activities should take. Numerous options have been investigated. The PUC report suggested a combined State and local approach to water management. This Study Commission investigated the possibility of creating a new state water agency or concentrating water management responsibilities within one existing agency. Ultimately, it became apparent that a structure for water management responsibilites could not be recommended without greater understanding of the State's needs and the development of a framework within which to build priorities.

This Study Commission, therefore, recommends that the Legislature enact into law a temporary Water Resource Management Board with full-time staff to perform the detailed work necessary to make recommendations to the Legislature regarding a permanent structure for State water management responsibilities. The Board should be appointed by the Governor and composed of representatives of state agencies with water supply responsibilities (State Planning Office; Public Utilities Commission; Departments of Agriculture, Food and Rural Resources; Conservation; Inland Fisheries and Wildlife; Economic and Community Development; Environmental Protection; Human Services) as well as members of public interest groups with a special interest in water issues (water utilities, municipal governments, commercial users, industrial users, recreational users, hydropower producers, natural resources agencies, general public).

The Study Commission recommends that the representative of the State Planning Office should serve as chair of the new Board. The State Planning Office has broad responsibilities in

all aspects of state government and is in the best position to serve as the coordinator of a group representing the divergent or conflicting interests of the separate state agencies with current water management responsibilities. The office has a significant history of participation in natural resources issues.

The Study Commission further considers it to be vital for the new Board to receive full time staffing for its activities. The issue of water management is complex and far-reaching. If the Board is to complete its charge, it will need to meet frequently. It will probably form subcommittees on aspects of its investigation. It will require substantial research and coordination. This Study Commission emphasizes that this work will not be possible without full time staff devoted solely to the work of the Board. Two studies of this issue have already been performed with part time staff with other responsibilities. Although staffing should be full time, it is not necessary that it be a permanent position. The recommended funding should be adequate to enable the State Planning Office to obtain the services of a person with significant experience in the area of water resources. The person who is recruited should be a person who will be able to analyze and evaluate the current water management system in Maine and be able to advocate effectively for the needs of the Board in obtaining information and cooperation from other governmental and private sources. The Study Commission also anticipates that significant assistance for the work of the Board will be provided from currently existing agencies with water management responsibilities and strongly encourages those agencies to make cooperation with the Board a high priority.

RECOMMENDATION 3: The Water Resource Management Board should analyze current state water management activities and issues of concern and make recommendations to the Legislature by January 1, 1991 regarding the appropriate State role in managing water supplies and the institutional structure necessary for efficient and effective State involvement.

The Board should make a thorough evaluation of current state activities in the field of water management and perform the following functions:

1. Recommend a permanent bureaucratic structure for centralized and coordinated conduct of the State role in water supply management;

2. Recommend the appropriate extent and level of State regulation of water use;

3. Implement a strategy for coordinated collection of water supply and use data and compile that data in a readily accessible and usable form;

4. Develop a strategy for coordination of all State and local agencies involved with water supply management;

5. Recommend a process for adjudication of disputes over the right to use water;

6. Review the methods by which water rights are obtained under existing law and recommend appropriate changes;

7. Recommend priority uses which shall enjoy preferential access to water supplies when supplies are inadequate to meet all demands;

8. Catalog publicly granted water rights by having staff request information from water utilities and others;

9. Recommend a policy regarding water diversion which addresses the implications of diversion from the State, and from regions and subbasins within the State;

10. Recommend ways to improve and encourage conservation of water resources; and

11. Develop technical assistance programs for municipalities, communities or individuals adversely affected by water use decisions.

RECOMMENDATION 4: In order to begin identifying the role of state agencies in water resource issues, the Water Resource Management Board should request that copies of all applications for licenses or permits having an impact on water resources filed with other agencies of state government be sent to the Board.

The Study Commission believes that the new board should accumulate information about other state agency roles relating to water resource management. The best way to begin that process is require the board to identify current agency activity in approving licenses or permits that have an impact upon water resources and to require the board to request copies of applications for those licenses or permits. This action will provide the board with information that is necessary for it to understand fully the pressures on Maine's water resources as well as the level and scope of review provided by current law.

The Study Commission considered proposals for more immediate oversight of certain water uses. In the past year, the Legislature has included a provision in the charters of new water districts requiring a review by the Public Utilities Commission of the impact of new withdrawals of water on existing uses and anticipated demands on the proposed source of water. The Study Commission is concerned about the impact existing water utilities may have if they develop a new source

of water supply. Many of these utilities have water rights granted by the Legislature before development of competing residential or recreational uses of the water source took place. The Study Commission recognizes that the exercise of utility water rights when competing uses will be affected may be controversial in some instances. The Study Commission considered addressing this concern by requiring a formal PUC review of all competing uses before a utility is permitted to use a new source of water supply. This approach was rejected as beyond the scope of current PUC jurisdiction and staff resources. A formal review by the Water Resource Management Board was also rejected because of the Board's temporary nature and the extent of the work it faces.

The Commission also considered a proposal to require water utilities seeking Department of Human Services approval for new construction or alterations involving a water source for a public water system to notify the new board with a subsequent 60 day moratorium on construction activity to permit the board to whatever action might be appropriate. The proposal was considered to be too narrow in scope, and a 60 day waiting period seemed unnecessary.

The Study Commission believes that an informal review by the Water Resource Management Board to provide monitoring of the requests for new impacts and uses is important. The Study Commission anticipates that if a large number of new water sources are proposed for development with controversial results, the Board will develop and submit a recommendation for review by the Legislature.

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APPENDIX 1

FIRST REGULAR SESSION

ONE HUNDRED AND FOURTEENTH LEGISLATURE

Legislative Document No.

STATE OF MAINE

NINETEEN HUNDRED AND EIGHTY NINE

AN ACT to Establish a Temporary Water Management Resources Board

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA Part 15-B is enacted to read:

PART 15-B

WATER RESOURCES MANAGEMENT BOARD

CHAPTER 355

WATER RESOURCES MANAGEMENT BOARD

§6301. Board created; duties.

There is established in section 12004-G the Water Resource Management Board. The Board is a temporary, 2 year, commission created to examine, and make recommendations to the Legislature regarding the appropriate State role in managing water supplies and the institutional structures necessary for efficient and effective State involvement. The Board shall have the following duties:

1. Permanent structure. Recommend a permanent bureaucratic structure for centralized and coordinated conduct of the State role in water supply management;

2. Extent of regulation. Recommend the appropriate extent and level of State regulation of water use;

3. Data. Implement a strategy for coordinated collection of water supply and use data and compile that data in a readily accessible and usable form;

4. Strategy for coordination. Develop a strategy for coordination of all State and local agencies involved with water supply management;

5. Dispute resolution process. Recommend a process for adjudication of disputes over the right to use water;

6. Review of water rights. Review the methods by which water rights are obtained under existing law and recommend appropriate changes;

7. Recommend priorities. Recommend priority uses which shall enjoy preferential access to water supplies when supplies are inadequate to meet all demands;

8. Catalog publically granted water rights. Catalog publicly granted water rights by having staff request information from water utilities and others;

9. Water diversion policy. Recommend a policy regarding water diversion which addresses the implications of diversion from the State, and regions and subbasins within the State;

10. Conservation. Recommend ways to improve and encourage conservation of water resources; and

11. Technical assistance. Develop technical assistance programs for municipalities, communities or individuals adversely affected by water use decisions.

§6302. Board membership; chair

The board shall have the following 16 members: the Director of the State Planning Office or the Director's designee; the Chair of the Public Utilities Commission or the Chair's designee; the Commissioner of the Department of Environmental Protection or the Commissioner's designee; the Commissioner of the Department of Human Services or the Commissioner's designee; the Commissioner of the Department of Conservation or the Commissioner's designee; the Commissioner of the Department of Economic and Community Development or the Commissioner's designee; the Commissioner of the Department of Agriculture, Food and Rural Resources or the Commissioner's designee; the Commissioner of the Department of Inland Fisheries and Wildlife or the Commissioner's designee; a representative, appointed by

the Governor, of a water utility regulated by the Public Utilities Commission; a representative, appointed by the Governor, of a municipal government; a representative, appointed by the Governor, of a commercial user of water; a representative, appointed by the Governor, of an industrial user of water; a representative, appointed by the Governor, of recreational users; a representative, appointed by the Governor, of a hydropower producer; a representative, appointed by the Governor, of a natural resources advocacy organization; and a member of the public appointed by the Governor. The chair of the Board shall be the Board's State Planning Office representative, the Director of the State Planning Office or the Director's designee. Appointments shall be made within 30 days of the effective date of this Part.

§6303. Board compensation.

The board's members shall be compensated as provided in chapter 379.

§6304. Meetings; staff.

1. Meetings. The Board chair shall convene the first meeting of the Board no later than 30 days after the effective date of this Part. The Board shall meet at least once each month and as often as necessary to carry out its responsibilities.

2. Staff. A person knowledgeable about the technical, economic and environmental aspects of water resource management, under a two year contract with the State Planning Office, shall provide full time staff assistance to the Board. All state agencies shall provide information and support requested by the Board to the extent practicable.

§6305. Report; reporting deadline.

The Board shall submit a report summarizing its findings and recommendations, including any suggested legislation, to the Legislature by January 1, 1991.

§6306. Repeal

This Part is repealed October 1, 1991.

Sec. 2. 5 MRSA §12004-G, sub-§29-A is enacted to read:

Natural Resources	Water Resources Management Board	Expenses Only	5 MRSA §6301

Sec. 3. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1989-90	1990-91
EXECUTIVE DEPARTMENT		
STATE PLANNING OFFICE		
Water Resource Management Board		
Positions	(1)	(1)
Personal Services	$25,719	$37,770
All Other	23,800	28,100
Capital Expenditure	2,952	
Total	$52,471	$65,870

Provides funds for a Policy Development Specialist to staff Water Resource Management Board. This position is authorized until September 30, 1991. Also provides funds for the expenses of public Board members and staff, 3 public hearings, advertising, printing costs and the purchase of a computer. These funds shall not lapse but shall carry forward until September 30, 1991.

CONSERVATION, DEPARTMENT OF

Maine Geological Survey

Positions	(1)	(1)
Personal Services	$ 21,482	$ 31,236
All Other	77,625	18,500
Capital Expenditure	750	
Total	$ 99,857	$ 49,736
TOTAL	$152,328	$115,606

Provides funds for a Geologist position to serve as State coordinator for the National Water-Use Information Program, $60,000 in FY 90 to contract for a watershed boundary mapping project, $25,000 in each year for matching funds with the United States Geological Survey, and anticipated general operating expenses.

STATEMENT OF FACT

This bill addresses the State's role in the management of public water supplies. The bill embodies the recommendations of the Water Supply Study Commission, established by Public Law 1987, c. 816. That Commission was created as part of the Legislature's response to mounting interest in and concern over the possibility of commercial export of Maine's relatively pristine water resources and conflicts in some locales between municipalities and water utilities over use of water resources. It addressed a broad range of water resource issues and the need for a greater State role in the management of water resources.

The bill creates a temporary, 2-year, Water Resource Management Board. The Board's duties call for examination of a number of critical issues identified by the Water Supply Study Commission.

The 16 member Board will be comprised of representatives of 8 State agencies with current duties regarding water supplies and representatives of 8 water user groups. The chair of the Board will be the Director of the State Planning Office or the Director's designee. Members will be compensated only for expenses incurred in carrying out the Board's responsibilities.

The Board is required to meet at least once each month. The Board will have the assistance of a full time staff person retained under a two year contract with the State Planning Office. All state agencies are directed to provide the Board with information as needed. The Board is required to report to the Legislature by January 1, 1991.

The bill appropriates funds necessary for staffing and for the conduct of the Board's responsibilities. A position in the Maine Geological Survey is established to manage and coordinate the collection of water usage data and to participate in the National Water-Use Information Program. This program is anticipated to receive approximately $25,000 in matching federal funds. Funding is also provided for the Watershed Boundary Mapping Project. Maine Geological Survey will contract for the development of a standard system to delineate and map watersheds.

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APPENDIX 2

Sec. 31. Maine Water Supply Study Commission. The Maine Water Supply Study Commission is established in this section.

1. Commission members. The commission shall be comprised of the following 11 members: Two Senators to be appointed by the President of the Senate; 2 members of the House of Representatives to be appointed by the Speaker of the House; 3 members to be appointed by the Governor, at least one of whom must be a member of the general public; one member representing the State Planning Office; one member representing the Public Utilities Commission; one member representing the Department of Human Services; and the State Geologist. All appointments shall be made within 30 days of the effective date of this section and shall be reported to the Executive Director of the Legislative Council.

The commission shall select a chairman from among its members. The members of the commission who are Legislators shall receive the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2, for days of attendance at commission meetings. All members of the commission shall receive reimbursement for expenses upon application to the Legislative Council.

2. Study. The commission shall undertake a study of the water supply of the State, including, but not limited to:

A. The adequacy of the water supply for both commercial and noncommercial use relative to the current and projected population;

B. The impact on the exportation of water from the State, including relevant transport issues;

C. The adequacy of current regulation of the State's water supply relative to the future needs of the residents of the State; and

D. A review of the appeals process regarding the restrictions on water transportation under the Maine Revised Statutes, Title 22, section 2660-A, including whether the appeals process is located within the appropriate state department and whether that process is adequate to fairly address the needs of both the people of the State and those who would seek an exception or appeal.

3. Staff. The commission shall request any necessary staff from the Legislative Council.

4. Report. The commission shall submit a report, together with any necessary implementing legislation, to the First Regular Session of the 114th Legislature by February 1, 1989.

APPENDIX 3

MAINE WATER SUPPLY STUDY COMMISSION MEMBERS

Representative Judith C. Foss	Commission Chair, District 40 Yarmouth
Senator Michael D. Pearson	District 6, Penobscot County
Senator Ronald E. Usher	District 28, Cumberland County
Representative Carol M. Allen	District 84, Washington
Walter Anderson	Maine Geological Survey
James Bernard	State Planning Office
Charles Rossoll	Department of Human Services
Chris Simpson	Public Utilities Commission
James E. Michaud	Grand Isle, Water Engineering Consultant
Hugh M. Morrison	Bangor Water District
Joseph B. Taylor	Portland Water District

APPENDIX 4

SUBCHAPTER VI

TRANSPORT OF WATER

Section
2660. Legislative findings.
2660–A. Restrictions on transport of water.

Subchapter VI, Transport of Water, was enacted by Laws 1987, c. 531, § 1.

§ 2660. Legislative findings

The Legislature finds that the transport of water for commercial purposes in large quantities away from its natural location constitutes a substantial threat to the health, safety and welfare of persons who live in the vicinity of the water and rely on it for daily needs. If the transportation occurs, persons who relied on the presence of water when establishing residences or commercial establishments may find themselves with inadequate water supplies. In addition, the Legislature finds that the only practicable way in which to prevent the depletion of the water resources is to prohibit the transport of water in large quantities away from the vicinity of its natural location. The purpose of this prohibition is, however, not to prevent the use of such supplies for drinking and other public purposes in the vicinity of the natural location of the water.

1987, c. 531, § 1.

§ 2660–A. Restrictions on transport of water

1. Prohibition. Except as otherwise provided in this section, no person may transport water for commercial purposes by pipeline or other conduit or by tank truck 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.

2. Exceptions. The prohibition in this section does not apply to:

A. Any water utility as defined in Title 35–A;

B. Water transported for use in well drilling, construction activities, concrete mixing, swimming pool filling, servicing portable toilets, firefighting, hospital operations, aquaculture, agricultural applications or civil emergencies;

C. Water distilled as a by-product of a manufacturing process; and

D. Water transported from a water source that, before July 1, 1987, was used to supply water for bottling and sale, and which is used exclusively for bottling and is sold in its pure form or as a carbonated or flavored beverage product.

3. Appeal. The Commissioner of Human Services, after consultation with the Public Utilities Commission, the State Geologist and the State Planning Office, may authorize transport of water for commercial purposes if the commissioner finds that: Transport of the water will not constitute a threat to public health, safety or welfare; that the water is not available naturally in the location to which it will be transported; and that failure to authorize transport of the water would create a substantial hardship to the potential recipient of the water. Any authorization under this subsection shall be for a period not to exceed 3 years, but may be renewed subject to the same criteria.

3–A. Conditions of authorization. Notwithstanding Title 1, section 302, the exceptions authorized in subsection 2 and any authorization granted under subsection 3 shall be subject to future legislative limitations of the right to transport water.

4. Emergencies. In case of an emergency, any person may transport water as necessary for the duration of the emergency, but the person transporting the water must inform the commissioner within 3 days and the commissioner may determine when the emergency is over.

5. Penalty. Any person who transports water in violation of this section is guilty of illegal transport of water. Illegal transport of water is a Class D crime. Each shipment or day of transport, if by pipeline, is a separate offense.

1987, c. 531, § 1; 1987, c. 745, §§ 1, 2; 1987, c. 816, §§ KK, 20, 21, eff. April 28, 1988.

1987 Legislation

Laws 1987, cc. 745 and 816, repealed and replaced subsec. 2 with identical text, which prior thereto read:

"The prohibition in this section does not apply to any water utility as defined under Title 35–A."

and added identical texts of subsec. 3–A.

APPENDIX 5

MARTHA E. FREEMAN, DIRECTOR
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LARS H. RYDELL
JOHN R. SELSER
HAVEN WHITESIDE
CAROLYN J. CHICK, RES. ASST.
ROBERT W. DUNN, RES. ASST.
HARTLEY PALLESCHI, JR., RES. ASST.

STATE OF MAINE
OFFICE OF POLICY AND LEGAL ANALYSIS
ROOM 101/107/135
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TEL: (207) 289-1670

September 1, 1988

TO: Members, Water Supply Study Commission

FROM: Julie S. Jones, Legislative Analyst

RE: Agency responsibilities

STATE GOVERMENT RESPONSIBILITIES
WATER SUPPLY

Department of Human Services

1. Transportation permitting
2. Analysis of private water supplies
3. Administration of Safe Drinking Water Act
   - A. Public water systems construction and operation
   - B. Drinking water regulations (including private water bottlers) -- safety
4. Regulation of water treatment plants

Department of Conservation

1. Maine Geological Survey
   - A. Well water information collection
   - B. Aquifer mapping
   - C. Collection and interpretation of hydrological information
2. Land Use Regulation Commission
   - A. Regulation of land uses affecting water in the unorganized territory

Department of Environmental Protection

1. Classification of surface waters
2. Pollution control, overboard discharge licensing
3. Regulation of land uses affecting quality of water

Department of Agriculture, Food and Rural Resources

1. Regulation of pesticide use

Public Utilities Commission

1. Rate regulation of water utilities
2. Some prior approval of water source usage

State Planning Office

1. State groundwater protection coordinator
2. Protection planning assistance to communities
3. Coastal zone water supply and demand maps

OTHER ENTITIES WITH WATER RESPONSIBILITES:

Municipalities	regulation of local development affecting water sources
Quasi-governmental units	Water districts, watershed districts, sewer and sanitary districts -- collection of data, operation of systems affecting water sources
Federal government	Water quality mandates, collection of data assistance to states
University of Maine	Research, Land and Water Resource Council projects

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APPENDIX 6

HELEN T. GINDER, DIRECTOR
HAVEN WHITESIDE, DEP. DIRECTOR
GILBERT W. BREWER
DAVID C. ELLIOTT
GRO FLATEBO
MARTHA E. FREEMAN, SR. ATTY.
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ROBERT W. DUNN, RES. ASST.
HARTLEY PALLESCHI, JR. RES. ASST.

September 6, 1988

To: Members, Water Supply Commission

From: Hartley Palleschi

Re: The collection of water data in Maine

Water data are collected by different agencies of government, the University and public utilities. Data compatibility and usefulness are complicated by differences in the needs of the collectors and because much of the available data are collected in response to a specific situation (eg. a license request) and without consideration of obvious geographic relationships.

This memo attempts to describe the types of data being collected. Agencies and their programs are categorized as collecting data on water quality, water location, or water quantity. The programs are further divided into those programs designed to collect water data on a regular periodic basis and programs where the collection of water data is a secondary or sporadically occurring part of program operation. When information collected by an agency's program falls into more than one category it is included in each appropriate category.

MAINE WATER DATA COLLECTION

QUALITY

Periodic collection/reporting

Department of Environmental Protection has lists of direct dischargers into surface waters; industrial, municipal waste treatment and residential overboard discharge. Water quality data on discharges exceeding 2,000 gallons per day is collected monthly.

Department of Human Services has water quality test data for all utilities. Testing includes radiological, bacteriological, organic and inorganic parameters.

Sporadic/Secondary collection

Department of Human Services keeps a microfilm record of private user water tests requested at the Public Health Lab.

Maine Geological Survey has data from 3 year study of pesticides in groundwater.

USGS has water chemistry information on surface and ground waters at selected sites.

DEP, LURC, the Board of Pesticides Control and the Department of Transportation collect various types of site specific information.

Land and Water Resources Center collects data on specific projects it undertakes. Recent examples include water chemistry in "pothole" ponds and the effects of forest fires on the flushing of heavy metals into water systems.

LOCATION

Periodic collection/reporting

Maine Geological Survey sand and gravel aquifer maps are available for all but northwestern Maine and a portion of Washington County.

Maine Geological Survey has significant sand and gravel aquifer maps for southern and eastern Maine. These maps show location, depth to water and bedrock and describe water quality and aquifer characteristics.

Maine Geological Survey receives well driller reports, but MGS tests of their accuracy with respect to location shows they are not very useful.

Maine Geological Survey has Ground Water Resource Maps showing yields and depths of bedrock wells in certain counties. The maps are based on information collected in the early 1970s.

QUANTITY

Measures of Supply

Periodic collection/reporting

USGS has well inventory information (static water level, well depth and yield, water chemistry, and geology) for populated areas of the state.

USGS has surface water discharge data from gauging stations throughout the state.

Office of Energy Resources has information on hydro-power activity in the state.

Sporadic/Secondary collection

Maine Geological Survey receives well driller reports which include depth to water and yields.

Measures of Demand

Periodic collection/reporting

Department of Environmental Protection has a master list of operating wastewater treatment facilities that includes the type of discharge and the approximate annual discharge based on the system design.

Public Utilities Commission receives annual reports from Maine water utilities that include water sources; gallons of water produced, purchased and pumped; and system water losses.

Department of Human Services receives annual summary reports from water utilities that include average daily flows, number of services, chemical treatment and storage facilities.

USGS collects surface and ground water data at selected sites and prepares estimates for the National Water Summary.

Sporadic/Secondary collection

Maine Geological Survey has a listing of water bottlers in Maine and approximate quantities they use.

Maine Potato Council has information on the amount of water used in irrigation and processing by the potato industry.

DEP, LURC, and the Department of Transportation collect site specific information.

Report: Maine Coastal Area Water Supply & Demand. 1978 report on municipal and domestic water supplies in coastal Maine towns.

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APPENDIX 7

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September 1, 1988

TO: The Water Supply Study Commission

FROM: Julie S. Jones, Legislative Analyst

RE: A brief analysis of water law

WATER LAW

I. Introduction

Water law establishes the system of determining who has the right to remove the water from its natural surroundings. Although water rights are occasionally spoken of in terms of "ownership," it seems most appropriate to think of water rights as a right of use when the water has not yet been withdrawn from its natural setting. Many people may have rights to use or withdraw water from a stream, pond or underground source, but they can't be said to really own the water until it has actually been withdrawn.

The law relating to water rights has developed differently in almost all of the fifty states. This can largely be attributed to different levels of supply, varying uses and different legal traditions that have had an impact on state law. While it must be understood that variations do exist, the following generalizations can be made:

TRADITIONAL COMMON LAW

I. Surface water.

State common law water rights systems with regard to surface water fall into one of two general categories: riparian systems and appropriation systems.

A. Riparian systems. Under riparian systems, rights to use water are shared, more or less equally, by all riparian landowners (those who own land on the bank of the water). Riparian water rights systems are derived

from English common law. They are generally found in areas where water is abundant and conflicting uses infrequent. Two branches of riparian common law exist in the United States.

1. English rule. The English rule is the one followed in Maine with some minor variations. Under the older, English rule, water rights are established according to the following priorities:

   a. All riparian land owners are entitled to unlimited withdrawal for domestic use.

   b. For non-domestic uses of water on the riparian land, riparian landowners have equal rights to a fair share. Conflicts are generally resolved by balancing the benefits of competing uses.

   c. The riparian landowner may not use the water for purposes not related to the riparian land, and there is no ability to transfer the riparian owner's rights to another person.

2. American rule. This version of common law is followed by most of the other eastern states.

   a. Each riparian landowner is entitled to reasonable use of the water for beneficial purposes.

   b. Use of water on non-riparian land may be permitted.

B. Appropriation systems. Appropriation systems developed in the western United States in areas where water was not widely available. Under an appropriation system, priorities of use are established according to earliest use. The first appropriation of water has a prior right. In times of scarce supply, later appropriations will be the first deprived regardless of the comparative benefits of the uses. The doctrine may be modified to deprive prior appropriation rights if they have ceased the use or if a portion of their use is attributable to waste.

II. Ground water.

Ground water in the form of underground streams, uncommon in Maine, is generally treated in the same manner as surface water. Percolating ground water is subject to different rules.

A. English common law. Under traditional English law, an owner of land is entitled to remove as much water as he wants from his land, even if he deprives other landowners of needed water.

B. American variations. Many states have varied the English rule by requiring that the withdrawer's use be reasonable or beneficial. Withdrawals for use off the overlying land may or may not be permitted.

STATUTORY VARIATIONS

I. Management systems.

A. Permitting systems. Modern understanding of the nature of water resources combined with increasing conflict over water uses has resulted in a trend toward statutory systems of water management and adjudication of water rights. The early emergence of permitting systems began in the west and the plains states. Typical permitting systems require a water user to identify the source and amount of water to be withdrawn and the purpose of the withdrawal as well as certain characteristics of the water source from which it is obtained. Statutory permitting systems frequently give preference to certain uses such as domestic uses, public water supply and irrigation.

B. Adjudicatory systems. Many state water management systems include an administrative agency which adjudicates conflicts relating to the use of water. These agencies make determinations of priority of appropriations or the reasonableness or benefit of particular uses in the course of resolving disputes over conflicting rights.

C. Constitutional requirements. Because water rights are property rights which may generally not be taken away by the state without compensation, any statutory permitting system must provide for the protection of existing property rights. In appropriation states this was accomplished by registering prior appropriations which are accorded priority when water is scarce. In riparian states, protection also needs to be given to persons with uses existing prior to enactment of the system.

D. Other regulation. Some states have enacted laws governing permissible or preferred uses of water without providing for a full scale permitting or adjudicatory process. Such statutes must be carefully drafted to avoid interference with existing property rights.

SUMMARY OF MAINE LAW

I. Common law

A. Surface water.

1. Great ponds and tidal rivers. In great ponds and tidal rivers the water is held by the State in trust for the public. Abutting landowners are subject to those public rights. The State may grant permission to use the water from these sources and frequently does, especially as public water supplies.

2. Other surface water sources. Maine follows the English rule that riparian landowners possess shared rights subject to reasonable use of water in non-tidal rivers and ponds of less than 10 acres.

B. Groundwater. A landowner may withdraw percolating groundwater from his land even if it interferes with or deprives another landowner of his supply as long as the withdrawal is not malicious or deliberate. (This standard has been modified recently by statute to protect beneficial domestic uses. See below.)

II. Statutory modifications.

A. Domestic uses. 38 MRSA §404 creates a preference for pre-existing beneficial domestic uses of groundwater whether from private wells or through public supply systems. A person who withdraws groundwater and interferes with such a use may be required to pay damages to the person harmed.

B. Transportation. 22 MRSA §2660-A prohibits the transportation of water beyond the municipality where it is naturally located in containers larger than 10 gallons. There are several exemptions and a special permit may be granted if the transport does not threaten public health, safety and welfare, water is not available at the proposed destination and the

failure to permit transportation would create a substantial hardship for the recipient. (The United States Supreme Court has ruled that water is an article of commerce and subject to the Commerce Clause provisions of the United States Constitution. State law prohibiting interstate transfer of water is of questionable validity; however, Commerce Clause analysis is complicated and may permit State restrictions under some circumstances. A determination on any particular restriction would require detailed research and analysis.)

C. Water quality. Numerous provisions of law and regulation govern the protection of water quality.

SOURCES

C.J. Meyers and A.D. Tarlock, Water Resource Management (1980, 1983 Suppl.).

Maine Public Utilities Commission, Water Supply and Allocation Study (1988).

R.L. Trafton, Allocation of Groundwater Rights in Maine (for Prof. Orlando Delogu, University of Maine Law School, unpublished available Maine Law and Reference Library, May 9, 1977).

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