

**DOMESTIC POLICY SUBCOMMITTEE  
OVERSIGHT AND GOVERNMENT REFORM COMMITTEE  
WEDNESDAY, DECEMBER 12, 1007  
2154 Rayburn HOB  
2:00 P.M.**

CHAIRMAN KUCINICH, MEMBERS OF THE COMMITTEE, Thank you very much for inviting me to testify today on this important topic. My name is James Wilfong and I am from a little town in the western mountains of Maine called Stow. Stow is located in a very freshwater rich area backed up against the state of New Hampshire and the White Mountain National Forest.

In 2003, several citizens of this region, including myself, were concerned about the large-scale extraction that was taking place in the Fryeburg, Maine section of the Saco River Sand and Gravel Aquifer, an aquifer that extends from Bartlett, NH to Hiram Me. The recipient of this extracted water is the largest bottled water company in the world, Nestle. We knew they were not here for a little water they were here for a lot of water. This pumping averages 500,000 gallons a day. We had several immediate questions and concerns:

1. Who owns the water?
2. Who will control the usage of the water?
3. How will the water be allocated if it becomes limited?
4. Is damage being done to the aquifer or the surrounding environment?
5. Do the citizens of Maine have a financial interest in this resource?
6. Which regulatory agency is responsible to sort out these many questions? Is it a local, state or federal responsibility?
7. Since water is considered a tradable good or a commodity, is trade treaty law involved? How will that affect our local, state and federal laws in this environmental area?
8. Is our state ready for this business?

I am sure that we had a few more thoughts, but this was a start. The answers to these questions in Maine are not encouraging. We are ruled by the common law of absolute dominion. Essentially, this law means, if the water runs under your property you can pump it. In Texas, they call it the law of the biggest pump. Under this doctrine, the landowners over groundwater claim ownership. This may seem strange, as groundwater and surface water are part of one hydrological system and in Maine, surface water is in the public trust and groundwater is not.

So, who will allocate the usage? It is not clear. It is still to be decided. Is the environment and aquifer being damage? In some cases, studies have been done but expertise for review and long-term evaluation is not sufficient and the public isn't sure the resource is being protected.

What can citizens do to protect their interests? In Maine, we wanted to pass a comprehensive law. We looked at four legislative concepts: we wanted to extend Maine's environmental law to large-scale extraction. We wanted a fair, open and transparent citizen's process. We wanted to establish reasonable use standards; we wanted to place groundwater under the public trust doctrine and we wanted some recognition of the public investment in clean water. We suggested a severance tax on major extraction.

H2O for ME and its supporters and the bottlers and their stakeholders launched into a statewide debate and tried to add to the national debate on groundwater issues. After nearly four years of debate and discussion we decided it was necessary to protect the resource and the environment as a first step. We found legislators who agreed. We also found a willingness among the bottlers and other stakeholders to be constructive and we negotiated a position. In June, the Maine Legislature passed a law that does the following: 1. It places all large volume wells under the Natural Resource Protection Act [NRPA]. 2. It provides for an open and transparent citizen process. 3. It only grandfathers 2 wells all others are covered. 4. It requires perpetual monitoring of all high volume wells. 5. It requires the applicant to pay for expert consultants to review, evaluate and make recommendations to the state. 6. It establishes a freshwater resource committee within the State Planning Office to investigate all freshwater uses within watersheds. 7. It places responsibility for groundwater in two departments.

That is essentially what it does. It does not establish a public trust for groundwater. It does erode absolute dominion. The law will only be effective if citizens are diligent about the enforcement of its intent. They must shoulder this responsibility.

What could the Congress do to help the situation?

1. It should provide financial resources and technical assistance to local and state regulators involving environmental studies
2. It could establish Federal minimum environmental standards for major extraction wells
3. It should review trade rules concerning water being designated as a tradable good and ensure access and control of clean fresh water for the long-term best interests of US citizens.
4. It could extend standing to US citizens [using the clean water act as a model]
5. It could place all freshwater in the public trust
6. It could hold a national conference on freshwater issues

The Maine law is a start. Each state must review its situation and adjust its water statutes to meet the new realities of the freshwater demands of the bottled water industry. For those states with weak and outdated groundwater law, the new Maine law could be a 1<sup>st</sup> step model. I wished that more than 30 years ago, when I was a young legislator, who was working on clean water law that I could have seen the future. We could have fixed our groundwater law right then. Water was bestowed upon us by the same power that granted us our freedom. Water is life. When it comes to potable water law we can't afford to get it wrong.

