



***Restoring the Trust:  
An Index of State Constitutional and  
Statutory Provisions and Cases on Water  
Resources and the Public Trust Doctrine***

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## ***Existing Trust Principles: An Index of State Provisions***

This index accompanies CPR's publication, *Restoring the Trust: Water Resources and the Public Trust Doctrine, A Manual for Advocates*. The purpose of this index is to provide a starting point for advocates to assess state-specific constitutional and statutory provisions and case law that apply the public trust concept to protecting water resources.<sup>1</sup> As the *Manual* notes,

The ideal operating framework for using the public trust doctrine to protect water resources is like a well-balanced tripod: a robust and updated common law, a constitutional declaration of public ownership of water, and statutory incorporation of the doctrine into water resources legislation. This framework integrates the public trust doctrine in all its forms and allows each form to be mutually reinforcing – a strength in one leg can compensate for any corresponding weaknesses in another leg.<sup>2</sup>

In some states, the public trust doctrine framework – the common law, a constitutional provision, and a statutory provision – already exists. Some are clear declarations of public ownership or use explicit public trust language. Other provisions refer to public trust principles or concepts from which courts infer the public trust doctrine. Together with the common law doctrine they provide a powerful tool for water advocacy groups in their efforts to protect water resources.

CPR's *Restoring the Trust: Water Resources and the Public Trust Doctrine, A Manual for Advocates* is available online at [www.progressivereform.org/pubtrustwater.cfm](http://www.progressivereform.org/pubtrustwater.cfm).

A constitutional public trust provision elevates the doctrine to a special realm of legal rights and is a key component to water resources protection. Citizens and courts accord the utmost priority to upholding these rights, which enshrine the values that guide development of common law and statutes. Moreover, a constitutional public trust provision would recognize the vital importance of natural resources and, in particular, water as the essential, life-sustaining resource. While it may not capture all the details required to protect natural resources, a constitutional environmental provision is particularly useful for issues that affect future generations – such as water supplies – because of the timelessness and enduring nature of constitutional rights.<sup>3</sup>

Many states have constitutional public trust provisions that refer either to the environment generally or, in some cases, to water resources specifically. States such as Hawaii and Pennsylvania use specific trust language, while states such as Alaska and Wisconsin contain the elements of a public trust, from which state courts have found a constitutional basis for the public trust doctrine. For example, the Hawai'i and Pennsylvania constitutions both explicitly declare state trusteeship over natural resources in the state but illustrate different approaches to interpretation. The Hawai'i Supreme Court has given full recognition to the duties and obligations stated in the constitutional provision. In contrast, the Pennsylvania Supreme Court has diminished the power of the provision by requiring additional implementing statutes to bring suit.

<sup>1</sup> For a broader, more general examination of the public trust doctrine in each state, see Robin Kundis Craig, *Comparative Guide to the Eastern Public Trust Doctrines: Classifications of States, Property Rights, and State Summaries*, 16 PENN. ST. ENVTL. L. REV. 1 (2007), and *A Comparative Guide to the Western States' Public Trust Doctrines: Public Values, Private Rights, and the Evolution Toward an Ecological Public Trust*, F.S.U. College of Law, Public Law Research Paper No. 369 (May 16, 2009), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1405822](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1405822).

<sup>2</sup> Alexandra B. Klass & Yee Huang, *Restoring the Trust: Water Resources & the Public Trust Doctrine, A Manual for Advocates* (2009).

<sup>3</sup> For a more detailed discussion on the effectiveness of constitutional environmental provisions, see Barton H. Thompson, Jr., *Constitutionalizing the Environment: The History and Future of Montana's Environmental Provisions*, 64 MONT. L. REV. 157, 198 (2003).

In states without explicit trust language, state supreme courts have still found a constitutional basis for the public trust doctrine by: (1) examining the state's custom and history of natural resources management; (2) looking to the intent of the constitutional framers or citizens in amending the constitution; (3) making statutory inferences; or (4) drawing on the language of the provision itself.

For example, the Wisconsin Supreme Court determined that the state, which derived its public trust provision from a similar provision in the pre-statehood 1787 Northwest Ordinance, has a long history of following the public trust doctrine as both constitutional and common law. Similarly, when the Arizona legislature attempted to prohibit courts from considering public trust values in water rights determinations, the Arizona Supreme Court invalidated the legislation. In its decision, the court stated that the doctrine “is a *constitutional limitation* on legislative power to give away resources held by the state in trust for its people.”<sup>4</sup>

The public trust doctrine has also transitioned from common law to statutory provisions through legislative action. Statutory provisions are advantageous because they tend to be part of more comprehensive water regulations and apply uniformly. They also tend toward greater integration of water resources management and land use planning. These provisions generally codify and exist alongside the common law doctrine.

Finally, the doctrine also appears in a handful of states' environmental rights statutes, which recognize a public, enforceable right to a healthy environment and healthy water resources. These statutes fulfill a *procedural* role of the public trust doctrine by allowing private citizens to participate in agency decision-making and to bring lawsuits to enjoin activities that harm the environment or water resources. For example, under the Michigan Environmental Protection Act, any person can bring a lawsuit “against any person for the protection of the air, water, and other natural resources and the public trust in these resources from pollution, impairment, or destruction.”<sup>5</sup> Similarly worded statutes permit lawsuits to protect a wide range of natural resources.

Significantly, these statutes provide substantive and uniform standards to identify violations of the public trust. The Minnesota Supreme Court has declared that litigants can demonstrate harm to the environment by proving the conduct violates an existing standard or, more generally, by proving that the conduct “materially, adversely affects or is likely to affect the environment.”<sup>6</sup> Under this standard, citizens have brought suits to protect a wide range of natural resources, including birds and their habitats,<sup>7</sup> wetland areas,<sup>8</sup> and drinking water wells.<sup>9</sup>

This survey of states' public trust doctrine provisions and case law reveals that many states have the legal framework upon which advocacy groups can build, strengthen, and reinforce the power of the public trust doctrine to protect water resources.

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<sup>4</sup> San Carlos Apache Tribe v. Superior Court ex rel. County of Maricopa, 972 P.2d 179 (Ariz. 1999) (emphasis added).

<sup>5</sup> MICH. COMP. LAWS ANN. § 324.1701 (West 2009).

<sup>6</sup> Minnesota Public Interest Research Group v. White Bear Rod & Gun Club, 257 N.W.2d 762 (Minn. 1977)

<sup>7</sup> State ex rel. Wacouta Tp. v. Brunkow Hardwood Corp., 510 N.W.2d 27 (Minn. App. 1993).

<sup>8</sup> Freeborn County by Tuveson v. Bryson, 210 N.W.2d 290 (Minn. 1973). See also Alexandra B. Klass, *Modern Public Trust Principles: Recognizing Rights and Integrating Standards*, 82 NOTRE DAME L. REV. 699 (2006).

<sup>9</sup> State ex rel. Shakopee Mdwakanton Sioux Cmty. v. City of Prior Lake, Case No. C-01-05286 (Scott County Dist. Ct., Nov. 22, 2002)

<u>State</u>	
Alabama .....	5
Alaska .....	5
Arizona.....	5
Arkansas .....	6
California .....	6
Colorado .....	7
Connecticut.....	7
Delaware .....	8
Florida .....	8
Georgia.....	8
Hawaii .....	8
Idaho .....	9
Illinois .....	9
Indiana .....	10
Iowa.....	10
Kansas .....	11
Kentucky .....	11
Louisiana .....	11
Maine .....	12
Maryland.....	12
Massachusetts .....	12
Michigan .....	13
Minnesota .....	13
Mississippi .....	13
Missouri .....	14
Montana.....	14
Nebraska.....	14
Nevada .....	14
New Hampshire .....	15
New Jersey.....	15
New Mexico .....	15
New York .....	16
North Carolina.....	16
North Dakota .....	17
Ohio.....	17
Oklahoma.....	17
Oregon .....	17
Pennsylvania.....	18
Rhode Island .....	18
South Carolina.....	18
South Dakota .....	18
Tennessee .....	19
Texas .....	19
Utah .....	19
Vermont .....	20
Virginia.....	20
Washington.....	20
West Virginia .....	21
Wisconsin .....	21
Wyoming.....	21

State*	Constitutional Provision(s)	Statutory Provision(s)	Notable Case(s)
Alabama	Article 1, section 24 <sup>10</sup>	Ala. Code 1975 § 33-7-1 <sup>11</sup>	Sayre v. Dickerson (1965) <sup>12</sup>
	-	Ala. Code 1975 § 9-10B-3 <sup>13</sup>	-
Alaska	Article 8, sections 3, <sup>14</sup> 13, <sup>15</sup> and 14 <sup>16</sup>	Alask. Stat. § 38.05.825 <sup>17</sup> Alask. Stat. § 46.15.030 <sup>18</sup> Alask. Stat. § 46.15.260(9) <sup>19</sup>	Owsichek v. State (1988) <sup>20</sup> Pullen v. Ulmer (1996) <sup>21</sup>
	-	See above	-
Arizona	-	Ariz. Rev. St. § 45-141 <sup>22</sup>	Maricopa County Mun. Water Conservation Dist. No. 1 v. Southwest Cotton Co. (1931) <sup>23</sup> Arizona Center for Law in Public Interest v. Hassell (1991) <sup>24</sup>

\* **Index Key** – Each state consists of two rows: the first row identifies provisions and cases related to surface water; the second row (shaded in blue) identifies provisions and cases related to groundwater.

<sup>10</sup> (2009) (“[A]ll navigable waters shall remain forever public highways....”) (emphasis added).

<sup>11</sup> (2009) (“All navigable waters in this state are public thoroughfares.”) (emphasis added).

<sup>12</sup> 179 So.2d 57 (Ala. 1965) (in determining the validity of a property dispute over a peninsula, the court recognized that “[a]ll tidal streams are, prima facie, public and navigable.” *Id.* at 70.).

<sup>13</sup> (2009). Alabama’s definition of “waters or waters of the state” includes groundwater.

<sup>14</sup> (2008) (“Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.”) (emphasis added).

<sup>15</sup> (2008) (“All surface and subsurface waters reserved to the people for common use... are subject to appropriation.”) (emphasis added).

<sup>16</sup> (2008). Section 14 guarantees “free access to navigable or public waters of the State.”

<sup>17</sup> (2009). Conveyance of tidal and submerged land to municipalities is permitted, unless “the public interest in retaining state ownership... clearly outweighs the municipality’s interest in obtaining the land.”

<sup>18</sup> (2009). The water of Alaska “is reserved to the people for common use.”

<sup>19</sup> (2009). Water is defined as “all water of the state, surface and subsurface, occurring in a natural state, except mineral and medicinal water.”

<sup>20</sup> 763 P.2d 488 (Alask. 1988) (in a case regarding access to hunting areas, interpreting the “common use clause” of the constitution as an anti-monopolization clause and a reflection of the public trust doctrine).

<sup>21</sup> 923 P.2d 54 (Alask. 1996) (discussing case law related to public trust doctrine and constitutional interpretation. *Id.* at 60.)

<sup>22</sup> (2009). Section 45-141 declares that waters of all sources, including surface and ground, “belong to the public” and are subject to appropriation and beneficial use.

<sup>23</sup> 4 P.2d 369 (1931) (in an early case determining the nature of water rights in Arizona, recognizing the public nature of water).

<sup>24</sup> 837 P.2d 158 (Az. App. Div. 1 1991) (applying PTD to invalidate legislation that substantially relinquished the state’s interest in submerged lands); (recognizing that “public trust jurisprudence is nascent in Arizona,” despite early acknowledgement of it by the state supreme court. *Id.* at 168.). This case was followed by a series of legislative attempts to eliminate the public trust doctrine. See *San Carlos Apache Tribe v. Superior Court*, 972 P.2d 179 (Az. 1999) (finding unconstitutional legislation that eliminated the public trust doctrine from consideration in water rights adjudications) (“The public trust doctrine is a constitutional limitation on legislative power to give away resources held by the state in trust for its people.” *Id.* at 199), and *Defenders of Wildlife v. Hull*, 18 P.3d 722 (Ariz. App. Div. 1 2001).

-	See above	Center for Biological Diversity v. Smith (2001) <sup>25</sup> Seven Springs Ranch, Inc. v. State ex rel. Arizona Department of Water Resources (1987) <sup>26</sup>
<b>Arkansas</b>	-	State v. McIlroy (1980) <sup>27</sup>
-	_28	-
<b>California</b>	Article 10, sections 2 <sup>29</sup> and 3 <sup>30</sup>	Cal. Water Code § 102 <sup>31</sup> Cal. Water Code § 104 <sup>32</sup> Cal. Water Code § 1201 <sup>33</sup>
See above	-	National Audubon Society v. Superior Court (1983) <sup>34</sup> Center for Biological Diversity, Inc. v. FPL Group, Inc. (2008) <sup>35</sup> Santa Teresa Citizen Action Group v. City of San Jose (2003) <sup>36</sup>

<sup>25</sup> See Joseph Sax, *We Don't Do Groundwater: A Morsel of California Legal History*, 6 U. Denv. Water L. Rev. 269, n.217. This case was filed but not decided on the merits. The citizens group argued that the Arizona Water Resources Board was required to apply the public trust doctrine to water resources adversely affected by groundwater pumping.

<sup>26</sup> 753 P.2d 161 (Ariz. App. 1987) (in reviewing state agency's determination of groundwater basins, finding that because the state groundwater statute specifically lists factors for consideration when establishing basin boundaries, consideration of the public trust doctrine is not applicable. *Id.* at 166.).

<sup>27</sup> 595 S.W.2d 659 (Ark. 1980) (in expanding the scope of the public trust doctrine, finding the traditional test of navigability "a remnant of the steamboat era" and equating recreational use with navigability).

<sup>28</sup> Arkansas Groundwater Protection and Management Act, § 15-22-902

<sup>29</sup> (2009). Section 2 codifies public trust principles as applied to water resources, including the conservation of water in the public interest and for the public welfare.

<sup>30</sup> (2009). Section 3 codifies public trust doctrine principles as applied to the sale or grant of tidelands.

<sup>31</sup> (2009). Section 102 declares that "[a]ll water within the State is the property of the people of the State."

<sup>32</sup> (2009). Section 104 recognizes the public's paramount interest in the waters of the state and recognizes the state's responsibility to determine the use of water.

<sup>33</sup> (2009). Section 1201 declares all unappropriated water to be "public water of the State."

<sup>34</sup> 658 P.2d 709 (Cal. 1983) (in a case concerning the diversion of tributaries of Mono Lake, holding that the public trust doctrine encompasses the non-navigable tributaries of navigable waters).

<sup>35</sup> 83 Cal. Rptr. 3d 588 (Cal. App. 1 Dist. 2008) (in a case against windfarm operators for injuries to and the deaths of raptors and other birds, holding that the public trust doctrine applies to wildlife and is not limited to its historical origins).

<sup>36</sup> 7 Cal. Rptr. 3d 868 (Cal. App. 6 Dist. 2003) (in a case challenging the potential contamination of groundwater from a water recycling program, stating that the public trust doctrine "has no direct application to groundwater sources" and that regardless the issue is not ripe. *Id.* at 709.)

<b>Colorado</b>	Article 16, section 5 <sup>37</sup>	Colo. Rev. St. § 37-92-102(1) <sup>38</sup> & (3) <sup>39</sup>	People v. Emmert (1979) <sup>40</sup> Aspen Wilderness Workshop, Inc. v. Colo. Water Conservation Board (1995) <sup>41</sup> Proposals to amend constitution to include PTD language <sup>42</sup>
	See above	Colo. Rev. St. § 37-90-102 <sup>43</sup>	Chatfield East Well Co., Ltd. v. Chatfield East Property Owner's Ass'n <sup>44</sup> Gallegos v. Colorado Ground Water Commission <sup>45</sup>
<b>Connecticut</b>	-	Conn. Gen. Stat. § 22a-15 <sup>46</sup> Conn. Gen. Stat. § 22a-16 <sup>47</sup>	Leydon v. Town of Greenwich (2001) <sup>48</sup>
	-	See above	Collens v. New Canaan Water Co. (1967) <sup>49</sup>

<sup>37</sup> (2008). Section 5 declares that the "waters of every natural stream" are the property of the public.

<sup>38</sup> (2009). Surface waters "have always been and are hereby declared to be" public property and dedicated to use by the public.

<sup>39</sup> (2009). This subparagraph vests the Colorado Water Conservation Board with trustee-like duties to appropriate water to "preserve the natural environment to a reasonable degree."

<sup>40</sup> 597 P.2d 1025 (Colo. 1979) (upholding trespass convictions of defendants who floated in waters over privately owned submerged land and touched the land); (clarifying that the Colorado Constitution preserves "the historical appropriation system of water rights upon which the irrigation economy in Colorado was founded, rather than to assure public access to waters for purposes other than appropriation." *Id.* at 1028.).

<sup>41</sup> 901 P.2d 1251 (Colo. 1995) (holding that the Colorado Water Conservation Board has "a unique statutory fiduciary duty to protect the public in administration of its water rights decreed to preserve the natural environment." *Id.* at 1260.); (Mullarkey, dissenting) ("This court has never recognized the public trust doctrine with respect to water." *Id.* at 1263.).

<sup>42</sup> See *In the Matter of Title, 917 P.2d 1277* (Colo. 1996) (en banc) (approving language of amendment for referendum) ("The state of Colorado shall adopt, and defend, a public trust doctrine to protect the public's rights and ownerships in and of the waters in Colorado, and to protect the natural environment; (3) Present or future water use rights may be granted or assigned to the public, and to any watercourse, without hindrance from a governmental or quasi-governmental entity. The state of Colorado shall defend all public ownership's [sic] of water from transfer from the public ownership, and from transfer from the watercourse to which that water right was pledged." *Id.* at 1279.). See also *In re Title, Ballot Title and Submission Clause, for 2007-2008, #17, 172 P.3d 871* (Colo. 2007) (rejecting proposal for constitutional amendment for PTD because the language contained more than a single subject).

<sup>43</sup> (2009). This statute applies Colorado's traditional water policy – prior appropriation – to groundwater.

<sup>44</sup> 956 P.2d 1260 (Colo. 1998) (in a dispute over a water adjudication, recognizing that "all surface and ground water in Colorado is a public resource" because of the public nature of water. *Id.* at 1267 and n.6.); ("Waters of the natural stream, including tributary ground water, belong to the public and are subject to use under Colorado's constitutional prior appropriation doctrine and implementing statutes." *Id.*)

<sup>45</sup> 147 P.3d 20 (Colo. 2006) (in a dispute over the Colorado Ground Water Basin's jurisdiction over surface water, noting the constitutional term "waters of any natural stream" means surface water and ground water that is a tributary of the surface water. *Id.* at 27.)

<sup>46</sup> (2009). This provision declares that "there is a public trust in the air, water and other natural resources... and that each person is entitled to the protection, preservation and enhancement" of those natural resources.

<sup>47</sup> (2009). This provision establishes a cause of action to bring a lawsuit for violation of the public trust.

<sup>48</sup> 777 A.2d 552 (Conn. 2001) (in a case concerning public access to a beach, noting that the public trust doctrine is established common law in Connecticut. *Id.* at n.17.).

<sup>49</sup> 234 A.2d 825 (Conn. 1967) (in a suit against a public utility that diverted water in part through wells, recognizing impact of groundwater withdrawals on surface water. *Id.* at 831.)

<b>Delaware</b>	-	7 Del. Code § 6001 <sup>50</sup>	-
	-	-	-
<b>Florida</b>	Article 10, section 11 <sup>51</sup>	Fla. Stat. § 373.223 <sup>52</sup>	Trepanier v. County of Volusia (2007) <sup>53</sup> Walton County v. Stop the Beach Renourishment, Inc. (2008) <sup>54</sup>
	-	Fla. Stat. § 373.019 <sup>55</sup> Fla. Stat. § 376.30(1)(b) <sup>56</sup>	-
<b>Georgia</b>	-	Ga. Code Ann. § 52-1-2 <sup>57</sup> Ga. Code Ann. § 12-5-281 <sup>58</sup>	-
	-	-	-
<b>Hawaii</b>	Article 11, sections 1 <sup>59</sup> and 7. <sup>60</sup>	Haw. Rev. St. § 174C-2(c) <sup>61</sup> Haw. Rev. St. § 174C-3 <sup>62</sup> Haw. Rev. St. § 174C-49(a)(4) <sup>63</sup>	Robinson v. Ariyoshi <sup>64</sup>

<sup>50</sup> (2009). Delaware's policy for natural resources dictates protection and use "in the interest of the people of the State." This section also recognizes other public trust principles, such as maintaining resources for future generations.

<sup>51</sup> (2009). Section 11 codifies the traditional public trust doctrine related to lands submerged under navigable waters, title to which the state holds "by virtue of its sovereignty, in trust for all the people."

<sup>52</sup> (2009). Florida has an extensive permitting system for water resources, which includes a "public interest" criterion for approving permitted uses. The state agency considers whether water use is "beneficial or detrimental to the overall collective well-being on the people or to the water resources in the area, the District, and the State." St. Johns River Water Management District, Applicant's Handbook: Consumptive Uses of Water, Chapter 40C-2, F.A.C., section 9-3 (March 8, 2009). See Marion County v. Green, 2008 WL 2937828 (Fla. 5th DCA 2008) (upholding grant of CUP where District adequately considered three-pronged test for granting permits) (for the public interest test, the District considers whether the water use is efficient, whether there is a need for the use, and whether the use serves a legitimate purpose) (Lawson, dissenting, public interest requires an evaluation over the life of the permit, not just the limited criteria considered by majority).

<sup>53</sup> 965 So.2d 276, 284 (Fla. 5th DCA 2007) (in a case regarding public access to the beach, noting that "the common law public trust doctrine is embodied in Article 10, section 11 of the Florida Constitution").

<sup>54</sup> 998 So.2d 1102 (Fla. 2008), cert. granted, 129 S.Ct. 2792 (2009). In this case, the Florida Supreme Court upheld the state's Beach and Shore Preservation Act, which fixed beachfront homeowners' property line in the event that the state-sponsored beach renourishment increased the dry beach area. Property owners argued that by fixing the property line they were denied property rights in the event of land accretion, but the Florida Supreme Court upheld the Act under the state's constitutional public trust duty to protect its beaches. The U.S. Supreme Court granted certiorari for the Fall 2009 term.

<sup>55</sup> (2009). This provision defines "water" or "waters in the state" as "any and all water on or beneath the surface of the ground or in the atmosphere... as well as all coastal waters within the jurisdiction of the state."

<sup>56</sup> (2009). This section recognizes that protection groundwater and surface water from pollution is "a matter of the highest urgency and priority."

<sup>57</sup> (2009). This provision codifies the public trust doctrine as applied to tidewaters, naming the State of Georgia as "trustee of the rights of the people of the state to use and enjoy all tidewaters which are capable of use for fishing, passage, navigation, commerce, and transportation, pursuant to the common law public trust doctrine."

<sup>58</sup> (2009). This provision establishes protection for coastal marshlands to "fulfill the responsibilities of each generation as public trustees of the coastal marshlands for succeeding generations."

<sup>59</sup> (2009) ("All public natural resources are held in trust by the State for the benefit of the people.") (emphasis added).

	See above	See above	In re Water Use Permit Applications <sup>65</sup> In re Waiola O Molokai, Inc. <sup>66</sup>
Idaho	Article 15, sections 1 <sup>67</sup> and 4-6 <sup>68</sup>	Id. Code § 58-1203 <sup>69</sup>	Dep't of Parks v. Idaho Dep't of Water Administration (1974) <sup>70</sup> Kootenai Env't'l Alliance v. Panhandle Yacht Club (1983) <sup>71</sup> Shokal v. Dunn (1985) <sup>72</sup>
	See above	Id. Code § 42-226 <sup>73</sup>	-
Illinois	Article 11, sections 1 <sup>74</sup> and 2 <sup>75</sup>	5 Ill. Comp. Stat. 605/1 <sup>76</sup> Signatory, Great Lakes-St. Lawrence River Basin Water Resources Compact <sup>77</sup>	Illinois Central Railroad Co. v. Illinois (1892) <sup>78</sup>

<sup>60</sup> (2009) ("The State has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people.").

<sup>61</sup> Public interest objectives include: "the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture, and navigation."

<sup>62</sup> (2008). This section defines "water" or "waters of the State" as "any and all water on or beneath the surface of the ground."

<sup>63</sup> (2008). Applicants for water use permits must demonstrate that the proposed use is consistent with the public interest.

<sup>64</sup> 658 P.2d 287 (Haw. 1982) (finding a public trust imposed on all waters of the state with "a concomitant duty to maintain the purity and flow of our waters for future generations").

<sup>65</sup> 9 P.3d 409 (Haw. 2000) (affirming that "the public trust doctrine applies to all water resources without exception or distinction") ("In sum, given the vital importance of all waters to the public welfare, we decline to carve out a ground water exception to the water resources trust. Based on the plain language of our constitution and a reasoned modern view of the sovereign reservation, we confirm that the public trust doctrine applies to all water resources, unlimited by any surface-ground distinction." Id. at 447.).

<sup>66</sup> 83 P.3d 664, 684 (Haw. 2004) (noting that the public trust in Hawaii is a state constitutional doctrine and the ultimate authority to interpret and defend the doctrine is through the judicial system).

<sup>67</sup> (2009) ("The use of all waters now appropriated... is hereby declared to be a public use, and subject to the regulations and control of the state.").

<sup>68</sup> See Michael Blumm, *Renouncing the Public Trust Doctrine: An Assessment of the Validity of Idaho House Bill 794*, 24 *ECOLOGY L.Q.* 461 (1997) (arguing that these provisions impose trust responsibilities on water use).

<sup>69</sup> (2009) ("The public trust doctrine as it is applied in the state of Idaho is solely a limitation on the power of the state to alienate or encumber the title to the beds of navigable waters as defined in this chapter."). For a detailed discussion of this provision, see Blumm, *supra* note 68.

<sup>70</sup> 530 P.2d 924 (1974) (broadening beneficial uses of water under prior appropriation to include non-diversionary, "scenic" uses).

<sup>71</sup> 671 P.2d 1085, 1095 (Id. 1983) (in a challenge to a grant of submerged lands to a private corporation, holding that the state has the power to dispose of public lands subject to limitations of the public trust doctrine); ("[T]he public trust doctrine at all times forms the outer boundaries of permissive government action with respect to public trust resources").

<sup>72</sup> 707 P.2d 441, n.2 (1985) (in a challenge to a water permit, noting that the state agency is required to protect the public interest, which is "related to the larger doctrine of the public trust").

<sup>73</sup> (2009). This provision declares that all ground waters in this state are property of the state.

<sup>74</sup> "The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations."

<sup>75</sup> (2009). Section 2 establishes a constitutional right to "a healthful environment." In *Chicago Park District*, the Illinois Supreme Court connected the public trust doctrine in part to article 11 of the state constitution. *People ex rel. Scott v. Chicago Park Dist.*, 360 N.E.2d 773, 780 (Ill. 1976).

<sup>76</sup> (2009). This provision reclaims state title to submerged lands "for the benefit of the People of the State and in pursuance of protecting the [public] trust."

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<b>Indiana</b>	-	Ind. Code § 14-25-1-1 <sup>79</sup> Ind. Code § 14-25-1-2 <sup>80</sup> Ind. Code § 14-26-2-5 <sup>81</sup> Ind. Code § 14-29-6-7 <sup>82</sup> Compact signatory <sup>83</sup>	-
	-	Ind. Code 13-11-2-137 <sup>84</sup> Ind. Code 14-25-3-3 <sup>85</sup>	-
<b>Iowa</b>	-	Iowa Code § 462A.69 <sup>86</sup>	State v. Sorensen (1989) <sup>87</sup> Bushby v. Washington County Conservation Bd. (2002) <sup>88</sup>

<sup>77</sup> On December 13, 2005, the eight states in the Great Lakes basin – Indiana, Illinois, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin – signed the Great Lakes-St. Lawrence River Basin Water Management Compact (Compact), culminating a regional water management agreement to ensure the sustainable use of the Great Lakes. See Melissa Kwaterski Scanlan, *Realising the Promise of the Great Lakes Compact: A Policy Analysis for State Implementation*, 8 Vt. J. Envtl. L. 39 (2006-2007). The Compact is available at [http://www.cqlg.org/projects/water/docs/12-13-05/Great\\_Lakes-St\\_Lawrence\\_River\\_Basin\\_Water\\_Resources\\_Compact.pdf](http://www.cqlg.org/projects/water/docs/12-13-05/Great_Lakes-St_Lawrence_River_Basin_Water_Resources_Compact.pdf) (last visited June 11, 2009). The Compact recognizes that the waters of the Great Lake Basin, including “tributary groundwater,” are “precious public natural resources shared and held in trust by the States.” The States “have a shared duty to protect, conserve, restore, improve and manage the renewable but finite Waters of the Basin for the use, benefit and enjoyment of all their citizens, including generations yet to come.”

<sup>78</sup> 146 U.S. 387 (1892). This case is considered the lodestar of the public trust doctrine, establishing the principle that a state cannot wholly abdicate control over public trust resources by granting a private entity exclusive control over them. In this case, the Illinois Legislature awarded Illinois Central a portion of the lakeshore for a new depot and more than 1000 acres of submerged lands for a harbor. Populist opposition led to the repeal of the grant and ensuing litigation. See Joseph D. Kearney & Thomas W. Merrill, *The Origins of the American Public Trust Doctrine: What Really Happened in Illinois Central*, 71 U. Chi. L. Rev. 799 (2004).

<sup>79</sup> (2009). The use of surface waters in Indiana must serve the best interests and the welfare of its citizens.

<sup>80</sup> (2009). This provision defines any natural water body in Indiana as a “natural resource and public water of Indiana.”

<sup>81</sup> (2009). Article 26 of the Indiana Code addresses lakes and reservoirs, recognizing public rights in the “natural resources and natural scenic beauty.” This provision also recognizes a vested right in “the preservation, protection, and enjoyment of all the public freshwater lakes of Indiana in their present state” and “the use of the public freshwater lakes for recreational purposes.” This provision also declares that the state “holds and controls all public freshwater lakes in trust for the use of all of the citizens of Indiana for recreational purposes.”

<sup>82</sup> (2009). This chapter establishes Indiana’s Natural, Scenic, and Recreational River System, for which certain rivers are “set aside and preserved for the benefit of present and future generations before the rivers have been destroyed.”

<sup>83</sup> See *supra* note 77.

<sup>84</sup> (2009) (includes “groundwater” in definition of natural resources).

<sup>85</sup> (2009). This provision describes the public policy concerning ground water, including broad public welfare interests in conserving and protecting groundwater.

<sup>86</sup> (2009) (“Water occurring in any river, stream, or creek having definite banks and bed with visible evidence of the flow of water is flowing surface water and is declared to be public waters of the state of Iowa and subject to use by the public for navigation purposes in accordance with law. Land underlying flowing surface water is held subject to a trust for the public use of the water flowing over it.”).

<sup>87</sup> 436 N.W.2d 358 (Iowa 1989) (in a disputed ownership of submerged lands, declining to broaden the scope of Iowa’s public trust doctrine despite other states’ application of the doctrine to rural parklands, historic battlefields, or archaeological remains).

<sup>88</sup> 654 N.W.2d 494, 498 (Iowa 2002) (in a challenge to municipality’s plan to clear trees in county park, declining to apply the “narrow” public trust doctrine and cautioning against overextending it).

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<b>Kansas</b>	-	-	Kansas ex rel. Meek v. Hays (1990) <sup>89</sup>
	-	-	-
<b>Kentucky</b>	-	Ky. Rev. St. § 151.120 <sup>90</sup> Ky. Rev. St. § 146.220 <sup>91</sup> Ky. Rev. St. § 151.170 <sup>92</sup>	-
	-	See above	-
<b>Louisiana</b>	Article 9, sections 1 <sup>93</sup> & 3 <sup>94</sup>	La. Civ. Code Article 450 <sup>95</sup> La. Civ. Code Article 452 <sup>96</sup> La. Rev. St. § 9:1101 <sup>97</sup> La. Rev. St. § 41:1701 <sup>98</sup> La. Rev. St. § 56:640.3 <sup>99</sup>	Save Ourselves v. Louisiana Env'tl. Control Comm'n (1984) <sup>100</sup> State v. Hugh (1994) <sup>101</sup> Avenal v. State (2004) <sup>102</sup>

<sup>89</sup> 785 P.2d 1356 (1990) (declining to grant public access rights to non-navigable water overlying privately owned submerged lands and adhering to the traditional public trust doctrine).

<sup>90</sup> (2008) ("Water occurring in any stream, lake, ground water, subterranean water or other body of water in the Commonwealth which may be applied to any useful and beneficial purpose is hereby declared to be a natural resource and public water of the Commonwealth and subject to control or regulation for the public welfare....").

<sup>91</sup> (2008) (establishes the Wild Rivers System "so that the public trust in these unique natural rivers might be kept").

<sup>92</sup> (2008). Under Kentucky's water permit system, an applicant must demonstrate that the proposed withdrawal will not be detrimental to public interests or rights of other public water users.

<sup>93</sup> (2008) ("The natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people. The legislature shall enact laws to implement this policy.").

<sup>94</sup> (2008). Section 3 codifies the principle of the traditional public trust doctrine that the state of Louisiana cannot abdicate control of submerged lands.

<sup>95</sup> (2008) (defining "public things" as "things that belong to the state... such as running waters, the waters and bottoms of natural navigable water bodies, the territorial sea, and the seashore.").

<sup>96</sup> (2008) Public things and common things are subject to public use in accordance with applicable laws and regulations. Everyone has the right to fish in the rivers, ports, roadsteads, and harbors, and the right to land on the seashore, to fish, to shelter himself, to moor ships, to dry nets, and the like, provided that he does not cause injury to the property of adjoining owners.

<sup>97</sup> (2008) (declaring as property of the state "the waters of and in all bayous, rivers, streams, lagoons, lakes and bays, and the beds...")

<sup>98</sup> (2008) (establishing a public trust in "the beds and bottoms of all navigable waters and the banks or shores of bays, arms of the sea, the Gulf of Mexico, and navigable lakes").

<sup>99</sup> (2008) (establishing a public trust in marine fishery resources); ("The legislature recognizes that under the public trust doctrine the marine fishery resources, among other natural resources, are managed by the state in trust for the benefit of all its citizens.").

<sup>100</sup> 452 So. 2d 1152 (La. 1984) (in a challenge to a permit granted for a hazardous waste disposal facility, noting that constitutional embodiment of the public trust doctrine in Louisiana is article 9 of the state constitution).

<sup>101</sup> 630 So. 2d 1259 (La. 1994) (noting that the public trust doctrine, as mandated by the state constitution, requires the state to protect and conserve all natural resources, including fish and wildlife), *overruled on other grounds*, State v. Knowles, 917 So.2d 1262 (La. App. 2d Cir. 2005).

<sup>102</sup> 886 So.2d 1085 (La. 2004) (holding that a freshwater diversion project, which destroyed oyster beds by lowering the water salinity, was supported by the public trust doctrine duty to protect and conserve the coastline).

	See above	La. Rev. St. § 30:2015.1 <sup>103</sup>	-
<b>Maine</b>	Article 4, part 3, section 1 <sup>104</sup>	Me. Rev. St. tit. 12, § 571 <sup>105</sup>	Opinion of the Justices (1981) <sup>106</sup>
	-	Me. Rev. St. tit. 38, § 401 <sup>107</sup>	-
<b>Maryland</b>	Declaration of Rights, Article 5 <sup>108</sup>	Md. Admin. Code, Env't § 12.17.07.01 <sup>109</sup>	Dep't of Natural Resources v. Mayor and Council of Ocean City (1975) <sup>110</sup> Bruce v. Director, Dept. of Chesapeake Bay Affairs (1971) <sup>111</sup>
	-	See above	-
<b>Massachusetts</b>	Article 49 <sup>112</sup>	Mass. Gen. Laws ch. 21L, § 1 <sup>113</sup> Mass. Gen. Laws ch. 91, § 2 <sup>114</sup>	Home for Aged Women v. Commonwealth (1909) <sup>115</sup> Moot v. Department of Environmental Protection (2007) <sup>116</sup>
	See above		-

<sup>103</sup> (2008). Pursuant to article 9, section 1, of the Louisiana Constitution, groundwater falls within the protective scope of the public trust doctrine.

<sup>104</sup> A 1981 opinion issued by the Maine Supreme Court justices suggests a constitutional basis for the public trust doctrine, but in *Harding* the Maine Supreme Judicial Court declined to decide the scope or constitutional basis of the public trust doctrine. *Harding v. Commissioner of Marine Resources*, 510 A.2d 533, 537 (Me. 1986).

<sup>105</sup> (2009) (defines the scope of the public trust related to public use of intertidal lands and recognizes the doctrine evolves to reflect the customs, traditions, heritage, and habit of the people).

<sup>106</sup> 437 A.2d 597 (Me. 1981) (in addressing the validity of a statute the relinquished state interest in certain intertidal lands, finding that such legislation must meet a particularly demanding standard of reasonableness that changes as the needs of society change).

<sup>107</sup> (2009) (recognizing public trust principles in groundwater protection).

<sup>108</sup> (2009) (adopting common law of England where not replaced or contradictory to existing law).

<sup>109</sup> (West 2009) (listing criteria for obtaining water permits in Maryland).

<sup>110</sup> 332 A.2d 630 (Md. 1975) (noting that the shoreline is held by the state in trust for the people of Maryland by virtue of Article 5 of the Maryland Declaration of Rights and other case law).

<sup>111</sup> 276 A.2d 200 (Md. 1971) (in a challenge to statutory restrictions on oyster and crab harvesting in tidal waters, noting that oyster and crabs are common property, held in trust by the state for all people).

<sup>112</sup> (2009). This article establishes a constitutional right to clean air and water and to "the natural, scenic, historic, and esthetic qualities of their environment."

<sup>113</sup> (2009) (defines "natural resources" as "land fish, wildlife, biota, air, water, groundwater and drinking water supplies belonging to, managed by, held in trust by, appertaining to or otherwise controlled by the commonwealth or any local government").

<sup>114</sup> (2009) (outlining duties and responsibilities related to commonwealth tidewaters of state public works department).

<sup>115</sup> 89 N.E. 124 (Mass. 1909) (in an early case, noting that the public trust doctrine is "wider in its scope, and it includes all necessary and proper uses, in the interest of the public").

<sup>116</sup> 861 N.E.2d 410 (Mass. 2007) (in a challenge to a construction permit, noting that Chapter 91 has historic roots in the public trust doctrine).

<b>Michigan</b>	Article 4, section 52 <sup>117</sup>	Mich. Comp. Laws § 324.1701 <sup>118</sup> Compact signatory <sup>119</sup>	-
	See above <sup>120</sup>	See above	Bott v. Natural Resources Committee (1982) <sup>121</sup> Mich. Citizens for Water Conservation v. Nestle Waters North America, Inc. (2005) <sup>122</sup>
<b>Minnesota</b>	Article 2, section 2 <sup>123</sup>	Minn. St. § 116B.01 <sup>124</sup> Minn. St. § 103A.201 <sup>125</sup> Compact signatory <sup>126</sup>	-
	See above	See above	-
<b>Mississippi</b>	-	Miss. Code § 51-1-1 <sup>127</sup>	Phillips Petroleum Co. v. Mississippi <sup>128</sup> Cinque Bambini Partnership v. State <sup>129</sup>
	-	-	-

<sup>117</sup> (2008). Section 52, the constitutional basis of the public trust doctrine in Michigan, states, “The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction.” See *People ex rel. MacMullan v. Babcock*, 196 N.W.2d 489, 497 (Mich. App. 1972) (“The importance of this trust is recognized by the People of Michigan in our Constitution.”); Op. Att’y Gen. No. 7162 (2004), 2004 Mich. OAG

<sup>118</sup> (2009). The Michigan Environmental Protection Act establishes a cause of action for violation of the public trust in air, water, and other natural resources.

<sup>119</sup> See *supra* note 77.

<sup>120</sup> Noah D. Hall, Memo, “Groundwater and the Public Trust Doctrine” (Mar. 11, 2008), available at [http://www.greatlakeslaw.org/glelc/files/Hall\\_PTD\\_and\\_groundwater\\_memo.pdf](http://www.greatlakeslaw.org/glelc/files/Hall_PTD_and_groundwater_memo.pdf).

<sup>121</sup> 327 N.W. 2d 838 (Mich. 1982) (in a challenge to public access to water surrounded by privately owned land, stating that the public trust doctrine applies only to navigable waters).

<sup>122</sup> 709 N.W. 2d 174 (Mich. App. 2005) (in a challenge to a withdrawal permit of groundwater for bottling purposes, rejecting argument that the public trust doctrine applied to groundwater because the plaintiffs failed to show that the groundwater would have eventually entered a navigable surface stream), *aff’d in part, rev’d in part*, 737 N.W. 2d 447 (Mich. 2007), *rehearing denied*, 739 N.W. 2d 332 (Mich. 2007).

<sup>123</sup> (2009) (declaring navigable boundary waters as “common highways and forever free to citizens of the United States...”).

<sup>124</sup> (2009). The Minnesota Environmental Rights Act establishes a legal cause of action for protection of the air, water, land, or other natural resources from pollution, impairment, or destruction. This act is similar to the Michigan Environmental Protection Act, *supra* note 118 and accompanying text.

<sup>125</sup> (2009) (reciting the regulatory policy of control over water resources by the state in the best interests of its citizens).

<sup>126</sup> See *supra* note 77.

<sup>127</sup> (2009) (defining navigable waters of the state).

<sup>128</sup> 484 U.S. 469 (1988) (affirming application of the public trust doctrine to both lands submerged beneath navigable waters and to lands subject to ebb and flow of the tide).

<sup>129</sup> 491 So.2d 508, 511 (Miss. 1986) (“The public purposes to which these lands and waters placed in the public trust may be devoted are not static. Over the years those purposes have come to include... swimming and other recreational activities, ...environmental protection and preservation, the enhancement of aquatic, avian and marine life, sea agriculture and no doubt others. Suffice it to say that the purposes of the trust have evolved with the needs and sensitivities of the people-and the capacity of trust properties through proper stewardship to serve those needs.”).

<b>Missouri</b>	-	-	-
	-	-	-
<b>Montana</b>	Article 9, section 3 <sup>130</sup>		Montana Coalition for Stream Access, Inc. v. Curran (1984) <sup>131</sup> In re Adjudication of the Existing Rights to the Use of All the Water (2002) <sup>132</sup>
			Montana Trout Unlimited v. Montana Dept. of Natural Resources and Conservation (2006) <sup>133</sup>
<b>Nebraska</b>	Article 15, sections 4 <sup>134</sup> and 5 <sup>135</sup>	Neb. Rev. Code § 46-702 <sup>136</sup>	-
	See above <sup>137</sup>	See above <sup>138</sup>	Sporhase v. Nebraska ex rel. Douglas (1982) <sup>139</sup> Spear T Ranch, Inc. v. Knaub (2005) <sup>140</sup>
<b>Nevada</b>	-	Nev. Rev. St. § 533.025 <sup>141</sup>	Desert Irr., Ltd. v. State (1997) <sup>142</sup> Mineral County v. Nevada (2001) <sup>143</sup>

<sup>130</sup> (2008). Section 3 states, “All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people....”

<sup>131</sup> 682 P.2d 163 (Mont.1984) (holding that surface waters capable of recreational use may be used by the public, regardless of streambed ownership or navigability of nonrecreational purposes, under the public trust doctrine and Montana Constitution).

<sup>132</sup> 55 P.3d 396 (Mont. 2002) (expanding the navigability test for waters subject to the public trust doctrine to “any surface waters that are capable of recreational use may be so used by the public without regard to streambed ownership or navigability for nonrecreational purposes”).

<sup>133</sup> 133 P.3d 224 (Mont. 2006) (in a case where agency processed groundwater permits, reversing agency decision based on failure to account for the impacts of pre-stream capture of groundwater on surface flow). Although this case does not specifically address the public trust doctrine, it is still significant because the court notes the relationship between the groundwater and the surface river.

<sup>134</sup> Section 4 declares that water is a natural want, defined by the Nebraska Supreme Court as “absolutely necessary to human existence.” Nebraska Mid-State Reclamation Dist. v. Hall County, 41 N.W.2d 397 (Neb. 1950).

<sup>135</sup> “The use of the water of every natural stream within the State of Nebraska is hereby dedicated to the people of the state for beneficial purposes.” Section 6 prioritizes water uses: domestic over any other use and agricultural uses over manufacturing uses. Neb. Const. art. 15, § 6.

<sup>136</sup> (2008). In Nebraska’s Ground Water Management and Protection Act (GWMPA), the state legislature finds that “ownership of water is held by the state for the benefit of its citizens.”

<sup>137</sup> In *Metropolitan Utilities*, the Nebraska Supreme Court said that the term “natural want” applies to ground water. Metropolitan Utilities Dist. of Omaha, 140 N.W.2d 626, 636 (Neb. 1966).

<sup>138</sup> (2008). The GWMPA also declares that “ground water is one of the most valuable natural resources in the state, and that an adequate supply of ground water is essential to the general welfare of the citizens of this state and to the present and future development of agriculture in the state.”

<sup>139</sup> 458 U.S. 941 (1982) (in addressing the nature of water as an article of commerce, finding Nebraska’s argument that groundwater is exempt from Commerce Clause regulation because of “public ownership” goes too far).

<sup>140</sup> 691 N.W.2d 116 (Neb. 2005) (in a dispute between surface water users and groundwater users, recognizing the connection between groundwater pumping and surface flows).

<sup>141</sup> (2008) (“The water of all sources of water supply within the boundaries of the State whether above or beneath the surface of the ground, belongs to the public.”).

<sup>142</sup> 944 P.2d 835 (Nev. 1997) (declaring “the most fundamental tenet of Nevada water law” is section 533.025 and the usufructuary, rather than ownership, nature of water rights).

	-	See above	<i>Mineral County</i>
<b>New Hampshire</b>	-	N.H. Rev. Stat. § 481:1 <sup>144</sup>	Opinion of the Attorney General (1998) <sup>145</sup> Purdie v. Attorney General (1999) <sup>146</sup>
		N.H. Rev. Stat. § 485-C:1 <sup>147</sup>	In re Town of Nottingham <sup>148</sup>
<b>New Jersey</b>	Article 8, section 5, paragraph 1 <sup>149</sup>	N.J. Stat. § 58:11A-2 <sup>150</sup> N.J. Stat. § 58:11A-3(g) <sup>151</sup>	Mayor and Mun. Council of City of Clifton v. Passaic Valley Water Com'n (1987) <sup>152</sup> Borough of Neptune City v. Borough of Avon-By-The-Sea (1972) <sup>153</sup>
	-	See above	-
<b>New Mexico</b>	Article 16, section 2 <sup>154</sup> Article 20, section 21 <sup>155</sup>	N.M. Stat. § 72-1-1 <sup>156</sup>	Threlkeld v. Third Judicial Dist. Ct. (1932) <sup>157</sup> State <i>ex rel.</i> Bliss v. Dority (1950) <sup>158</sup>

<sup>143</sup> 20 P.3d 800 (Nev. 2001) (denying writs of prohibition to prevent state water agency from granting additional future water rights) (Rose, J., concurring) (concluding that “the existence of the public trust doctrine in Nevada appears to be beyond debate”).

<sup>144</sup> (2009) (declaring broad protection for water “whether located above or below ground” in the interest of present and future generations).

<sup>145</sup> Available at <http://doj.nh.gov/publications/opinions/21198AGO.html>.

<sup>146</sup> 732 A.2d 442 (N.H. 1999) (finding that legislation that extended the public trust in shorelines to the highest high water mark effected an unconstitutional taking of private property).

<sup>147</sup> (2009) (explicitly citing the public trust doctrine as the source of state responsibility for groundwater management). New Hampshire requires permits for large groundwater withdrawals, which cannot impact domestic water supplies, exceed long-term replenishment rates, or reduce flow-levels pursuant to the public trust. N.H. Rev. Stat. § 485-C:21 (2009).

<sup>148</sup> 904 A.2d 582 (N.H. 2006) (in a challenge to issuance of groundwater withdrawal permit, holding that the Department of Environmental Services was not required to consider the public trust doctrine when specific statutory language did not require it); (declining to “engraft common law tort principles” for applying the public trust doctrine to groundwater onto an existing statutory scheme).

<sup>149</sup> (2008). The New Jersey Constitution limits state ownership and the public trust doctrine protection of tidal lands. The lack of tidal flow over lands for period of 40 years bars state claim over land, unless during that time state has specifically claimed that land.

<sup>150</sup> (2009). The Water Quality Planning legislation includes specific reference to the public trust in the waters of the state and other broader public trust principles.

<sup>151</sup> (2009). The term “waters of the State” includes all water, ground and surface.

<sup>152</sup> 539 A.2d 760 (N.J. Super. L. 1987) (applying the public trust doctrine to drinking water) (“Since water is essential for human life, the public trust doctrine applies with equal impact upon the control of our drinking water reserves.”).

<sup>153</sup> 294 A.2d 47, 54-55 (N.J. 1972) (“The public trust doctrine, like all common law principles, should not be considered fixed or static, but should be molded and extended to meet changing conditions and needs of the public it was created to benefit.”).

<sup>154</sup> (2009) (“Unappropriated water of every natural stream is belongs to the public.”).

<sup>155</sup> (2009). New Mexico grants constitutional protection of the state’s “beautiful and healthful environment.”

<sup>156</sup> (2009) (“All natural waters flowing in streams and watercourses... belong to the public and are subject to appropriation for beneficial use.”).

	See above	N.M. Stat. § 72-12-1 <sup>159</sup>	McBee v. Reynolds (1965) <sup>160</sup>
<b>New York</b>	Article 14, section 4 <sup>161</sup>	N.Y. Env'tl. Conserv. § 15-1601 <sup>162</sup> N.Y. Pub. Lands § 75(7)(a) <sup>163</sup> N.Y. Nav. § 2 <sup>164</sup> Compact signatory <sup>165</sup>	People of Town of Smithtown v. Poveromo (1972) <sup>166</sup> Evans v. City of Johnstown (1978) <sup>167</sup> Friends of Van Cortlandt Park v. City of New York (2001) <sup>168</sup>
	-	-	-
<b>North Carolina</b>	Article 14, section 5 <sup>169</sup>	N.C. Gen. Stat. § 1-45.1 <sup>170</sup>	-
	See above	-	-

<sup>157</sup> 15 P.2d 671 (N.M. 1932) (discussing the what constitutes "public use" of natural resources); ("However, we already had a policy, also time-honored, as to waters. We had nationalized them. Not as a source of public revenue, as minerals are retained for royalties; but as an elemental necessity, like air, which must not be allowed to fall under private control. Id. at 673.)

<sup>158</sup> 225 P.2d 1007 (N.M. 1950) (in a suit against defendants for unlawful water withdrawals, declaring that "the public waters of this state are owned by the state as trustee for the people...").

<sup>159</sup> (2009) ("The water of underground streams, channels, artesian basins, reservoirs, or lakes... belong[s] to the public and is subject to appropriation for beneficial use.").

<sup>160</sup> 399 P.2d 110 (N.M. 1965) (in a water adjudication, recognizing that groundwater is public, subject to appropriation, and included in the term "water" as used in the state constitution).

<sup>161</sup> (2009). Section 4 expresses a constitutional mandate to protect natural resources and scenic beauty and to acquire and preserve lands and waters for the use and enjoyment of the people.

<sup>162</sup> (2009) ("All the waters of the state are valuable public natural resources held in trust by this state, and this state has a duty as trustee to manage its waters effectively for the use and enjoyment of present and future residents and for the protection of the environment.")

<sup>163</sup> (2009) (enabling grants of state-owned submerged lands under conditions to preserve the public interest in navigation, commerce, fishing, bathing, recreation, environmental protection, and access to the navigable waters of the state).

<sup>164</sup> (2009). "Navigable waters of the state" only includes surface waters that are navigable in fact, which is limited to commerce navigability.

<sup>165</sup> See *supra* note 77.

<sup>166</sup> 336 N.Y.S.2d 764 (N.Y. Dist. Ct. 1972) (in a case against property owner who filled in the foreshore of riverfront property without a permit, noting that "the entire ecological system supporting the waterways is an integral part of them (the waterways) and must necessarily be included within the purview of the trust."), *rev'd on other grounds*, 359 N.Y.S.2d 848 (N.Y. Sup. App. Term Aug 15, 1973).

<sup>167</sup> 410 N.Y.S.2d 199 (N.Y. Sup. 1978) (in citizens' challenge of municipal sewage plant based on violations of the public trust for polluting waterway, holding that the public trust doctrine does not apply because the waterway is non-navigable and citizens failed to allege interference with public uses or improper alienation of public trust resources).

<sup>168</sup> 750 N.E.2d 1050 (N.Y. 2001) (finding that legislative approval is required before construction a water treatment plant on parkland because parkland in New York is impressed with the public trust and construction and operation of the plant prohibits public park use for an extended period of time).

<sup>169</sup> (2009). Section 5 is a constitutional mandate to protect the "common heritage of forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty" for the benefit of all people.

<sup>170</sup> (2009). Explicit public trust rights in North Carolina involve public access and use, including the "right to navigate, swim, hunt, fish, and enjoy all recreational activities in the watercourses of the State and the right to freely use and enjoy the State's ocean and estuarine beaches and public access to the beaches."

<b>North Dakota</b>	Article XI, section 3 <sup>171</sup>	N.D. Cent. Code § 61-01-01 <sup>172</sup>	Baeth v. Hoisveen (1968) <sup>173</sup> United Plainsmen Association v. North Dakota State Water Conservation Commission (1976) <sup>174</sup>
	See above	See above	Volkman v. City of Crosby (1963) <sup>175</sup>
<b>Ohio</b>	-	Ohio Stat. § 1506.10 <sup>176</sup> Compact signatory <sup>177</sup>	State v. City of Bowling Green (1974) <sup>178</sup>
	-	-	-
<b>Oklahoma</b>	-	-	Franco-American Charolaise, Ltd. v. Oklahoma Water Resources Board (1990) <sup>179</sup>
	-	-	-
<b>Oregon</b>	-	Or. Rev. St. section 537.332(3) <sup>180</sup> & (5) <sup>181</sup> Or. Rev. St. section 537.334(2) <sup>182</sup>	

<sup>171</sup> (2008) (“All flowing streams and natural watercourses are property of the state for mining, irrigating, and manufacturing purposes.”) *United Plainsmen*, *infra* note 174, interpreted this section to mean that the state holds navigable waters and underlying lands in trust for the public. *Id.* at 461.

<sup>172</sup> (2008). This provision declares that all waters, including surface and ground water and water overlying privately owned lands, within the state belong to the public and are subject to appropriation for beneficial use.

<sup>173</sup> 157 N.W.2d 728 (N.D. 1968) (holding that state legislature’s declaration that all waters, surface and ground, in the state belong to the public was valid). See *North Dakota State Water Commission v. Board of Managers*, 332 N.W.2d 254 (N.D. 1983) (finding public rights in water despite private ownership of underlying lands).

<sup>174</sup> 247 N.W.2d 457 (1976) (in issuing water permits, finding that “the discretionary authority of state officials to allocate vital state resources is... circumscribed by... the Public Trust Doctrine.”).

<sup>175</sup> 120 N.W.2d 18 (N.D. 1963) (holding that beneficial use of groundwater that predated the relevant legislation established vested rights that do not belong to the public as granted in section 61-01-01).

<sup>176</sup> (2009). The waters, underlying soil, and contents of Lake Erie belong to the state “as a proprietor in trust for the people of the state, for the public uses to which they may be adapted.”

<sup>177</sup> See *supra* note 77.

<sup>178</sup> 313 N.E.2d 409 (Ohio 1974) (in a suit by the state against a municipality for wastewater discharge that allegedly caused a fish kill, recognizing that the state holds wildlife in trust for the benefit of the people and concluding that “where the state is deemed to be the trustee of property for the benefit of the public it has the obligation to bring suit not only to protect the corpus of the trust property but also to recoup the public’s loss occasioned by the negligent acts of those who damage such property”).

<sup>179</sup> 855 P.2d 568 (Okla. 1990) (holding that a statute that limited riparian water rights to domestic use effected a compensable taking of water rights) (Lavender, dissenting in part) (arguing that the public trust doctrine undermines plaintiff’s claim for just compensation for taking of a water right because “at a minimum” grants of water rights – “absent express or sufficiently clear legislative intent to the contrary” – are burdened with public interests that are equal to riparian and appropriative interests).

<sup>180</sup> (2009). Chapter 537 establishes Oregon’s in-stream water right program, which retains water rights to achieve or maintain certain flow levels. In-stream water right defined as “a water right held in trust by the Water Resources Department for the benefit of the people of the State of Oregon to maintain water in-stream for public use.”

<sup>181</sup> (2009). Paragraph (5) states that “public use” includes but is not limited to recreation, environmental purposes, and navigation.

<sup>182</sup> (2009). Paragraph (2) finds that in-stream water rights “shall not diminish the public’s rights in the ownership and control of the waters of this state or the public trust therein.” (emphasis added.)

	-	Or. Rev. St. § 537.525 <sup>183</sup>	Waterwatch of Oregon, Inc. v. Water Resources Commission <sup>184</sup>
<b>Pennsylvania</b>	Article I, section 27 <sup>185</sup>	Compact signatory <sup>186</sup>	Com. by Shapp v. National Gettysburg Battlefield Tower, Inc. (1973) <sup>187</sup>
	-	-	-
<b>Rhode Island</b>	Article 1, section 17 <sup>188</sup>	R.I. Gen. Laws § 46-5-1.2 <sup>189</sup>	
	-	R.I. Gen. Laws § 46-13.1-2 <sup>190</sup>	-
<b>South Carolina</b>	Article 14, sections 1 <sup>191</sup> & 4 <sup>192</sup>	S.C. Code § 49-1-10 <sup>193</sup>	-
	-	-	-
<b>South Dakota</b>	<sup>194</sup>	S.D. Codified Laws § 46-1-1 <sup>195</sup> , -2 <sup>196</sup> , & -3 <sup>197</sup> S.D. Codified Laws § 34A-10-1 <sup>198</sup>	In re Water Right Claim No. 1927-2 (1994) <sup>199</sup> Parks v. Cooper (2004) <sup>200</sup>

<sup>183</sup> (2009) (general public policy regarding regulation of groundwater in Oregon).

<sup>184</sup> 112 P.3d 443 (Or. App. 2005) (in a challenge to groundwater permitting rules, declining to address whether agency violated "public trust responsibilities" where agency's failure to follow statutory guidelines was dispositive).

<sup>185</sup> (2009) ("The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the *common property of all the people*, including *generations yet to come*. As *trustee* of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.") (emphasis added).

<sup>186</sup> See *supra* note 77.

<sup>187</sup> 311 A.2d 588 (Pa. 1973) (holding that the constitutional provision "merely state[s] the general principle of law that the Commonwealth is trustee of Pennsylvania's public natural resources" and that the amendment requires additional legislative action to be enforceable) (Jones, C.J., dissenting) (finding that the constitutional amendment installs the common law public trust doctrine as a constitutional right).

<sup>188</sup> (2008). Section 17 is the constitutional mandate for the state to protect and maintain natural resources, including air, land, water, plant, animal, mineral and other natural resources of the state. See *Champlin's Realty Associates, L.P. v. Tillson*, 823 A.2d 1162 (R.I. 2003) (discussing the history of the PTD in Rhode Island and noting that article 1, section 17 of the Constitution codifies the common law doctrine).

<sup>189</sup> (2008). Although this section outlines the public trust doctrine as applied to tidal lands, it notes that article 1, section 17, of the state constitution is the public trust doctrine.

<sup>190</sup> (2008). Rhode Island's legislative policy on groundwater management incorporates many public trust principles, including sustainable water supplies and the state duty to enhance water quality.

<sup>191</sup> (2008). Section 1 declares that boundary rivers and "all navigable waters" are "common highways and forever free."

<sup>192</sup> (2008) ("All navigable waters shall forever remain public highways free to the citizens of the State and the United States...").

<sup>193</sup> (2008) (reiterating article 14, section 4, of the state constitution).

<sup>194</sup> See *Parks*, *infra* note 200, at n.14.

<sup>195</sup> (2009) ("It is hereby declared that the people of the state have a paramount interest in the use of all the water of the state and that the state shall determine what water of the state, surface and underground, can be converted to public use or controlled for public protection." According to *Parks*, *infra* note 200, sections 1, 2, and 3 reflect "an aspect of the public trust doctrine, requiring the State to preserve water for public use." *Id.* at 837.

<sup>196</sup> (2009) (state control of water resource development for the greatest public benefit).

<sup>197</sup> (2009) (declaration of public ownership of water).

	-	See above	-
<b>Tennessee</b>	Article 1, section 29 <sup>201</sup>	Tenn. Code Ann. § 69-3-102 <sup>202</sup> Tenn. Code Ann. § 69-3-103 <sup>203</sup> Tenn. Code Ann. § 68-221-702 <sup>204</sup>	Rith Energy, Inc. v. U.S. (1999) <sup>205</sup>
	-	See above	-
<b>Texas</b>	Article 16, section 59 <sup>206</sup>	Tex. Water Code § 11.021(a) <sup>207</sup> Tex. Water Code § 11.0235 <sup>208</sup>	In re Adjudication of the Water Rights of Upper Guadalupe Segment of Guadalupe River Basin (1982) <sup>209</sup>
	-	Tex. Admin. Code tit. 30, § 297.47 <sup>210</sup>	-
<b>Utah</b>	-	Utah Code Ann. § 73-1-1 <sup>211</sup>	J.J.N.P. Co. v. State of Utah (1982) <sup>212</sup>

<sup>198</sup> (2009). In *Parks*, *infra* note 200, the South Dakota Supreme Court found that the public trust doctrine was manifest in the state's Environmental Protection Act. *Id.* at 838.

<sup>199</sup> 524 N.W.2d 855 (S.D. 1994) (upholding a water permit for the U.S. Fish and Wildlife Service to reserve water for the future continued flow of springs to insure against the water table dropping below level needed to maintain marsh and wildlife habitat).

<sup>200</sup> 676 N.W.2d 823 (S.D. 2004) (holding that "all waters within South Dakota, not just those waters considered navigable under the federal test, are held in trust by the State for the public").

<sup>201</sup> (2008) (recognizing free navigation of the Mississippi River as an "inherent right of the citizens of the State").

<sup>202</sup> (2008) (recognizing that "the waters of Tennessee are the property of the state and are held in public trust for the use of the people of the state" and that "the people of Tennessee, as beneficiaries of this trust, have a right to unpolluted waters"). The state is obligated to "take all prudent steps to secure, protect, and preserve this right."

<sup>203</sup> (2008). Waters of the state include surface and ground water but not bodies of water wholly surrounded by privately owned property.

<sup>204</sup> (2008) (recognizing an explicit trust for waters of the state) ("Recognizing that the waters of the state are the property of the state and are held in public trust for the benefit of its citizens, it is declared that the people of the state are beneficiaries of this trust and have a right to both an adequate quantity and quality of drinking water.").

<sup>205</sup> 44 Fed. Cl. 108 (Fed. Cl. 1999) (holding that denial of a mining permit did not constitute a compensable taking in part due to the public trust doctrine codified in Tennessee statutes).

<sup>206</sup> (2009) (declaring that conservation and development of natural resources, including surface waters, are both public rights and public duties).

<sup>207</sup> (2009) ("The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, canyon, ravine, depression, and watershed in the state is the property of the state").

<sup>208</sup> (2009). This provision explicitly declares that the waters of Texas are "held in trust for the public."

<sup>209</sup> 642 S.W.2d 438 (Tex. 1982) (in a challenge to the constitutionality of the Water Rights Adjudication Act, stating that "Texas holds the title to the waters in a navigable stream in trust for the public." *Id.* at 444).

<sup>210</sup> (2009). This provision requires the Texas Commission on Environmental Quality to consider the hydrological connection between surface and groundwater and the impacts of a surface water right on groundwater.

<sup>211</sup> (2008) ("All waters in this state, whether above or under the ground are hereby declared to be the property of the public, subject to all existing rights to the use thereof.")

<sup>212</sup> 655 P.2d 1133 (Utah 1982) (granting public access to lake despite surrounding private land ownership) (noting that the state "regulates the use of the water, in effect, as trustee for the benefit of the people") ("Public ownership is founded on the principle that water, a scarce and essential resource in this area of the country, is indispensable to the welfare of all the people; and the State must therefore assume the responsibility of allocating the use of water for the benefit and welfare of the people of the State as a whole. The doctrine of public ownership is the basis upon which the State regulates the use of water for the benefit and well being of the people." *Id.* (citing *Marks v. Whitney*, 6 Cal. 3d 251, 491 P.2d 374, 98 Cal. Rptr. 790 (1971))).

-		See above	-
<b>Vermont</b>	-	Vt. St. Ann. tit. 29, § 401 <sup>213</sup> Vt. St. Ann. tit. 10, § 901 <sup>214</sup> Vt. St. Ann. tit. 10, § 901 <sup>215</sup>	-
	-	Vt. St. Ann. tit. 10, § 1390(5) <sup>216</sup>	-
<b>Virginia</b>	Article 11, section 1 <sup>217</sup> Article 11, section 3 <sup>218</sup>	Va. Code Ann. § 1-302 <sup>219</sup>	Complaint of Steuart Transp. Co. (1980) <sup>220</sup> Evelyn v. Commonwealth (2005) <sup>221</sup>
	-	Va. Code Ann. § 62.1-254 <sup>222</sup>	-
<b>Washington</b>	-	Wash. Rev. Code § 90.03.290 <sup>223</sup>	Caminiti v. Boyle (1987) <sup>224</sup> Citizens for Responsible Wildlife Management v. State (2004) <sup>225</sup>
	-	Wash. Rev. Code § 90.44.040 <sup>226</sup>	Rettkowski v. Dep't of Ecology (1993) <sup>227</sup>

<sup>213</sup> (2008) (establishing public trust for lakes and ponds that are public waters and requiring that these waters be managed to serve the public good).

<sup>214</sup> (2009) ("It is hereby declared to be the policy of the state that the water resources of the state shall be protected, regulated and, where necessary, controlled under authority of the state in the public interest and to promote the general welfare.").

<sup>215</sup> (2008) (including groundwater in the definition of state waters).

<sup>216</sup> (2008) ("It is the policy of the state that the groundwater resources of the state are held in trust for the public.").

<sup>217</sup> (2009). The Virginia Constitution grants an environmental constitutional right, which states: "To the end that the people have clean air, pure water, and the use and enjoyment for recreation of adequate public lands, waters, and other natural resources, it shall be the policy of the Commonwealth to conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings. Further, it shall be the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth."

<sup>218</sup> (2009). The state holds oyster beds, rocks, and shoals in trust for the benefit of the people.

<sup>219</sup> (2009) (state ownership of waters and submerged lands).

<sup>220</sup> 495 F. Supp. 38 (E.D. Va. 1980) (extending PTD protection to migratory waterfowl) ("Under the public trust doctrine, the State of Virginia and the United States have the right and the duty to protect and preserve the public's interest in natural wildlife resources. Such right does not derive from ownership of the resources but from a duty owing to the people." *Id.* at 40.).

<sup>221</sup> 621 S.E.2d 130 (Va. App. 2005) (in affirming an order for property owner to remove structure that interfered with the public trust, finding that the state constitution permits consideration of state's public trust duties when interpreting and applying *all* legislative enactments).

<sup>222</sup> (2009) (embracing public trust principles in the Groundwater Management Act).

<sup>223</sup> (2009). For water permits for power development, the Department of Environmental Protection must determine whether the use is "likely to prove detrimental to the public interest, having in mind the highest feasible use of the waters *belonging to the public.*" (Emphasis added.)

<sup>224</sup> 732 P.2d 989 (Wash. 1987) (in upholding statute that permitted riparian owners to build private recreational docks, articulating a test to determine the violation of the public trust doctrine: whether state has relinquished right of control over *jus publicum* and if so whether state has promoted the public interest or not substantially impaired it).

<sup>225</sup> 103 P.3d 203 (Wash. Ct. App. 2004) (in a challenge to statute restricting various hunting methods, discussing but declining to address whether the public trust doctrine applies to wildlife).

<b>West Virginia</b>	-	W. Va. Code § 20-2-3 <sup>228</sup>	
	-	W. Va. Code § 22-12-2 <sup>229</sup>	-
<b>Wisconsin</b>	Article 9, section 1 <sup>230</sup>	Wis. Stat. § 31.06 <sup>231</sup> Wis. Stat. § 30.10 <sup>232</sup> Compact signatory <sup>233</sup>	State v. Bleck (1983) <sup>234</sup>
	-	-	-
<b>Wyoming</b>	Article 1, section 31 <sup>235</sup> Article 8, section 1 <sup>236</sup>	-	-
	See above	-	-

<sup>226</sup> (2009) (declaring that all groundwater is public, belongs to the public, and is subject to beneficial use).

<sup>227</sup> 858 P.2d 232 (Wash. 1993) (noting that there are no prior instances of interpreting the PTD to extend to non-navigable waters or groundwater and declining to address issue) (Guy, J., dissenting) (“It is time to recognize that the public’s interest is in water as an essential natural, finite resource, not in water just as a public highway or playground. Application of the public trust doctrine should not depend on artificial concepts of navigability.” *Id.* at 245.)

<sup>228</sup> (2009). In West Virginia, the state holds title to all wildlife, including migratory birds, and all forms of aquatic life as trustee for the people.

<sup>229</sup> (2009). This provision establishes the state’s groundwater policy, which includes the requirement that groundwater quality be maintained for present and future generations. It also recognizes the connection between surface and groundwater quality.

<sup>230</sup> (2009). Waters of and navigable waters leading into the Mississippi and St. Lawrence are “common highways” that are forever free.

<sup>231</sup> (2009). In considering construction of infrastructure that may interfere with public use of navigable waters, the state must consider public rights, including natural scenic beauty and environmental quality, alongside economic needs.

<sup>232</sup> (2009) (“All lakes wholly or partly within this state which are navigable in fact are declared to be navigable and public waters, and all persons have the same rights therein and thereto as they have in and to any other navigable or public waters.”).

<sup>233</sup> See *supra* note 77.

<sup>234</sup> 338 N.W.2d 492 (Wis. 1983) (in upholding conviction for construction of ski lift on navigable waters without a permit, noting that article 9, section 1, of the Wisconsin Constitution is the basis for the public trust doctrine, expanded to protect use for purely recreational and non-pecuniary purposes).

<sup>235</sup> (2008). Control of water in Wyoming is vested in the state that must “equally guard all the various interests involved.”

<sup>236</sup> (2008) (“The water in all natural streams, springs, lakes, or other collections of still water within state boundaries is property of the state.”).