
ENVIRONMENTAL Fact Sheet



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Groundwater Rights and the Groundwater Protection Act

Several questions often arise when groundwater withdrawals are considered, among them “Who owns groundwater?” and “Which laws govern groundwater withdrawals?” Groundwater is a shared resource in New Hampshire. Therefore the question of “who owns groundwater” may better or more practically be restated as who has the right to use water and how much? New Hampshire’s water rights system is based on common law (law that is based on historic court decisions opposed to written codified law). New Hampshire’s common law with respect to water use is governed by the doctrine of reasonable use. “Reasonable use” is generally taken to mean that one property owner’s water use may not unreasonably interfere with the water use of another property owner, regardless of which use was established first. “Reasonable use” is a mixed question of fact and law, and the standard may change over time – so what was once reasonable may over time become unreasonable.

Because the movement of groundwater does not respect municipal boundaries, it makes sense that the state is the entity that can regulate or restrict groundwater use. New Hampshire’s Groundwater Protection Act (RSA 485-C) is intended to ensure that new “large” groundwater withdrawals (those that exceed 57,600 gallons over any 24-hour period) do not adversely impact the quality or quantity of groundwater or water resources such as neighboring wells, wetlands, streams, rivers and lakes. Since August 1998, any proposed “large” groundwater withdrawal must undergo a comprehensive permitting process to demonstrate that other water users or water resources (lakes, rivers and wetlands) would not be adversely impacted. The permitting process includes public notification, two public hearings, extensive field testing and assessment of data, and development of an environmental monitoring, reporting, and mitigation plan.

It is important to note that RSA 485-C does not replace common law with respect to water rights; rather, common law coexists with the statute. This means that landowners developing a groundwater withdrawal of any amount have a right to reasonable use of the water under common law, that large new groundwater withdrawals are regulated under RSA 485-C, and that civil cases may be brought to the courts to resolve conflicts when the water rights of another land owner are unreasonably impacted by any withdrawal.

More information about the DES Large Groundwater Withdrawal Permitting Program may be found at http://des.nh.gov/organization/divisions/water/dwgb/dwspp/lg_withdrawals/index.htm.

For Additional Information

Please contact the Drinking Water and Groundwater Bureau at (603) 271-2513 or dwgbinfo@des.nh.gov or visit our website at <http://des.nh.gov/organization/divisions/water/dwgb/index.htm>. All of the bureau’s fact sheets are on-line at <http://des.nh.gov/organization/commissioner/pip/factsheets/dwgb/index.htm>. All drinking water and related rules can be accessed at <http://des.nh.gov/organization/commissioner/legal/rules/index.htm#drinking>.

Note: This fact sheet is accurate as of June 2010. Statutory or regulatory changes, or the availability of additional information after this date may render this information inaccurate or incomplete.