



Public Trust Should Not Be Trusted

By Russ Harding

Summary

Michigan should reject further attempts to place groundwater under the state's control. Such efforts, like those outlined in House Bill 5319, undermine private property rights.

Main Text Word Count: 635

When politicians talk about placing natural resources in public trust, landowners should be worried. The right to own and use private property is a bedrock principle of a free people. These rights are threatened by House Bill 5319, which would place groundwater in public trust and require landowners to secure a permit from the state of Michigan in order to use that water. The bill would essentially overturn more than a century of Michigan water law.

Property rights are often compared to a bundle of sticks. Philosopher John Locke was an early proponent of this idea, which holds that the sticks that make up the bundle are a compilation of the various rights that come with owning private property, including the rights to live on or bequeath it. Water rights are a significant "stick" in that bundle. With the introduction of House Bill 5319, Michigan property owners are threatened by government action that would steal a stick from that bundle and give it to the state.

Like most states east of the Mississippi River, Michigan is a riparian water-use state. In Michigan, if you own the land, you own the water and have a legal right to use that water as long as you do not interfere with the reasonable use of water by your neighbors. This has been true since the state was first settled.

Riparian water law has worked well in Michigan for the simple reason that Michigan has abundant water. In fact, Michigan groundwater tables are so high that many homeowners have to install sump pumps just to keep water out of their basements.

The proposed public trust legislation treats groundwater as if we lived in an arid Western state, where water tables can be 1,000 feet or more beneath the surface. In many of these states, water is appropriated by the government, leading to endless conflicts and lawsuits. Mark Twain, who spent time in Nevada, famously quipped about the situation: "Whiskey is for drinking and water is for fighting."

The Michigan Legislature dealt with recent groundwater concerns with the passage of Public Act 33 of 2005. That law requires a landowner to obtain a groundwater permit in certain circumstances, such as proximity to a trout stream. Public Act 33 was a compromise between landowners and business groups that wanted to preserve private property water rights, and environmental groups that believed that all water should belong to the government. That law has already made it more difficult to use water in the

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state, removing a competitive advantage Michigan once enjoyed and turning it into a minor liability.

Increasing government control of water in the state would not only be a taking of private property, but would be a serious threat to future economic growth. Access to abundant water in the state is a key advantage Michigan has in attracting much-needed jobs in energy, agriculture and manufacturing, including the so-called green jobs Gov. Jennifer Granholm seeks. The state cannot afford to throw that advantage away, especially since Michigan is not threatened by a shortage of water.

Rather than threatening water rights, Michigan needs to follow the example of Ohio. A ballot initiative amending the Ohio Constitution and protecting the rights of landowners to use groundwater was approved by an impressive 72 percent of the voters in the November 2008 election. The constitutional amendment in Ohio merely codified existing riparian water law, which was similar to the kind used successfully in Michigan for the past century.

Many Michigan officials seem more interested in taking away existing rights of property owners rather than protecting them. It may be time to take the critical issue of property rights directly to the voters, bypassing the political class. As the Ohio example shows, residents understand the importance of property rights better than do many politicians.

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