

A Review of Groundwater Rights in New York

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Have you ever wondered how much water your water system is legally entitled to withdraw? What are the legal rights of other landowners such as homeowners, farmers, industries to ground water in your aquifer? These are questions that I have been asked over the years and I am going to attempt to answer

them in this article.

Here in New York, groundwater rights are based primarily upon land ownership rights. A landowner has the right to withdraw ground water for use as long as this does not harm the rights of other landowners. This principle has its roots to English common law and was upheld by a 1900 New York Court of Appeals decision where the court held that it was an unreasonable use to transport groundwater off the overlying land if the extraction of the groundwater caused injury to other overlying landowners. Stated another way, land owners are entitled to all reasonable uses of groundwater for the benefit of their property. However, this use is limited by consideration of the reasonable use by others of their property.

Water System Withdrawal Rates

Using the above mentioned legal principles as a guideline, your water system has a legal right to withdraw groundwater at reasonable rates that do not limit the ability of adjacent landowners to use the same resource. In order to define what a reasonable rate is, water systems typically must go through a permitting process. Typically, water systems must obtain a Water Supply Permit from NYSDEC. During

this process, a study of the impacts on other water

supplies and surface water is often required. In the Susquehanna River Basin area in New York (see Figure 1 *bottom left*), the Susquehanna River Basin Commission requires that all projects using more than 100,000 gallons per day (gpd) do not significantly impact neighboring water supplies, surface water bodies, or wetlands. Future regulations for the Great Lakes Basin in New York (Figure 2 *bottom right*) will require that withdrawals exceeding 100,000 gpd are to be limited to quantities that are reasonable for project purposes that will not cause significant adverse impacts.

Rights of Other Users

What about other groundwater users that share your aquifer? Unless these users withdraw more than 100,000 gpd and are located in the Susquehanna River Basin or Great Lakes Basin, they are not subject to regulations on groundwater withdrawals. The only limit on their use of water is that it does not impact the rights of other water users. Unfortunately, if their withdrawal rate is not regulated, only the courts can decide if the withdrawal rate is reasonable.

The Future

Groundwater rights in New York and other Eastern states have not evolved largely because of an abundance of water that we are blessed with. However, today's reality is that there are areas where groundwater resources are being utilized near or past their sustainable limit. Many forecast that water will be a vital commodity in the future. Although many public water systems are regulated with respect to their withdrawals, there are no withdrawal limits on other water users such as bulk/bottled water plants or mines. Perhaps some day there will be a state-wide system of sharing water like there is in other states. In the meantime, I suggest that water systems would work with their local communities to develop groundwater protection programs. Please call me if you have any questions. 💧

