

# **Why should I be worried about the large scale groundwater extraction ordinance being put forth by the Board of Selectmen?**

**The large scale groundwater extraction ordinance will bring many jobs to the Town of Wells.**

**FALSE.** Some initial jobs will be required to clear land, install wells, and run pipelines. But, once that's completed, there will be very few shift-work employees necessary to maintain a pumping station. And, such jobs will not necessarily be filled by residents of the Town of Wells.

**The large scale groundwater extraction ordinance will definitely bring significant revenue to the Town of Wells.**

**FALSE.** The landowner of an extraction site will pay property taxes to the Town, just as any landowner would; but, unless the Town is party to a contract involving extraction from Town-owned land, the Town will not share in any revenue derived from the groundwater extraction.

**The large scale groundwater extraction ordinance won't affect me; because, I get my water from the Kennebunk, Kennebunkport, Wells (KKW) water district.**

**FALSE.** There is no state law that gives the water district any more rights to groundwater than any other landowner. If a large scale groundwater extraction is begun on land owned by a corporation, that corporation will have just as much legal right as the water district to any water it can pump from underneath its property. If the KKW water district's wells and surface water sources of supply are downstream from the large scale extractor, the water district will be at a disadvantage and might well experience more severe seasonal water supply shortages than it has in recent past years when the KKW water district was forced to purchase water from the Biddeford and York water districts.

**The large scale groundwater extraction ordinance won't affect me because I have my own well and my property is miles away from the Branch Brook aquifer and watershed.**

**FALSE.** There are several other significant groundwater sources in the Town of Wells that might become the target of large scale extractors. For example, there's a significant groundwater source that runs under Route 9, southwest from the junction of Route 9 and Route 109, all the way to Parsonage Corner. Large scale extraction from that aquifer could potentially adversely affect every business and residence along that Route 9 corridor.

**The large scale groundwater extraction ordinance will enable the Town to pick and choose who will be allowed large scale groundwater extraction permits.**

**FALSE.** The Town will have to grant a permit to any applicant that meets the application requirements of the ordinance.

**The large scale groundwater extraction ordinance provides compensatory damage protection for the water supplies of all property owners and businesses within the Town.**

**FALSE.** Maine is one of a very few states that still adheres to the English common law absolute dominion rule premise that groundwater (water beneath the ground) is the absolute property of the owner of the land above it. The only relevant statutory exception that Maine has made to this rule is

the Title 38 M.R.S.A. §404. Ground water rights statute that provides basic compensatory damage protection for the preexisting water supply of domestic household users, but not for commercial users, nor for any property owner who constructs a well or connects to the water district after an extraction operation has begun.

**Do you mean to tell me that even if I or the KKW water district can prove that a groundwater extraction operation has adversely affected the water supply of my commercial business, the Maine courts will not award me compensatory damages?**

**CORRECT.** If you find this somewhat disturbing, please read, or have your attorney read, Maddocks v. Giles, 1999 ME 63, available online at [http://www.courts.state.me.us/court\\_info/opinions/documents/99me63ma.htm](http://www.courts.state.me.us/court_info/opinions/documents/99me63ma.htm) , where the Maine Supreme Judicial Court affirmed the absolute dominion rule regarding groundwater. Particularly note that Footnote {6} explains that 38 M.R.S.A. §404 was inapplicable to the plaintiffs; because, they were not domestic household users.

**The large scale groundwater extraction ordinance provides adequate compensatory damage protection for my single-family domicile's water supply.**

**FALSE.** It is the State of Maine statute, 38 M.R.S.A. §404, that provides compensatory damage protection for the water supply of domestic household users, but only for those households receiving water from a well, or from the water district, prior to the start of the extraction operation. The Town's proposed ordinance adds no additional protection. Furthermore, if a single-family domicile's preexisting water supply is adversely affected by a large scale extraction operation, the domicile owner will have to initiate legal proceedings, hire an expert hydrogeologist to try to prove the extractor is at fault, and be prepared to cover the \$20,000 or more expense of the suit possibly going all the way to the Maine Supreme Judicial Court.

**So, if I drill a new well or connect my single-family domicile to the water district after an extraction operation has begun; and, my water supply is later adversely affected by that extraction operation, the Maine courts will not award me compensatory damages?**

**CORRECT.** 38 M.R.S.A. §404 limits the possibility of compensatory damage awards to single-family domestic water supplies that existed prior to the commencement of an extraction operation.

**But, the language added recently to the Ordinance by the Board of Selectmen will protect pre-existing commercial wells, won't it?**

**FALSE.** The Town's attorney advised the Board against adding such language because it conflicts with the absolute property rights basis of the absolute dominion rule. Any additional protection language would likely be ruled by the Maine courts to be illegal.

**Then, why is the Board of Selectmen pushing so hard for a large scale groundwater extraction addition to the Chapter 145 Land Use ordinance, given that such a regulatory ordinance is not in the best interest of businesses and of many residential property owners within the Town?**

**GOOD QUESTION** and one that every business owner and every residential property owner should ask the Board of Selectmen.