

**GEORGIA WATER --  
“A PUBLIC RESOURCE OR A COMMODITY”:  
WHAT ARE THE *REAL* POLICY QUESTIONS?**

**Water Policy Working Paper #2002-008<sup>1</sup>**

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**November, 2002**

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<sup>1</sup> The authors gratefully acknowledge financial support for this work provided by the U.S. Department of Agriculture (2001-38869-1607).

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## Executive Summary

Over the last year or so there has been considerable controversy in Georgia concerning policies related to the planning and management of Georgia's water resources. Two key issues in this controversy relate to protecting public interests in water, and reliance on markets as a means for resolving critical problems in reallocating water over time. These two issues are often combined within the context of the question: "are Georgia's waters a public resource or a commodity to be bought and sold?"

This question is at best confusing and at worst misleading. The issue of whether or not Georgia's water resources are a "public resource" is one that is *independent* of -- not related to -- the issue of whether or not water use permits issued by the Georgia Environmental Protection Division can be marketed (which is what we take the term "commodity" to imply).

An unfortunate aspect of the *public resource v. commodity* question is that it detracts from a focus on what are in fact important policy questions facing the state. Instead of this confusing choice, two clearly legitimate questions should be raised. First, to what extent does current Georgia law adequately protect the public's interests in the state's water resources? Second, in water basins in which new water use permits can not be obtained, how can changes in water use patterns over time be facilitated? *One* (of several) option(s) for facilitating reallocation is some form of a market institution. These considerations should make clear that the policy choice facing the Georgia Legislature is *not*: is water a public resource or a commodity? The policy questions that *are* facing the Legislature include: do present laws adequately protect the public's interests in Georgia's water supplies? And, how are problems associated with the reallocation of water use permits to be facilitated?

In this paper we first address the question as to the strength of Georgia's commitment to protect public interests in the state's water resources as such commitments are expressed in existing laws. Comparing legislative declarations of state policy in Georgia with those in 36 other Eastern States, we find that none of the states have expressions of this commitment that would reasonably be regarded as more strongly stated than Georgia law. In conclusion, we find that Georgia water law currently recognizes the public's dependence on the state's water resources and its commitment to policies and programs that assure that water is used prudently for the maximum benefit of the people. Adding "public resource" language to the law would not substantively strengthen these existing policy declarations.

Attention is then turned to the "water as a commodity" issue. We argue here that the "water as a commodity" issues is at best poorly framed. In our view debate in Georgia should center on alternatives for resolving the reallocation issue; it should focus on the question as to how Georgia is to strike a balance between private, competing use of water and public, non-competing uses of water (e.g., instream flows), and how this balance is to be adjusted over time in response to changes in social, environmental, and climatic conditions. When market mechanisms are considered as one of the means to achieve reallocation, evaluation of their effectiveness is dependent on a particular set of market institutions. Thus, being "for" or "against" markets makes no more sense than being "for" or "against" water use permits — everything depends on the provisions and protections of specific laws and proposals.

## GEORGIA WATER: “A PUBLIC RESOURCE OR A COMMODITY” WHAT ARE THE *REAL* POLICY QUESTIONS?

### I. Introduction

Over the last year or so there has been considerable controversy in Georgia concerning policies related to the planning and management of Georgia’s water resources. Two key issues in this controversy relate to protecting public interests in water, and reliance on markets as a means for resolving critical problems in reallocating water over time. These two issues are often combined within the context of the question: “are Georgia’s waters a public resource or a commodity to be bought and sold?”

Unfortunately, this question is at best confusing and at worst misleading. This follows from the simple fact that whether or not Georgia’s water resources are a “public resource” is an issue that is *independent* of -- not related to -- the issue as to whether or not water use permits issued by the Georgia Environmental Protection Division can be marketed (which is what we take the term “commodity” to imply).

An unfortunate aspect of the *public resource v. commodity* question is that it detracts from a focus on what are in fact important policy questions facing the state. Thus, a clearly legitimate question can be raised as to the extent to which current Georgia laws adequately protect the public’s interests in the state’s water resources. Similarly, a clearly legitimate question presently facing Georgians is how, in water basins in which new water use permits can not be obtained, changes in water use patterns over time are to be facilitated. As we have

suggested elsewhere,<sup>1</sup> a “market” for water use permits (in which case the permit is the commodity, not water *per se*) is *one* possible way of facilitating such changes. The point, however, is that decisions concerning this second question are unaffected by how Georgians chooses to respond to the first question. There are a number of states that, while strongly committed to applications of the public trust doctrine to their water resources, allow the voluntary transfer — marketing — of water rights,<sup>2</sup> including California, the “home” of the landmark public trust case applied to water resources,<sup>3</sup> and Arizona, whose Supreme Court struck down efforts by the state legislature to limit the public trust doctrine as it applies to water resources.<sup>4</sup> Over the period 1990-2001, the sale of water rights in excess of 100,000 acre feet (a.f.) took place in each of these two states.<sup>5</sup> Thus, there are clear examples where water appears to be a very “public” resource, *and* this public resource is indeed treated as a “commodity” in the sense that the state allows rights to be marketed. At the risk of being repetitive, the policy choice facing the Georgia Legislature is *not*: is water a public resource or a commodity? The policy questions that *are* facing the Legislature include: do present laws adequately protect the public’s interests in Georgia’s water supplies; and how are problems associated with the

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<sup>1</sup> Cummings, R., N. Norton and V. Norton, Water Rights Transfers: Options for Institutional Reform, Working Paper #2001-001, Water Policy Program, Georgia State University, September, 2001 (38 pp.). See, also, Dellapenna, Joseph W. (Ed.), *The Regulated Riparian Model Water Code*, American Society of Civil Engineers (New York: 1997) at pp. 10 and 280.

<sup>2</sup> See Adams, Jennifer, *et. al.*, Water as a Part of the Public Trust: A Review of Selected State Codes, Water Policy Working Paper #2002-001, Water Policy Program, Georgia State University, January, 2002 (43 pp.)

<sup>3</sup> *National Audubon Society v. Superior Court of Alpine County*, 33 Cal. 3<sup>rd</sup> 419 (1983).

<sup>4</sup> *The San Carlos Apache Tribe...193 Ariz 195 (1999)*. In declaring unconstitutional Arizona Code Section 45-263(b) which declared that “The public trust is not an element of a water right in an adjudication proceeding ...,” the court held that “The public trust doctrine is a constitutional limitation on legislative power to give away resources held by the state in trust for its people...The Legislature cannot by legislation destroy the constitutional limits on its authority” (at p. 19).

<sup>5</sup> Czetwertynski, Mariella, The Sale and Leasing of Water Rights in Western States: An Overview for the Period 1990-2001, Water Policy Working Paper #2002-002, Water Policy Program, Georgia State University,

reallocation of water use permits to be facilitated? Related to the latter question is: what particular combination of non-market and market institutions best serves Georgia's interests?

In the spirit of attempting to provide information that the Legislature might find useful in their considerations of these questions, in section II we briefly examine Georgia's water statutes for the purpose of identifying legislative intent as it concerns the protection of the public's interest in water resources. The interest in this examination is an assessment of the asserted need for stronger statements of commitment, and the extent to which declaring water a "public resource" meets this need. Section III compares the statement of legislative intent in Georgia law with such statements given in laws in 36 (primarily) Eastern states. In this regard, our interest is in the strength of Georgia's commitment to protect public interests relative to other states. Section IV briefly takes up the "water as a commodity" issue. Concluding remarks are offered in section V.

## **II. The Protection Of Public Interest In Georgia's Water Resources.**

The statement of legislative intent regarding the management of water resources in Georgia is found in Georgia Code section 12-5-21. This section reads as follows.

### **Georgia Code 12-5-21 Declaration of policy; legislative intent**

The people of the State of Georgia are dependent upon the rivers, streams, lakes, and subsurface waters of the state for public and private water supply and for agricultural, industrial, and recreational uses. It is therefore declared to be the policy of the State of Georgia that *the water resources of the state shall be utilized prudently for the maximum benefit of the people*, in order to restore and maintain a reasonable degree of purity in the waters of the state and an adequate supply of such waters, and to require where necessary reasonable usage of the waters of the state and reasonable treatment of sewage, industrial wastes, and other wastes prior to their discharge into such waters. To achieve this end, *the government of the state shall assume responsibility for the*

*quality and quantity of such water resources* and the establishment and maintenance of a water quality and water quantity control program adequate for present needs *and designed to care for the future needs of the state*, provided that nothing contained in this article shall be construed to waive the immunity of the state for any purpose. (*emphasis added*)

Thus, recognizing the public's dependence on, and therefore interests in, *all* water resources in the state, the declared policy of the state is to assure that such waters be prudently used for the maximum benefit of *all* the people. The state then assumes full responsibility for the quality and quantity of the state's waters for these purposes, and is committed to the establishment and maintenance of programs that assure water quality and quantity adequate for the present *and future* needs of the state.

All else equal, it would appear that the statement of policy and legislative intent concerning the protection of the public's interests in the state's water resources in Georgia's current law appears to be strong and comprehensive. It is argued by some, however, that current law would be materially strengthened by an amendment to the law that would in some way declare Georgia waters to be a "public resource." It is not immediately clear to the authors how the existing commitment by the state would be materially strengthened by this declaration, but we do not wish to dismiss it out of hand. We do find the term "public resource" or "public natural resource" in the codes of some Eastern States (Florida, Michigan, New Hampshire, New York); we find "public asset" in New Jersey's code, and "public waters" in the codes of North Dakota, Vermont, and Minnesota. But in virtually all cases the term is used simply to define waters "belonging" to the state<sup>6</sup> -- waters for which the state has a trustee responsibility.

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<sup>6</sup> In Florida, waters of the state are among its "basic resources." But, also, "Because water constitutes a public resource (*emphasis added*) benefitting the entire state, it is the policy of the Legislature that the waters in the state be managed on a state and regional basis...so as to meet all reasonable-beneficial uses...(and to) protect such water resources..." Florida Code §373.016(4)(a).

Minnesota explicitly defines “public waters” simply as “...all waters lying wholly within the state and all portions that lie within the jurisdiction of the state contained within any wilderness areas ...(in which)...<sup>7</sup> the public have a right to use for navigation, fishing, hunting or any other beneficial use.”

Water as a “public resource” is defined in a July, 2002 draft of the Water Rights Structure Working Group to Georgia’s Joint Comprehensive Water Plan Study Committee in the following way.

“Water as a public resource’ means that surface and ground waters lying within or forming a part of the boundaries of the state are so essential to the common good that they must be managed by the state in the public interest, subject to reasonable use by persons pursuant to usufructuary rights.” (at p. 22)

The authors of this paper find nothing objectionable about this statement, nor do they disagree with the principles implied by it. What is not clear, however, is how this statement improves upon, or strengthens, the state’s commitment to manage water resources that appears in existing law. Indeed, in terms of a state’s commitment to protect public interests in water, the declaration that, given the people’s dependence on water resources, the policy of the state is to assure that water is used *prudently for the maximum benefit of the people*, along with the explicit assumption of responsibility for the establishment and maintenance of programs adequate for present and future water needs of the public, appears to us as being as strong as, if not stronger than, the statement that “surface and ground waters ... are so essential to the common good that they must be managed by the state in the public interest.” The language of the recommendation regarding reasonable use and usufructuary rights appears to add nothing to the protections and

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<sup>7</sup> Minnesota Statutes §84.43.

limits on water use in Georgia that have been long established by Georgia courts.

A remaining concern, however, is that perhaps we are missing something in terms of the oft repeated assertion that declaring water to be a “public resource” would represent a strengthening of Georgia law. We then turn to examination of stated legislative intent regarding water policy in other Eastern states to the end of assessing the relative strength of Georgia’s water laws

### **III. Protecting Public Interest In Water Resources In Other Eastern States: An Overview Of Legislative Intent**

Using the on-line access to the Lexis-Nexis database provided by Georgia State University’s Pullen Library, the authors searched the codes of 36 states for the terms “water resources” and “policy.”<sup>8</sup> The states included in this survey are given below, and survey results are given in an appendix to this report.

As they relate to a state’s stated concern with the management of its water resources, we find two general types of policy statements in the codes of these 36 states. The first type is characterized by relatively simple statements identifying a unit of government responsible for water management (Wisconsin), or of water

<u>States Surveyed</u>		
Alabama	Maryland	Ohio
Arkansas	Massachusetts	Oklahoma
Connecticut	Michigan	Pennsylvania
Delaware	Minnesota	Rhode Island
Florida	Mississippi	South Carolina
Illinois	Missouri	South Dakota
Iowa	Nebraska	Tennessee
Indiana	New Hampshire	Texas
Kansas	New Jersey	Vermont
Kentucky	New York	Virginia
Louisiana	North Carolina	West Virginia
Maine	North Dakota	Wisconsin

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<sup>8</sup> A further search for the words “public resource” was also conducted for a source of data related to discussions in section II. We acknowledge the limited nature of this search. Searches using other terms may have yielded other information. Our feeling is, however, that the search performed is adequate for the purposes of this study.

management being in the public interest, thereby needing a plan (Kansas, Connecticut), or slightly stronger statements where water management/protection is in the public interest and should be managed so as to promote the general welfare of the public, and/or beneficial uses (Arkansas, Delaware, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, Nebraska,<sup>9</sup> North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Vermont, and Virginia). Absence of stronger language in most of these states is understandable given that water problems arise indirectly through wetlands management and/or soil erosion problems, as opposed to growing water scarcity.<sup>10</sup>

The second class of policy statements found in the codes of Eastern States have (arguably) stronger statements of commitment to water management -- they include language that compares with *some parts* of the language used in Georgia's law. For example, somewhat like Georgia, two states make explicit the state's responsibility for conserving water (Rhode Island) or improving water quality (West Virginia). Five states (Michigan, New Jersey, New York, Pennsylvania, and Tennessee) explicitly acknowledge the state's water resources as resources for which the state has the responsibility of a trustee. The implications of this role as trustee are not spelled out, however, beyond statements related to the need to conserve or manage water "effectively" (Michigan, New York, Pennsylvania) and/or the need to develop plans (New Jersey). Tennessee's code provides that "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, it is

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<sup>9</sup> While general language in Nebraska's code is not as strong as in those of other state's, Nebraska's Ground Water Management and Protection Act creates locally-operated Resource Management Districts that may adopt stringent water management principles and policies.

<sup>10</sup> Notable exceptions include Nebraska and Texas wherein water is indeed scarce in parts of the state, and water management is driven primarily at the local/regional level.

declared to be the public policy of Tennessee that the people of Tennessee, as beneficiaries of this trust, have a right to unpolluted waters.”<sup>11</sup> We find no similar references to water quantity. Emphasis is given to managing water with an eye on the interests of future generations, or on sustainable use, in the codes of Alabama, Florida, Massachusetts, Maryland, and New Hampshire.

While many of the codes in this second group share the “flavor” of Georgia’s law, we find in none of them a statement of legislative intent that would reasonably be regarded as being stronger, or broader in scope, than Georgia’s: a recognition of the public dependence and therefore interests in the state’s water resources, a commitment for policies that assure that water is used prudently for the maximum benefit of the people, and the explicit assumption of responsibility for the establishment and maintenance of programs adequate for present and future water needs of the public. Of course, the reader can make his or her own judgements in these regards by perusing the material given in the appendix.

Our (admittedly limited) review of state codes yields a few observations that may be of interest for two other issues being discussed in the ongoing review of Georgia’s programs for water management. First, in terms of the level (state *vs.* local/regional) at which water planning and management takes place, 8 states rely primarily on local/regional entities (Arkansas, Delaware, Florida, Kansas, Minnesota, Nebraska, Oklahoma, and South Dakota). In half of these states (Delaware, Nebraska, Oklahoma, and South Dakota), soil and water districts are charged with the tasks of designing and implementing water planning and management

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<sup>11</sup> Tennessee Code §69-3-102.

activities.

Secondly, interbasin water transfers are directly addressed in the codes of six states (we exclude provisions in states abutting the Great Lakes related to transfers of water from the Lakes). Four of the six states view interbasin transfers as an important, integral part of managing the state's water, although they are typically concerned with problems of the source of origin for transferred water. For example, the Florida code provides that "...the Legislature recognizes the need to allocate water throughout the state so as to meet all reasonable-beneficial uses. However, the Legislature acknowledges that such allocations have in the past adversely affected the water resources of certain areas in this state. To protect such water resources and to meet the current and future needs of those areas with abundant water, the Legislature directs the department and the water management districts to encourage the use of water from sources nearest the area of use or application whenever practicable."<sup>12</sup>

Two of the six states, Maine and Michigan, explicitly prohibit such transfers. For example, Maine's code (§2660) provides that:

"The Legislature finds that the transport of water for commercial purposes in large quantities away from its natural location constitutes a substantial threat to the health, safety and welfare of persons who live in the vicinity of the water and rely on it for daily needs. If the transportation occurs, persons who relied on the presence of water when establishing residences or commercial establishments may find themselves with inadequate water supplies. In addition, the Legislature finds that the only practicable way in which to prevent the depletion of the water resources is to prohibit the transport of water in large quantities away from the vicinity of its natural location. The purpose of this prohibition is, however, not to prevent the use of such supplies for drinking and other public purposes in the vicinity of the natural location of the water."

#### **IV. The "Water As A Commodity" Issue**

We now consider the appropriately *separate* issue that has become popularly framed as

the question: “is water to be treated as a commodity?” In our view, even when (appropriately) separated from the “public resource” issue, this question is poorly framed.<sup>13</sup> The use of water in industry and agriculture is undeniably the same as the use of other inputs such as energy and chemicals. This use is the result of rational economic decisions as to how a farmer or the owner of a firm is to combine such things as land, labor, capital, water, and other inputs for the purpose of producing goods and services valued by society. Home consumption of water is not very different from home consumption of a myriad of products, and is particularly similar to the home consumption of energy. No one is suggesting that these “commodity” uses of water are improper. No one is suggesting that agriculture and industry should not be using water, as they use other resources (e.g., land), to earn income. No one is suggesting that households should not use water to produce private services, such as cleaning clothes, taking showers, or watering plants. Indeed, it is the state’s recognition that such uses *are beneficial* to the Georgia public that has provided the basis for its issuance of a permit to use water for these purposes. Moreover, in many parts of the state this commodity “water” is bought and sold like any other commodity. Communities in Dade, Walker, and Whitfield Counties in North Georgia on regular and/or intermittent bases purchase water from private utility companies in Georgia, as well as from two water companies located in Tennessee: Tennessee-American Water Company and Eastside Utilities. Tennessee-American Water Company (located in Chattanooga) reports serving 5,337 utility customers in Georgia, yielding revenues of some \$2.1 million. As still other similar examples, the City of Savannah, as well as private water companies, sell water to

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<sup>12</sup> Florida Code §373.016(4)(a).

<sup>13</sup> As an aside it is interesting to note that in *Sprohase v. Nebraska*, the U.S. Supreme Court explicitly defines groundwater as a “commodity” -- it is a commodity in commerce and as such its movement across state lines

communities and residential developers in Coastal Georgia.

As noted above in section I, the relevant issue facing Georgia that relates to water as a commodity is how the state is to reallocate water over time in basins where new water use permits are no longer available. The appropriate (in our view) debate in Georgia should focus on whether, and under what circumstances, water use permits can be exchanged among private individuals (or between private users and agents for public use) -- it should focus on how Georgia is to strike a balance between private, competing use of water and public, non-competing uses of water (e.g., instream flows). In this latter regard, important issues arise concerning how this balance is to be adjusted over time with *changes*: in human needs that occur due to socio-demographic, economic, and other developments; in our understanding of ecosystem processes and their reliance on water; and in our appreciation of implications of potential (if not probable) changes in climatic conditions.

To conclude our discussion of the “water as a commodity” issue, we note that the use of market-*like* institutions as one means by which water reallocation over time might be facilitated has been raised in Georgia. The efficacy of market institutions of reallocating water was recently challenged by Professor Dellapenna during his January, 2002 presentation before the Legislative Water Study Committee. Professor Dellapenna asserts that even in Western States there have been few water sales of any substantial magnitude. We believe that the debate over market institutions in Georgia could take place more productively if there were wider recognition that market institutions for water are **not** synonymous with appropriative rights, the

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is protected under the Commerce Clause of the U.S. Constitution.

unregulated sale of water, or even with private ownership of water.

We first note that the Regulated Riparian Model Water Code<sup>14</sup> which Professor Dellapenna both edited and generally advocates, is positive toward market institutions within the context of a regulated riparian system:

“In order to attain contemporary economic, environmental, and other social goals, the State shall encourage and enable the sale or other voluntary modification of water rights subject to the protection of third parties and the public interest.”<sup>15</sup>

“The RRMWC adopts a policy favoring the modification of water rights to promote the highest or best use of the resource. This approach, particularly where modification occurs through a market, has strong supporters in the literature of water management and is beginning to be found in actual water management today.”<sup>16</sup>

and

“The lack of economic incentives in water usage has contributed to a reality in which water is frozen into its present uses and new uses must depend on developing ‘new’ supplies rather than on conservation in existing uses or the transfer of water from low-valued uses to higher-valued future uses. The end result of such a situation can only be significant and growing inefficiency.”<sup>17</sup>

This language clearly refers to market transfers of usufructuary rights under the regulatory authority of the state, and not an unfettered private market in water. We note that this is *precisely* the context for market-like institutions that we previously suggested as being potentially useful for resolving water allocation problems in Georgia,<sup>18</sup> and which was included in the recommendations of Water Rights Structure Working Group to Georgia’s Joint Comprehensive Water Plan Study Committee. The key point here is that market institutions can — and in our view should — remain subject to the same environmental safeguards as any other means of allocating or re-allocating Georgia’s water resources.

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<sup>14</sup> Joseph W. Dellapenna (ed.), *The Regulated Riparian Model Water Code*, American Society of Civil Engineers (New York: 1997).

<sup>15</sup> *Ibid*, at p. 9.

<sup>16</sup> *Ibid*, at p. 279.

<sup>17</sup> *Ibid*, at p. 281.

We differ with Professor Dellapenna on the evidence of how successful market institutions have been in re-allocating significant quantities of water. His argument is expanded in one of his recent law review articles in the following way.

“...as an empirical matter, actual markets in free-flowing water have always been *extremely rare*. Such markets as there are generally have been used to transfer fairly *small quantities* of water *among similar users* in close proximity to each other, such as between farmers or ranchers within a single irrigation or water management district...The modern concern, however, is not with creating markets to facilitate such transactions, but to find ways to move large quantities of water out of existing uses into uses that were not developed at the time the water was first allocated to existing patterns of use.”<sup>19</sup> (*emphasis added*)

Data reported by Czetwertynski<sup>20</sup> present a very different view of “empirical matters” related to rare, small quantity transfers between similar users. First, water transfers are *not* so rare. Over the period 1990-2001, more than 20 water sales transactions took place in six of 17 states that were reviewed, 22 in California, 28 in Arizona, 32 in New Mexico, 62 in Nevada, and **851** in Colorado.

Second, transactions are *not* limited to “small quantities.” While Professor Dellapenna does not define “small quantities,” the *average* transaction in 10 of the 17 states between 1990 and 2001 exceeded 500 acre feet -- a quantity of water sufficient to satisfy household water needs for most rural, Georgia towns with populations as high as *4,000 people*.<sup>21</sup> In many states, the *average* volume of water involved in water sales exceed 500 acre feet by large amounts: 1,000 to 3,000 a.f. in Idaho, Oregon, Texas, and Washington; 3,691 a.f. in Arizona, 7,803 a.f. in California, and one transfer of **80,000(!)** a.f. in Oklahoma.

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<sup>18</sup> *Supra* Note 1.

<sup>19</sup> Dellapenna, Joseph W., “The Importance of Getting Names Right: The Myth of Markets for Water,” 25 William and Mary Environmental Law and Policy Review 324 (Winter, 2000).

<sup>20</sup> *Supra* Note 5.

Third, and finally, water transactions are *not* “generally” limited to transactions between similar (farmer-to-farmer) users. Czetwertynski’s report clearly shows that it is farmer-to-farmer sales of water that are “rare.” With the exception of Wyoming (that had one sale, and it involved a farmer-to-farmer sale), the bulk of sales are between farmers and municipal/industrial entities. As but a few examples, none of the water sales in Kansas(7), Nevada(62), New Mexico(32), Oklahoma(1), Oregon(3), and Washington(1) involved farmers selling water to farmers. Thus, it would appear that markets have had some success in addressing Dellapenna’s “modern concern” for “...ways to move large quantities of water out of existing uses into uses that were not developed at the time the water was first allocated to existing patterns of use.”<sup>22</sup>

## **V. Concluding Remarks**

Our hope is that this paper will have accomplished two purposes. Our first purpose was to argue that the “is water a public resource or a commodity” question, all too commonly heard in contemporary discussions of Georgia’s water future, does not properly frame the policy questions that should be basic to the Legislature’s consideration of Georgia’s water law. The “is water a public resource?” question can be viewed as a separate policy-relevant question that asks: “does present Georgia law adequately protect the public’s interests in the state’s water resources?” Our survey of water codes in other Eastern states suggests that Georgia water law provides adequate protection, although the Legislature could attempt to make this protection stronger. If the term “public resource” is used/added by the Legislature, it will have little

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<sup>21</sup> Assumes average annual 4-person household water use at .5 acre feet.

<sup>22</sup> *Supra* Note 5.

meaning, since no precedent exists to determine what that phrase means. Therefore, the determination of how strong the protections are for water quantity and quality in our State will be subject to years of litigation, with results that will yield (arguably) no stronger protection for the resource than under current Georgia law.

The “is water a commodity” piece of the question is relevant for a totally separate policy issue with which the Legislature must grapple. In water-short basins, under conditions where new water use permits cannot be obtained from the EPD, the policy question is: does the state simply freeze the current pattern of water use, or does it attempt to facilitate changes in the pattern of water use so that affected basins can take advantage of future opportunities for economic growth? If it chooses the latter, **then** the “commodity” question arises as a part of the state’s consideration of means by which to facilitate reallocation in future years.

This question is highly relevant to the broader question of how Georgia allocates scarce water supplies in the face of long-term changes in water use patterns, economic activity, and our understanding of ecosystem requirements. Georgia will need to develop approaches that allow these adjustments to take place equitably, transparently, and efficiently. We believe that the recognition that market institutions can provide flexibility, encourage conservation, and help to prevent negative economic consequences will help Georgia meet this challenge.

We emphasize again that we are not talking about making water an unregulated private commodity. We have argued elsewhere<sup>23</sup> that a simple, unregulated market for water use permits would not best serve Georgia’s interests; we recommend consideration of a market

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<sup>23</sup> *Supra* Note 1.

design, unique among the states, where the public's interests in water resources might be best protected. Thus, the "commodity" debate should center on alternatives to a market design for resolving the reallocation issue; it should focus on the question as to how Georgia is to strike a balance between private, competing use of water and public, non-competing uses of water (e.g., instream flows), and how this balance is to be adjusted over time in response to changes in social, environmental, and climatic conditions. This debate is unaffected by how the state responds to the question of what new language, if any, is needed to safeguard the public's interest in Georgia's water resources.

## APPENDIX

### Eastern State's Codes Related To Water Resources And Legislative Intent Regarding The Protection Of Public Interests

[Note: *italics* added by authors for emphasis]

#### Alabama

##### § 22-22A-2. Legislative intent

The Legislature finds the resources of the state must be managed in a manner compatible with the environment, and the health and welfare of the citizens of the state. To respond to the needs of its environment and citizens, the state must have a comprehensive and coordinated program of environmental management. It is therefore the intent of the Legislature to improve the ability of the state to respond in an efficient, comprehensive and coordinated manner to environmental problems, and thereby assure for all citizens of the state a safe, healthful and productive environment.

##### § 9-10B-2. Legislative intent

The Legislature of the State of Alabama hereby finds and declares that:

(1) All waters of the state, whether found on the surface of the ground or underneath the surface of the ground, are among the basic resources of the State of Alabama;

(2) The use of waters of the state for human consumption is recognized as a priority use of the state and it is the intent of this chapter that no limitation upon the use of water for human consumption shall be imposed except in emergency situations after the Office of Water Resources has considered all feasible alternatives to such limitations.

(3) The use of such waters should be conserved and managed *to enable the people of this state to realize the full beneficial use thereof and to maintain such water resources for use in the future;*

(4) *The general welfare of the people of this state is dependent upon the dedication of the water resources of the State of Alabama to beneficial use to the fullest extent to which they are capable through the development and implementation of plans and programs to manage such quantitative water resources;*

#### Arkansas

##### § 14-117-102. Declaration of policy

(a) The General Assembly takes notice that interests of the state would be benefitted by the establishment of irrigation systems and that the coordination of irrigation, flood control, and drainage improvements *is a matter of public interest and public welfare;* the General Assembly believes that this end will be promoted by enabling legislation for the organization of irrigation and drainage districts, vesting the districts with appropriate powers to accomplish their objectives, and, therefore, declares its policy to be to promote these activities by providing for

the organization, operation, and *maintenance of districts* for the multiple purposes of irrigation, flood control, and drainage.

### **Connecticut**

§ 22a-352. (Formerly Sec. 25-5b).

Long-range plan for management of water resources.

(a) The Department of Environmental Protection, the Department of Public Health and the Office of Policy and Management, shall establish a continuing planning process and shall prepare and periodically update jointly a state-wide long-range plan for the management of the water resources of the state.

§ 22a-5. Duties and powers of commissioner.

The commissioner shall carry out the environmental policies of the state and shall have all powers necessary and convenient to faithfully discharge this duty. In addition to, and consistent with the environment policy of the state, the commissioner shall (a) *promote and coordinate management of water*, land and air resources to *assure their protection, enhancement and proper allocation and utilization*; (b) provide for the protection and management of plants, trees, fish, shellfish, wildlife and other animal life of all types, including the preservation of endangered species; ...

### **Delaware**

§ 3901. Declaration of policy

It is the policy of the State to provide for the preservation of the productive power of Delaware land and the optimum development and use of certain surface water resources of the State by furthering the conservation, protection, development and utilization of land and water resources, including the impoundment, and disposal of water and by preventing and controlling floodwater and sediment damages, and thereby to preserve natural *resources and promote their beneficial use*, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, provide recreation development, protect the tax base, protect public lands and highways, and protect and promote the health, safety and general welfare of the people of this State.

§ 3905. General powers and duties of Department

(a) The Department shall:

(1) Formulate policies and general programs *to be carried out by the Department and by soil and water conservation districts* for the prevention of erosion, floodwater and sediment damages and for the conservation, protection, development and utilization of the State's soil and water resources, including the impoundment and disposal of water, and removal of sediment from waterways, lakes, ponds or other bodies of water;

### **Florida**

§ 373.016 Declaration of policy.

(1) The waters in the state are among its *basic resources*. Such waters have not heretofore been conserved or fully controlled so as to realize their full beneficial use.

(2) The department and the governing board shall take into account cumulative impacts on water resources and manage those resources *in a manner to ensure their sustainability*.

(3) It is further declared to be the policy of the Legislature:

(a) To provide for the management of water and related land resources;

(b) To promote the conservation, replenishment, recapture, enhancement, development, and proper utilization of surface and ground water;

(c) To develop and regulate dams, impoundments, reservoirs, and other works and to provide water storage for beneficial purposes;

(d) To promote the availability of sufficient water for all existing *and future* reasonable-beneficial uses and natural systems;

(4) (a) Because water constitutes a public resource benefitting the entire state, it is the policy of the Legislature that the waters in the state *be managed on a state and regional basis*.

Consistent with this directive, the Legislature recognizes the need to allocate water throughout the state so as to meet all reasonable-beneficial uses. However, the Legislature acknowledges that such allocations have in the past adversely affected the water resources of certain areas in this state. To protect such water resources and to meet the current and future needs of those areas with abundant water, the Legislature directs the department and the water management districts to encourage the use of water from sources nearest the area of use or application whenever practicable.

(5) The Legislature recognizes that the water resource problems of the state vary from region to region, both in magnitude and complexity. It is therefore the intent of the Legislature to vest in the Department of Environmental Protection or its successor agency the power and responsibility to accomplish the conservation, protection, management, and control of the waters of the state and with sufficient flexibility and discretion to accomplish these ends *through delegation of appropriate powers to the various water management districts*.

## **Illinois**

§ 70 ILCS 405/2. Declaration of policy

Sec. 2. Declaration of policy. The General Assembly declares it to be *in the public interest* to provide (a) for the conservation of the soil, soil resources, water and water resources of this State, (b) for the control and prevention of soil erosion, (c) for the prevention of air and water pollution, and (d) for the prevention of erosion, floodwater and sediment damages, and thereby to conserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, conserve wild life and forests, protect the tax base, protect public lands, and protect and promote the health, safety and general welfare of the people of this State.

## **Indiana**

§ 14-25-1-2. Water as natural resource and subject to control and regulation

(a) Water in a natural stream, natural lake, or another natural body of water in Indiana that may be applied to a useful and beneficial purpose is declared to be:

(1) A natural resource and *public water of Indiana*; and

(2) Subject to control and regulation for the public welfare as determined by the general assembly.

(b) Diffused surface water flowing vagrantly over the surface of the ground is not considered to be public water. The owner of the land on which the water falls, pools, or flows has the right to use the water.

#### § 14-25-3-3. Public policy

It is a public policy of the state in the interest of the economy, health, and welfare of Indiana and the citizens of Indiana to conserve and protect the ground water resources of Indiana and for that purpose to provide reasonable regulations for the most beneficial use and disposition of ground water resources.

### **Iowa**

#### § 161A.2 Declaration of policy.

It is hereby declared to be the policy of the legislature to integrate the conservation of soil and water resources into the production of agricultural commodities to insure the long-term protection of the soil and water resources of the state of Iowa, and to encourage the development of farm management and agricultural practices that are consistent with the capability of the land to sustain agriculture, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist and maintain the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands and promote the health, safety and public welfare of the people of this state.

#### § 455B.262 Declaration of policy and planning requirements.

1. It is recognized that the protection of life and property from floods, the prevention of damage to lands from floods, and the orderly development, wise use, protection, and conservation of the water resources of the state...
2. The general welfare of the people of the state requires that the water resources of the state be put to beneficial use which includes ensuring that the waste or unreasonable use, or unreasonable methods of use of water be prevented, and that the conservation and protection of water resources be required with the view to their reasonable and beneficial use in the interest of the people, and that the public and private funds for the promotion and expansion of the beneficial use of water resources be invested to the end that the best interests and welfare of the people are served.
3. Water occurring in a basin or watercourse, or other body of water of the state, *is public water and public wealth of the people of the state* and subject to use in accordance with this chapter, and the control and development and use of water for all beneficial purposes is vested in the state, which shall take measures to ensure the conservation and protection of the water resources of the state. These measures shall include the protection of specific surface and groundwater

sources as necessary to ensure long-term availability in terms of quantity and quality to preserve the public health and welfare.

### **Kansas**

§ 82a-901a. Legislative declaration.

The people of the state can best achieve the proper utilization and control of the water resources of the state through comprehensive planning which coordinates and provides guidance for the management, conservation and development of the state's water resources.

§ 82a-1020. Legislative declaration.

It is hereby recognized that a need exists for *the creation of special districts* for the proper management of the groundwater resources of the state; for the conservation of groundwater resources; for the prevention of economic deterioration; for associated endeavors within the state of Kansas through the stabilization of agriculture; and to secure for Kansas the benefit of its fertile soils and favorable location with respect to national and world markets. It is the policy of this act to preserve basic water use doctrine and to establish the right of local water users to determine their destiny with respect to the use of the groundwater insofar as it does not conflict with the basic laws and policies of the state of Kansas. It is, therefore, declared that in the public interest it is necessary and advisable to permit the establishment of groundwater management districts.

### **Kentucky**

§ 151.110. Water resources policy -- Duties of cabinet

(1) (a) The conservation, development, and proper use of the water resources of the Commonwealth of Kentucky have become of vital importance as a result of population expansion and concentration, industrial growth, technological advances, and an ever increasing demand for water for varied domestic, industrial, municipal, and recreational uses. It is recognized by the General Assembly that excessive rainfall during certain seasons of the year causes damage from overflowing streams. However, prolonged droughts at other seasons curtail industrial, municipal, agricultural, and recreational uses of water and seriously threaten the continued growth and economic well-being of the Commonwealth. The advancement of the safety, happiness, and welfare of the people and the protection of property require that the power inherent in the people be utilized to promote and to regulate the conservation, development, and most beneficial use of the water resources. It is hereby declared that *the general welfare requires that the water resources of the Commonwealth be put to the beneficial use to the fullest extent of which they are capable*, that the waste or non-beneficial use of water be prevented, and that the conservation and beneficial use of water be exercised in the interest of the people. Therefore, it is declared the policy of the Commonwealth to actively encourage and to provide financial, technical, or other support for projects that will control and store our water resources in order that the continued growth and development of the Commonwealth might be assured.

(2) It is a finding of the General Assembly that groundwater is an important but vulnerable natural resource of this state, that the majority of rural Kentuckians rely exclusively on

groundwater for drinking, and that groundwater is inextricably linked to surface waters which may also serve as a drinking water resource. It is also a finding that groundwater is a resource equally vital for agricultural, commercial, and industrial purposes and that useable groundwater is critical to the future development of these industries. Therefore, it shall be the policy of this state to manage groundwater for the health, welfare, and economic prosperity of all citizens.

## **Louisiana**

### **§ 30 Purpose**

A. The legislature hereby acknowledges that water as a source of life is the most important element of man's environmental resources. Louisiana has been favored with abundant water resources and has had little to prompt the establishment of a state policy and program addressing the short and long-term availability of and need for water. However, the planning, development, and wise management of the state's water resources will be necessary to sustain its people, commerce, and industry.

B. To ensure an adequate and safe supply of water to Louisiana users, the legislature hereby creates a statewide program for the planning, development, and management of water resources.

### **§ 3099.1 Legislative findings; purpose**

The utilization of ground water resources is hereby found and declared *to be a matter of public interest*. In the public interest, a comprehensive ground water management system must be implemented. Such ground water management system must take into consideration the requirements, needs, and obligations of all stakeholders of ground water in the state of Louisiana. Any such system shall be based upon good management practices and sound science based upon generally accepted scientific principles and must include as a goal the long-term protection of each aquifer. Ground water must be managed, protected, and regulated in the best interests of all the citizens of the state.

### **§ 2002 Findings and declaration of policy**

The legislature finds and declares that:

(1) The maintenance of a healthful and safe environment for the people of Louisiana is a matter of critical state concern.

(2) It is necessary and desirable for the protection of the public welfare and property of the people of Louisiana that there be maintained at all times, both now and in the future, clean air and water resources, preservation of the scenic beauty and ecological regimen of certain free flowing streams, and strictly enforced programs for the safe and sanitary disposal of solid waste, for the management of hazardous waste, for the control of hazards due to natural and man-made radiation, considering sound policies regarding employment and economic development in Louisiana.

## **Maine**

### **§ 2. Policy**

Conservation of soil and water resources may involve adjustments in land and water use and the development, improvement and protection of these resources under various combinations of use. It is declared to be the policy of the Legislature to provide for and encourage the optimal use of the State's agricultural resources, to insure the availability of appropriate soil and water resources for the production of food and other renewable resources, to provide for the conservation of the soil and soil and water resources of this State, and for the control and prevention of soil erosion, and thereby to preserve natural resources and maintain the economic base for the State's natural resource industries, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands and protect and promote the health, safety and general welfare of the people of this State.

### **§ 401. Findings; purpose**

The Legislature finds and declares that the protection of ground water resources is critical to promote the health, safety and general welfare of the people of the State. Aquifers provide a significant amount of the water used by the people of the State. Aquifers and aquifer recharge areas are critical elements in the hydrologic cycle. Aquifer recharge areas collect, conduct and purify the water that replenishes aquifers.

The Legislature further finds and declares that an adequate supply of safe drinking water is a matter of the highest priority and that it is the policy of the State to protect, conserve and maintain ground water supplies in the State.

The Legislature further finds and declares that ground water resources are endangered by unwise uses and land use practices.

The Legislature further finds that these resources may be threatened by certain agricultural chemicals and practices, but that the nature and extent of this impact is largely unknown. Failure to evaluate this potential problem is likely to result in costly contamination of some ground water supplies leading to increased risks to the public health.

The Legislature further finds and declares it to be the purpose of this Article to require classification of the state's ground water resources.

### **§2660. Legislative findings**

The Legislature finds that the transport of water for commercial purposes in large quantities away from its natural location constitutes a substantial threat to the health, safety and welfare of persons who live in the vicinity of the water and rely on it for daily needs. If the transportation occurs, persons who relied on the presence of water when establishing residences or commercial establishments may find themselves with inadequate water supplies. In addition, the Legislature finds that the only practicable way in which to prevent the depletion of the water resources is to prohibit the transport of water in large quantities away from the vicinity of its natural location. The purpose of this prohibition is, however, not to prevent the use of such supplies for drinking and other public purposes in the vicinity of the natural location of the water.

## **Maryland**

§ 5-501. Policy of State; subtitle supplemental to existing laws

(a) Policy of State. -- In order to conserve, protect, and use water resources of the State in accordance with the best interests of the people of Maryland, it is the policy of the State to control, so far as feasible, appropriation or use of surface waters and groundwaters of the State. Also, it is State policy to promote public safety and welfare and control and supervise, so far as is feasible, construction, reconstruction, and repair of dams, reservoirs, and other waterworks in any waters of the State.

§ 5-5A-02. Legislative findings

The General Assembly finds that: ...

(1) The waters of the State are a precious, irreplaceable resource essential to the environment, commerce, and recreation of citizens and tourists of the State;

## **Massachusetts**

§ 3. Planning; Adoption of Principles, Policies and Guidelines by Water Resources Commission; Water Resources Management Advisory Committee Established; Adoption of Regulations by Department of Environmental Quality Engineering.

The department and commission shall cooperate in the planning, establishment and management of programs to assess the uses of water in the commonwealth and to plan for future water needs.

The commission shall adopt principles, policies and guidelines necessary for the effective planning and management of water use and conservation in the commonwealth and for the administration of this chapter as necessary and proper to ensure an adequate volume and quality of water for all citizens of the commonwealth, *both present and future*. Such principles, policies and guidelines shall be designed to protect the natural environment of the water in the commonwealth; to assure comprehensive and systematic planning and management of water withdrawals and use in the commonwealth, recognizing that water is both finite and renewable; and to allow continued and *sustainable economic growth* throughout the commonwealth and increase the social and economic well being and safety of the commonwealth's citizens and of its work force.

## **Michigan**

§ 32702. The legislature finds and declares that: ...

(c) The waters of the state are valuable public natural resources held *in trust by the state, and the 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*.

(d) The waters of the Great Lakes basin are a valuable public natural resource, and the states and provinces of the Great Lakes region and Michigan share a common interest in the preservation of that resource.

(e) Any new diversion of waters of the Great Lakes basin for use outside of the Great Lakes basin will have significant economic and environmental impact adversely affecting the use of this resource by the Great Lakes states and Canadian provinces.

(f) The continued availability of water for domestic, municipal, industrial, and agricultural water supplies, navigation, hydroelectric power and energy production, recreation, and the maintenance of fish and wildlife habitat and a balanced ecosystem are vital to the future economic health of the states and provinces of the Great Lakes region.

(g) Future *interbasin diversions* and consumptive uses of waters of the Great Lakes basin *may have significant adverse impacts* upon the environment, economy, and welfare of the Great Lakes region and of this state.

(h) The states and provinces of the Great Lakes region have a duty to protect, conserve, and manage their shared water resources for the use and enjoyment of present and future residents.

## **Minnesota**

### § 103A.201 Regulatory policy

Subdivision 1. Policy. To conserve and use water resources of the state *in the best interests of its people*, and to promote the public health, safety, and welfare, it is the policy of the state that:

(1) subject to existing rights, *public waters* are subject to the control of the state;

### § 110A.01 Policy statement

Conservation of the state's water resources is a state function, and the public interest, welfare, convenience, and necessity require *the creation of water user districts* and the construction of systems of works, in the manner provided, for the conservation, storage, distribution, and use of water. The construction of systems of works by districts, as provided, is hereby declared to be in all respects for the welfare and benefit of the people of Minnesota.

### § 103A.201 Regulatory policy

Subdivision 1. Policy. To conserve and use water resources of the state in the best interests of its people, and to promote the public health, safety, and welfare, it is the policy of the state that:

(1) subject to existing rights, *public waters* are subject to the control of the state;

(2) the state, to the extent provided by law, shall control the appropriation and use of waters of the state; and

(3) the state shall control and supervise activity that changes or will change the course, current, or cross section of public waters, including the construction, reconstruction, repair, removal, abandonment, alteration, or the transfer of ownership of dams, reservoirs, control structures, and waterway obstructions in public waters.

## **Mississippi**

### § 51-3-1. Declaration of policy on conservation of water resources

It is hereby declared that the general welfare of the people of the State of Mississippi requires

that the water resources of the state be *put to beneficial use to the fullest extent of which they are capable*, that the waste or unreasonable use, or unreasonable method of use, of water be prevented, that the conservation of such water be exercised with the view to the reasonable and beneficial use thereof in the interest of the people, and that the public and private funds for the promotion and expansion of the beneficial use of water resources shall be invested to the end that the best interests and welfare of the people are served.

It is the policy of the Legislature that conjunctive use of groundwater and surface water shall be encouraged for the reasonable and beneficial use of all water resources of the state. The policies, regulations and public laws of the State of Mississippi shall be interpreted and administered so that, to the fullest extent possible, the ground and surface water resources within the state shall be integrated in their use, storage, allocation and management.

All water, whether occurring on the surface of the ground or underneath the surface of the ground, is hereby declared to be among the *basic resources of this state* therefore *belong to the people of this state* and is subject to regulation in accordance with the provisions of this chapter. The control and development and use of water for all beneficial purposes shall be in the state, which, in the exercise of its police powers, shall take such measures to effectively and efficiently manage, protect and utilize the water resources of Mississippi.

## **Missouri**

§ 640.400. Citation of law

2. The department shall ensure that the quality and quantity of the water resources of the state are maintained at the highest level practicable *to support present and future beneficial uses*. The department shall inventory, monitor and protect the available water resources in order to maintain water quality, protect the public health, safety and general and economic welfare.

§ 256.200. Duties and powers of commission

The clean water commission shall develop a plan for a gradual, long-range, comprehensive statewide program for the conservation, development, management and use of the water resources of the state, and to this end:

(1) Shall collect data, make surveys, investigations and recommendations concerning the water resources of the state as related to its social and economic needs;

(2) Shall act as a clearing house and coordinator for the collection of water resources data and for the use of water resources data collected by various other governmental agencies and organizations; ...

## **Nebraska**

§ 2-4202. Legislative policy

It is hereby declared to be the policy of the Legislature to provide for the conservation and protection of the natural resources of this state through control and prevention of soil erosion, reduction of sediment damage, control of flood waters, enhancement of domestic water supply, improvement of water quality, and collection and containment of water. Within this state, the

landowners involved in farm and ranch operations and the political subdivisions must be provided with financial assistance to encourage conservation of the state's water and related land resources. Without such conservation incentives, the control, containment, and utilization of our water resources and the productivity of our soil will be greatly threatened. Assistance provided to landowners under the Conservation Corporation Act will enhance farm and ranch operations, one of the chief industries of this state, by protecting or enhancing agricultural productivity and will protect, preserve, and promote the source of food supplies to the citizens of this state. Assistance provided to political subdivisions under the Conservation Corporation Act will promote the general welfare of the citizens of such political subdivisions and further promote the productivity of business enterprises and the general health, welfare, and safety. The necessity for the Conservation Corporation Act *to protect the health, safety, and general welfare of all people of this state* is hereby declared as a matter of legislative determination.

§ 2-1576. Legislative intent

The Legislature recognizes and hereby declares that it is the public policy of this state to properly conserve, protect, and utilize the water and related land resources of the state, to better utilize surface waters and available precipitation, to encourage ground water recharge to protect the state's dwindling ground water supply, to protect the quality of surface water and ground water resources, and to reduce soil erosion and sediment damages. The Legislature further declares that *it is in the public interest of this state* to financially assist in encouraging water and related land resource conservation and protection measures on privately owned agricultural, horticultural, or silvicultural land and that this will produce long-term benefits for the general public.

§ 46-656.08. Natural resources district; powers; enumerated

*Regardless of whether or not any portion of a district has been designated as a management area*, in order to administer and enforce the Nebraska Ground Water Management and Protection Act and to effectuate the policy of the state to conserve ground water resources, a district may:

- (1) Adopt and promulgate rules and regulations necessary to discharge the administrative duties assigned in the act;
- (2) Require such reports from ground water users as may be necessary;
- (3) Require meters to be placed on any water wells for the purpose of acquiring water use data;
- (4) Conduct investigations and cooperate or contract with agencies of the United States, agencies or political subdivisions of this state, public or private corporations, or any association or individual on any matter relevant to the administration of the act;
- (5) Report to and consult with the Department of Environmental Quality on all matters concerning the entry of contamination or contaminating materials into ground water supplies; and
- (6) Issue cease and desist orders, following ten days' notice to the person affected stating the contemplated action and in general the grounds for the action and following reasonable opportunity to be heard, to enforce any of the provisions of the act or of orders or permits issued pursuant to the act, to initiate suits to enforce the provisions of orders issued pursuant to the act,

and to restrain the construction of illegal water wells or the withdrawal or use of water from illegal water wells.

### **New Hampshire**

#### § 481:1. Declaration of Policy

The general court finds that an adequate supply of water is indispensable to the health, welfare and safety of the people of the state and is essential to the balance of the natural environment of the state. Further, the water resources of the state are subject to an ever-increasing demand for new and competing uses. The general court declares and determines that the water of New Hampshire whether located above or below ground constitutes a limited and, therefore, precious and invaluable *public resource* which should be protected, conserved and managed in the interest of *present and future generations*. The state as trustee of this resource for the public benefit declares that it has the authority and responsibility to provide careful stewardship over all the waters lying within its boundaries. The maximum public benefit shall be sought, including the assurance of health and safety, the enhancement of ecological and aesthetic values, and the overall economic, recreational and social well-being of the people of the state. All levels of government within the state, all departments, agencies, boards and commissions, and all other entities, public or private, having authority over the use, disposition or diversion of water resources, or over the use of the land overlying, or adjacent to, the water resources of the state, shall comply with this policy and with the state's comprehensive plan and program for water resources management and protection.

### **New Jersey**

#### § 58:1A-2. Legislative findings and declarations

The Legislature finds and declares that the water resources of the State are *public assets of the State held in trust* for its citizens and are essential to the health, safety, economic welfare, recreational and aesthetic enjoyment, and general welfare, of the people of New Jersey; that ownership of these assets is in the State as trustee of the people; that because some areas within the State do not have enough water to meet their current needs and provide an adequate margin of safety, the water resources of the State and *any water brought into the State must be planned for and managed as a common resource from which the requirements of the several regions and localities in the State shall be met*; that the present regulatory system for these water resources is ineffective and counterproductive; that it is necessary to insure that within each basin there exist adequate water supplies to accommodate present and future needs; that to ensure an adequate supply and quality of water for citizens of the State, both present and future, and to protect the natural environment of the waterways of the State, it is necessary that the State, through its Department of Environmental Protection, have the power to manage the water supply by adopting a uniform water diversion permit system and fee schedule, a monitoring, inspection and enforcement program, a program to study and manage the State's water resources and plan for

emergencies and future water needs, and regulations to manage the waters of the State during water supply and water quality emergencies.

### **New York**

§ 15-1601. Legislative findings and declarations

1. The legislature finds and declares that:
  - a. 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.

### **North Carolina**

§ 143-211. Declaration of public policy

(a) It is hereby declared to be the public policy of this State to provide for the conservation of its water and air resources. Furthermore, it is the intent of the General Assembly, within the context of this Article and Articles 22A and 21B of this Chapter, to achieve and to maintain for the citizens of the State a total environment of superior quality. Recognizing that the water and air resources of the State belong to the people, the General Assembly affirms the State's *ultimate responsibility for the preservation and development of these resources in the best interest of all its citizens* and declares the prudent utilization of these resources to be essential to the general welfare.

### **North Dakota**

§ 61-01-01. Waters of the state -- *Public waters*

All waters within the limits of the state from the following sources of water supply belong to the public and are subject to appropriation for beneficial use and the right to the use of these waters for such use must be acquired pursuant to chapter 61-04:

1. Waters on the surface of the earth excluding diffused surface waters but including surface waters whether flowing in well-defined channels or flowing through lakes, ponds, or marshes which constitute integral parts of a stream system, or waters in lakes;
2. Waters under the surface of the earth whether such waters flow in defined subterranean channels or are diffused percolating underground water;
3. All residual waters resulting from beneficial use, and all waters artificially drained; and
4. All waters, excluding privately owned waters, in areas determined by the state engineer to be non-contributing drainage areas. A non-contributing drainage area is any area that does not contribute natural flowing surface water to a natural stream or watercourse at an average frequency more often than once in three years over the latest thirty-year period.

§ 61-01-26. Declaration of state water resources policy

In view of legislative findings and determination of the ever-increasing demand and anticipated future need for water in North Dakota for every beneficial purpose and use, it is hereby declared to be the water resources policy of the state that:

1. The public health, safety and general welfare, including without limitation, enhancement of opportunities for social and economic growth and expansion, of all of the people of the state, depend in large measure upon the optimum protection, management, and wise utilization of all of the water and related land resources of the state.

2. *Well-being of all of the people of the state shall be the overriding determinant* in considering the best use, or combination of uses, of water and related land resources.

3. Storage of the maximum water supplies shall be provided wherever and whenever deemed feasible and practicable.

4. Accruing benefits from these resources can best be achieved for the people of the state through the development, execution, and periodic updating of comprehensive, coordinated, and well-balanced short-term and long-term plans and programs for the conservation and development of such resources by the departments and agencies of the state having responsibilities therefore. The plans and programs for the conservation and development of these resources may include implementation of a program to cost-share with local sponsors of water quality improvement projects.

## **Ohio**

### § 6121.03 State policy.

It is hereby declared to be the public policy of the state through the operations of the Ohio water development authority under this chapter to contribute toward one or more of the following: to preserve, protect, upgrade, conserve, develop, utilize, and manage the water resources of the state, to prevent or abate the pollution of water resources, to promote the beneficial use of waters of the state for the protection and preservation of the public health, safety, convenience, and welfare, to assist in the financing of waste water facilities and water management facilities for industry, commerce, distribution, and research, including public utility companies, to create or preserve jobs and employment opportunities or improve the economic welfare of the people of the state, or to assist and cooperate with governmental agencies in achieving such purposes.

## **Oklahoma**

### § 3-1-102. Legislative determination--Declaration of policy

In recognition of the ever-increasing demands on the renewable natural resources of the state and of the need to preserve, protect and develop such resources at such a rate and at such levels of quality as will meet the needs of the people of the state, it is hereby declared to be the policy of the State of Oklahoma to provide for the conservation of the renewable natural resources of this state, and for the control and prevention of soil erosion, and for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization and disposal of water, and thereby to preserve and develop natural resources, control floods, conserve and develop water resources and water quality, prevent impairment of dams and reservoirs, preserve wildlife, preserve natural beauty, promote recreational development, protect the tax base, protect public lands and protect and promote the health, safety and general welfare of the people of this state. It is further the policy of the Legislature to authorize *conservation districts* established

under the Conservation District Act to serve *as the primary local unit of government responsible for the conservation of the renewable natural resources of this state*, and competent to administer, in close cooperation with landowners and occupiers, with local governmental units, and with agencies of the government of this state and of the United States, projects, programs and activities suitable for effectuating the policy of the Conservation District Act.

§ 1086.1. Policy of state as to use of surplus and excess water--State water plan

A. All of the people have a primary interest in the orderly and coordinated control, protection, management, conservation, development and utilization of the water resources of the state. The people residing within areas where waters originate benefit from the optimum development and utilization of water within the area of origin. The people in water deficient areas benefit by being able to use excess and surplus waters. The policy of the State of Oklahoma is *to encourage the use of surplus and excess water to the extent that the use thereof is not required by people residing within the area where such water originates*. In order to maximize the alternatives available for the use and benefit of the public and water-user entities and for the use and benefit of the public and for the general welfare and future economic growth of the state, it is therefore the purpose of this act to provide means for the expeditious and coordinated preparation of a comprehensive state water plan and decennial updates thereof for submission to the Legislature providing for the management, protection, conservation, structural and nonstructural development and utilization of water resources of this state, ...

**Pennsylvania**

§ 5102. Findings and declarations of policy

It is hereby determined and declared as a matter of legislative finding that:

(1) Fundamental to the health and welfare of the people of Pennsylvania are the land and water resources of the State.

§ 7522. Declaration of policy

The General Assembly finds and declares as follows:

(1) Section 27 of Article I of the Constitution of Pennsylvania states that: "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.*"

**Rhode Island**

§ 46-15.7-1 Legislative findings and declaration. – (a) The general assembly finds that:

(1) The constitution of the state of Rhode Island *charges the general assembly with responsibility for the conservation of all natural resources, including water.*

(2) The supply of fresh water available to the people of Rhode Island for use in their daily lives and to support agriculture, hydropower, indigenous wildlife and plant species, navigation, water-based recreation, wetlands, and other uses is finite and *is not equally available or accessible*

*throughout the state.*

(3) A significant portion of the fresh water resource of the state is already being used to serve a variety of needs and purposes and the total volume and quality of the remaining fresh water resource of the state is subject to quantitative, qualitative, or geographic constraints on its availability or use. ...

(b) Therefore, the general assembly declares that:

(1) Management of the amounts, purposes, timing, locations, rates, and other characteristics of fresh water withdrawals from ground or surface waters is essential in order to protect the health, safety, and general welfare of the people of the state of Rhode Island, to promote the continued existence, diversity, and health of the state's native wildlife and plant species and communities, and *the fair and equitable allocation of the water resource among users and uses, and to insure that long-range rather than short-range considerations remain uppermost.* ...

(3) This requirement shall be carried out by *management of fresh water resources of the state based on long-range planning for and conservation of these resources; fairness, equitable distribution, and consideration for all human uses;* matching the use of water with the quality of water necessary for each use, giving priority to those uses that require the highest quality water; maintenance of native aquatic and terrestrial animal and plant species, populations, and communities and statewide diversity; continued upholding of and improvement in the quality of the environment and especially of the water resources itself; and careful integration with all other social, economic, and environmental objectives, programs, and plans of the state. ...

(5) With regard to agriculture, it is a priority of the state to preserve agriculture; securing this state priority involves allocation of water resources in a manner that provides for agricultural sustainability while recognizing the importance of other water uses, and accordingly, in any program by which water withdrawals may be allocated by the board pursuant to its powers, including but not limited to powers set forth in chapters 15, 15.1, 15.3 and 15.7 of this title, the board *shall give priority to commercial agricultural producers, as defined in § 46-15.3-4(2), that have adopted and implemented an agricultural water withdrawal management plan* which has been approved by the department of environmental management, division of agriculture, consistent with duly adopted plans and estimates regarding the aggregated supply available from the affected water resource. In putting into effect the purposes of this subdivision, the board shall consider the reduction in water withdrawal that has resulted from the implementation of an agricultural water withdrawal management plan as a credit against any reduction in water withdrawal which would otherwise be required; and to the extent not inconsistent: (i) with the board's obligations to assure drinking water supplies under chapter 15.3 of this title and water supplies for fire protection; and (ii) with federal and state law, the board shall allow commercial agricultural producers to continue to irrigate commercial crops either in fields or greenhouses, notwithstanding a critical dry period.

### **South Carolina**

§ 49-5-20. Legislative declaration of policy.

The General Assembly declares that the *general welfare and public interest* require that the groundwater resources of the State be put to beneficial use to the fullest extent to which they are capable, subject to reasonable regulation, in order to conserve and protect these resources,

prevent waste, and to provide and maintain conditions which are conducive to the development and use of water resources.

### **South Dakota**

§ 46-1-1. Use of water of state -- Paramount interest of people -- Conversion to public use

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.

§ 46A-18-1. Legislative findings and policy

Conservation, management and development of the state's water resources *are vital to the public interest, welfare, convenience and necessity* and require, in some circumstances, the creation of water project districts for the purposes of sponsoring and implementing water projects for the conservation, storage, distribution and utilization of water and for the prudent management of water resources.

§ 46A-1-1. Legislative findings and policy

The general health, welfare and safety of the people of the state of South Dakota are dependent upon the conservation, development, management, and optimum use of all this state's water resources. To achieve this objective it is essential that a coordinated, integrated, multiple use water resource policy be formulated and a plan developed to activate this policy as rapidly as possible. It is in the public interest that these functions be carried out through a coordination of all state agencies and resources.

§ 34A-2-1. Legislative findings and policy

...it is hereby declared to be the public policy of this state to conserve the waters of the state and to protect, maintain and improve the quality thereof for water supplies, for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational and other legitimate uses; to provide that no waste be discharged into any waters of the state without first receiving the necessary treatment or other corrective action to protect the legitimate and beneficial uses of such waters; to provide for the prevention, abatement and control of new and existing water pollution; and to co-operate with other agencies of the state, agencies of other states and the federal government in carrying out these objectives.

§ 46A-2-2. Purposes for which district created

...is necessary, that the *South Dakota conservancy district be created* in the manner herein provided so that construction of water resource facilities for the conservation, storage, distribution and utilization of water for multiple purposes may commence.... Encouragement, promotion and responsibility for the development of such use shall be accomplished by providing for state water resources planning in order:

(1) To provide for the future economic welfare and prosperity of the people of this state; ...

### **Tennessee**

§ 69-3-102. Declaration of policy and purpose

- (a) 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*, it is declared to be the public policy of Tennessee that the people of Tennessee, as beneficiaries of this trust, have a right to unpolluted waters. In the exercise of its public trust over the waters of the state, the government of Tennessee has an obligation to take all prudent steps to secure, protect, and preserve this right.
- (b) It is further declared that the purpose of this part is to abate existing pollution of the waters of Tennessee, to reclaim polluted waters, to prevent the future pollution of the waters, and to plan for the future use of the waters so that the water resources of Tennessee might be used and enjoyed to the fullest extent consistent with the maintenance of unpolluted waters.

**Texas**

§ 11.302. Declaration of Policy

The conservation and best utilization of the water resources of this state are a public necessity, and it is in the interest of the people of the state to require recordation with the commission of claims of water rights which are presently unrecorded, *to limit the exercise of these claims to actual use*, and to provide for the adjudication and administration of water rights to the end that the surface-water resources of the state may be put to their greatest beneficial use. Therefore, this subchapter is in furtherance of the public rights, duties, and functions mentioned in this section and in response to the mandate expressed in Article XVI, Section 59 of the Texas Constitution and is in the exercise of the police powers of the state in the interest of the public welfare.

§ 2.003. Policy

- (a) The agricultural policy of this state must consider and address:
- (1) water availability issues, including planning for water supplies and drought preparedness and response, by ensuring that a high priority is assigned to the agricultural use of water;

§ 20.001. Legislative Purpose and Policy

- (a) The legislature declares that it is the policy of the state to:
- (1) encourage and assist in the conservation and development of the water resources of the state for all useful and lawful purposes by the acquisition, improvement, extension, or construction of water resource conservation and development projects;
- (2) encourage the optimum development of the feasible sites available for the construction or enlargement of dams and reservoirs for conservation of the public water of the state held in trust for the use and benefit of the public through assistance and participation in the acquisition and development of water storage facilities and systems or works necessary for filtration, treatment, and transportation of water from storage to points of treatment, filtration, and distribution;
- (3) aid in the protection of the quality of the water resources of the state by encouraging and assisting in the financing of water quality enhancement projects; and
- (4) aid in flood control, drainage, subsidence control, recharge, chloride control, agricultural soil and water conservation, and desalinization by encouraging and assisting in the financing of projects necessary to those purposes. ...

## **Vermont**

### § 901. Water resources management policy

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*.

### § 1001. Purpose

The department of environmental conservation is created to administer the water conservation policy of this state. It is *in the public interest* that the waters of the state shall be protected, regulated and where necessary controlled under the authority of the state. The proper administration of the water resources now and for the future require careful consideration of the interruption of the natural flow of water in our watercourses resulting from the construction of new, and the operation of existing dams, diversion, and other control structures.

### § 401. Policy

Lakes and ponds which *are public waters* of Vermont and the lands lying thereunder *are a public trust*, and it is the policy of the state that these waters and lands shall be managed to serve the public good, as defined by section 405 of this title, to the extent authorized by statute. For the purposes of this chapter, the exercise of this management shall be limited to encroachments subject to section 403 of this title. The management of these waters and lands shall be exercised by the department of environmental conservation in accordance with this chapter and the rules of the water resources board. For the purposes of this chapter, jurisdiction of the department shall be construed as extending to all lakes and ponds which are public waters and the lands lying thereunder, which lie beyond the shoreline or shorelines delineated by the mean water level of any lake or pond which is a public water of the state, as such mean water level is determined by the board. No provision of this chapter shall be construed to permit trespass on private lands without the permission of the owner.

## **Virginia**

### § 62.1-11. Waters declared natural resource; state regulation and conservation; limitations upon right to use

A. Such waters are a natural resource which should be regulated by the Commonwealth.

B. The regulation, control, development and use of waters *for all purposes beneficial to the public* are within the jurisdiction of the Commonwealth which in the exercise of its police powers may establish measures to effectuate the proper and comprehensive utilization and protection of such waters.

C. The changing wants and needs of the people of the Commonwealth may require the water resources of the Commonwealth to be put to uses beneficial to the public to the extent of which they are reasonably capable; the waste or unreasonable use or unreasonable method of use of water should be prevented; and the conservation of such water is to be exercised with a view to the welfare of the people of the Commonwealth and their interest in the reasonable and

beneficial use thereof.

D. The public welfare and interest of the people of the Commonwealth require the proper development, wise use, conservation and protection of water resources together with protection of land resources, as affected thereby.

E. The right to the use of water or to the flow of water in or from any natural stream, lake or other watercourse in this Commonwealth is and shall be limited to such water as may reasonably be required for the beneficial use of the public to be served; such right shall not extend to the waste or unreasonable use or unreasonable method of use of such water.

F. The quality of state waters is affected by the quantity of water and it is the intent of the Commonwealth, to the extent practicable, to maintain flow conditions to protect instream beneficial uses and public water supplies for human consumption.

§ 62.1-82. Control and regulation by State Corporation Commission; existing rights of riparian owners

The control and regulation on the part of the Commonwealth of the development of the waters of the Commonwealth shall be paramount, and shall be exercised through the agency of the State Corporation Commission, sometimes in this chapter referred to as the Commission; provided, however, *nothing contained in this chapter shall deprive any riparian owner of any right which he may have, under existing law, except by due and further process of law upon the exercise of eminent domain and upon the payment of just compensation for any such right.*

### **West Virginia**

§ 22C-1-2. Declaration of policy and responsibility; purpose and intent of article; findings

It is hereby declared to be the public policy of the state of West Virginia and *a responsibility of the state of West Virginia*, through the establishment, funding, operation and maintenance of water development projects, to maintain, preserve, protect, conserve and in all instances possible to improve the purity and quality of water within the state in order to: (1) Protect and improve public health; (2) assure the fullest use and enjoyment of such water by the public; (3) provide suitable environment for the propagation and protection of animal, bird, fish, aquatic and plant life, all of which are essential to the health and well-being of the public; and (4) provide water of the necessary quality and in the amount needed for the development, maintenance and expansion of, and to attract service industries and businesses, agriculture, mining, manufacturing and other types of businesses and industries.

§ 22-11-2. Declaration of policy

(a) It is declared to be the public policy of the state of West Virginia to maintain reasonable standards of purity and quality of the water of the state consistent with (1) public health and public enjoyment thereof; (2) the propagation and protection of animal, bird, fish, aquatic and plant life; and (3) the expansion of employment opportunities, maintenance and expansion of agriculture and the provision of a permanent foundation for healthy industrial development.

(b) It is also the public policy of the state of West Virginia that the water resources of this state

with respect to the quantity thereof be available for reasonable use by all of the citizens of this state.

**Wisconsin**

§ 281.11. Statement of policy and purpose.

The department shall serve as the central unit of state government to protect, maintain and improve the quality and management of the waters of the state, ground and surface, public and private.