

What role should your community have in regulating large groundwater withdrawals?

A public discussion with the NH Legislature's Groundwater Commission

NHGroundwater.com

Who Has a Right to Our Water?

Water is a shared resource.

Land owners have a right to **reasonably use** water on/adjacent to or underneath the land.

Land owners do not own the groundwater beneath their land.

Water use by a given land owner is constrained by **common law** and **statutory law** which protect the public's interests in water resources and other water users.

Common Law Exist Side by Side with Statutory Law (not administered jointly)

Common Law

- Public Trust
- Police Powers
- “Parens Patriae”
- Reasonable Use Standard

Enforced/adjudicated
in court

Statutory Law

- Laws established by the Legislature
- Regulations developed by state agencies

Enforced by regulatory
agencies as enabled by
law

Parallel Processes

Note the bright line

1) Common law and doctrines (Public Trust, Reasonable Use Standards, Police Powers, “parens patriae”)

- Not an overall regulatory scheme/cannot be changed by new statutory laws
- Overall goal of ensuring justice occurs in a particular case
- Justices make written decisions based on facts presented in each case
- Many of the decisions and doctrines originated in England and were passed onto the legal system in the states
- Lawyers then extrapolate principles from historic court decisions to argue current court cases
- Common law is flexible and evolves over time
- People or the State enforce their rights by taking a court action against another party
- NH Dept. of Justice (not regulatory agencies) would represent NH in protecting NH rights

Common Law - Public Trust

- Is a Term of Art
- Certain waters are held in trust by the state for the benefit of the public
- The public is a trustee & the State owns the water
- Underlying rationale – certain things including public waters cannot be privately owned
- Originated in Roman times and then England – originally applied only to navigation and tidal waters.
- Applicability has broadened over the 19th and 20th centuries.

Common Law - Reasonable Use Standard

- Governs rights between private land owners
- Applies to riparian rights (right to use shorelines) and groundwater use
- Some basic principles include
 - “leave some for your neighbor”
 - “don’t unreasonably affect your neighbor or the public”

Common Law – Police Power

Governs the state's right to regulate behaviors and enforce order within its territory, often framed in terms of public welfare, security, morality, and safety

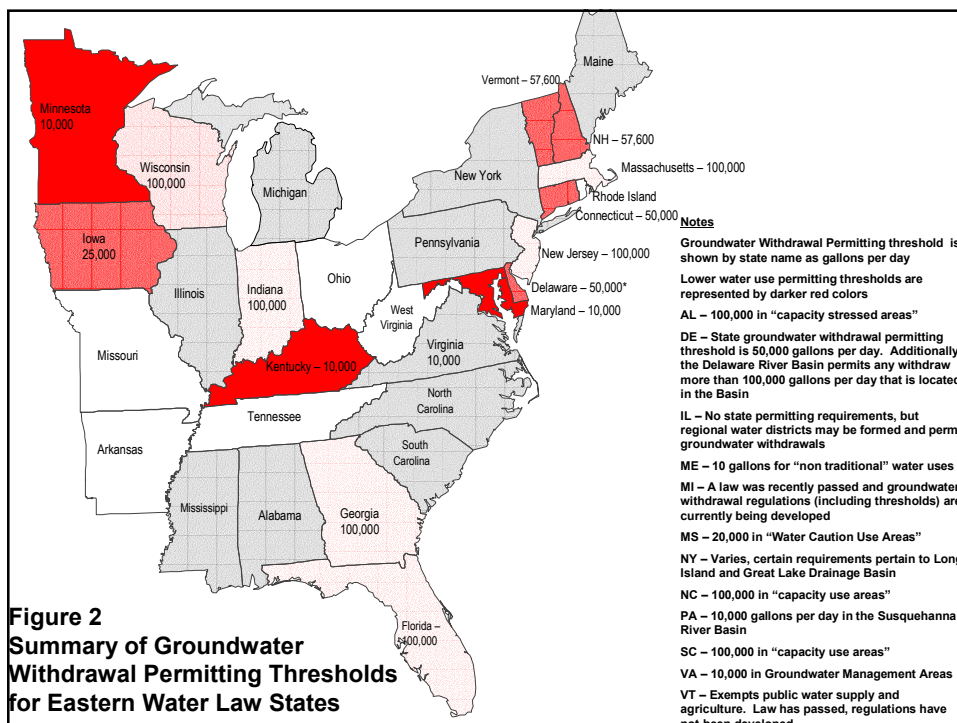
Common Law - Parens Patriae

The state declares itself to be suing on behalf of its people.

2) Statutory Groundwater Withdrawal Permitting Requirements

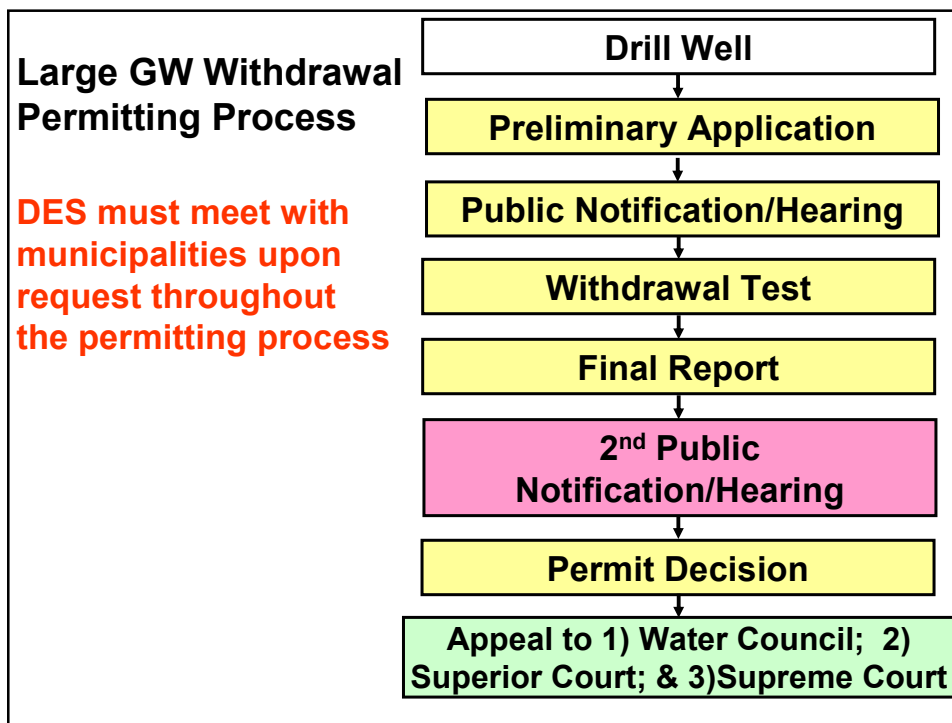
Two Standards

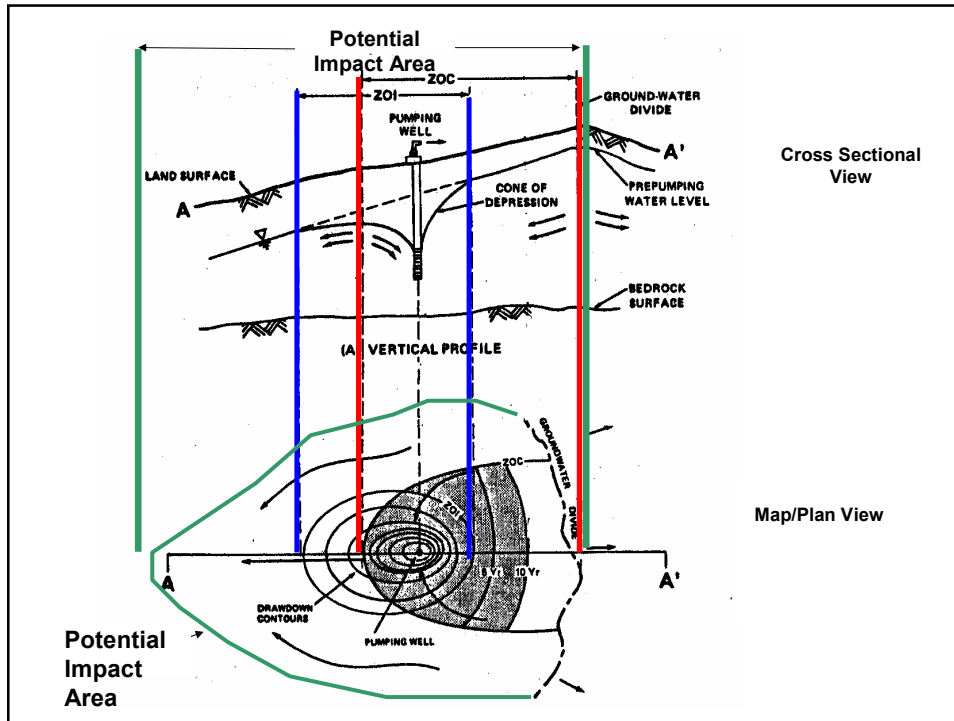
- Groundwater withdrawals developed prior to August 1998 or non potable groundwater uses less than 57,600 gallons – no statutory requirements
- Groundwater withdrawals developed after July 1998 and exceeding 57,600 gallons per day – substantial statutory requirements



New Hampshire GW Withdrawal Law

- Applies to new groundwater withdrawals exceeding 57,600 gallons/24-hour period
- Established in August 1998
- Accomplishing its objectives – Conserve water, work with communities, prevention/mitigation of adverse impacts to water users and environmental resources





Summary of Large Groundwater Withdrawal Applications

	Applications Filed	Permits Issued	Applications Pending
Golf Courses	6	4	0
Bottled Water	7	5	1
Community Water System	29	10	18
Other Commercial	2	0	0

Local Groundwater Withdrawal Ordinances in New Hampshire

- Some municipalities have adopted local ordinances to regulate groundwater withdrawals
- Municipalities cannot regulate large groundwater withdrawals (>57,600 gallons/day) – Pre-empted by RSA 485-C:20
- It is uncertain if municipalities can regulate small groundwater withdrawals

Land Use Regulation and Large Groundwater Withdrawals

Master Plan

- Land Use Zoning
- Subdivision Regulations
- Site Plan Review
- Consideration of Zoning Variances

For almost all commercial groundwater withdrawals permitted since 1998, significant zoning variances were issued

See document titled “A Decision Maker’s Guide to Understanding Land Use Planning and Large Groundwater Withdrawals”

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See Meeting Announcement Flyer for Potential Discussion Points

Written comments may be sent to **NHGroundwater.com**