

LEGAL COMMITTEE MEETING

Courtyard by Marriott
Lincoln, Nebraska

April 24, 2025

Call to Order at: 3:30 pm (Central Daylight Time)

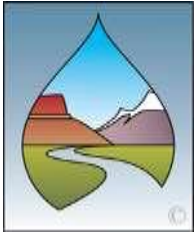
Scarlet

Conducting: Sara Gibson, Oklahoma

TAB

1. **Welcome and Introductions**
2. **Approval of Minutes**
- C 3. **Sunsetting Positions –**
Position #480 - regarding Migratory Birds & the Management of State Water Rights & Resources
4. **Nebraska: Impacts of LB962 –** Justin Lavene
- Q 5. **Great Salt Lake, Upstream Water Rights, and Public Trust Doctrine -** Candice Hasenyager
5. **State Engineers Survey Report –** Jen Verleger
6. **Indian Water Rights –** Michelle Bushman
 - a. 19th Biennial Indian Reserved Water Rights Settlement Symposium
 - b. Ad Hoc Group DC visits
- R 7. **Western Water Cooperative Committee –** Michelle Bushman
- H 8. **FY2025-2026 Committee Work Plan**
- S 9. **Staff Updates –** Michelle Bushman
 - a. Legislation and Litigation Update
- XYZ 10. **Sunsetting Positions for Summer 2025 Meetings -**
None
11. **Other Matters**
- 5:30 pm Adjourn

Tab C – WSWC Policy Positions



RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
MIGRATORY BIRDS AND THE
MANAGEMENT OF STATE WATER RIGHTS AND RESOURCES

~~Arlington, Virginia~~Lincoln, Nebraska
~~April 6, 2022~~April 25, 2025

WHEREAS, the Western States Water Council (WSWC) is a government entity representing eighteen states, with members appointed by their respective governors; and

WHEREAS, the WSWC's mission is to ensure that the West has an adequate, secure, and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future; and

WHEREAS, the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*) prohibits the taking of various migratory birds; and

WHEREAS, in December of 2021, the United States Fish and Wildlife Service (USFWS) revoked its regulation establishing that a taking under the MBTA does not include an incidental taking (86 FR 54642); and

WHEREAS, the USFWS seeks to promulgate a new regulation (86 FR 54667) under the MBTA that would for the first time codify a prohibition on incidental takes and would also allow incidental takes for government agency activities through general and specific permits; and

WHEREAS, water in the West is often a scarce resource critical for both a healthy economy and healthy environment, including protected endangered and threatened species; and

WHEREAS, water is both a public and a private resource, with some uses benefitting the public good as a whole, while others are recognized as protected private property rights; and

WHEREAS, the States are primarily responsible for the allocation, administration, management, and protection of the water resources and rights to the use of water within their borders, as well as the management and protection of migratory birds and the environments upon which they depend; and

WHEREAS, various state and local governmental agencies own or operate water use or distribution facilities which benefit water users and the public as well as migratory birds and their respective environments; and

WHEREAS, many, if not most, of the senior state granted rights to the use of waters in western rivers and streams predate federal environmental protections by decades, and the

certainty provided by early water rights continues to be the foundation for past, present and future investments; and

WHEREAS, the West and its flora and fauna, including protected species, are part of a unique and unparalleled heritage reflecting the Nation's value for wild and open spaces, as well as a western conservation ethic; and

WHEREAS, western States and many western water uses are also committed to the preservation of western species through reasonable, transparent and effective regulatory protections and restrictions, as well as conservation incentives for private property owners; and

WHEREAS, opportunities exist for greater collaboration and cooperation to conserve threatened and endangered species, while recognizing state granted water rights and addressing western water issues, without unmitigated or uncompensated "takings" of either water rights or threatened and endangered species where provided for under state or federal law.

NOW, THEREFORE, BE IT RESOLVED that the Council calls upon federal agencies to engage in a substantive discussion of past, present and future efforts to work in concert with State agencies to implement Congress' intent to resolve water and species protection issues and to ensure the creation of flexible regulations that do not interfere with state management of water resources.

See Former Position No. 480, 4/06/22

Tab Q – Great Salt Lake, Upstream Water
Rights, and Public Trust Doctrine

MAR 27 2025

Salt Lake County

THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

By: _____ Deputy Clerk

UTAH PHYSICIANS FOR A HEALTHY
ENVIRONMENT, AMERICAN BIRD
CONSERVANCY, CENTER FOR
BIOLOGICAL DIVERSITY, SIERRA CLUB,
and UTAH RIVERS COUNCIL,

Plaintiffs,

vs.

UTAH DEPARTMENT OF NATURAL
RESOURCES, et al.,

Defendants,

and

CENTRAL UTAH WATER CONSERVANCY
DISTRICT, et al.,

Intervenors.

RULING AND ORDER RE:

**MOTIONS TO DISMISS FILED BY
STATE DEFENDANTS AND
INTERVENORS**

Case No: 230906637

Judge Laura S. Scott

March 27, 2025

Before the court are the motions to dismiss filed by Defendants Utah Department of Natural Resources (DNR), Utah Division of Water Rights (DWR), and Utah Division of Forestry, Fire, and State Lands (FFSL) (collectively State Defendants) and Intervenors Central Utah Water Conservancy District, Weber Basin Water Conservancy District, and Jordan Valley Water Conservancy District (collectively Water Conservancy Districts); Utah Lake Water Users Association, PacifiCorp, Provo River Water Users Association, Metropolitan Water District of Salt Lake & Sandy, Utah Lake Distributing Company, and the cities of Eagle Mountain, Provo, Ogden, and Salt Lake (collectively Water User Intervenors); and Utah Division of Water

Resources and Board of Water Resources, Utah Division of Wildlife Resources, and Utah Division of State Parks (collectively State Agency Intervenors).^{1, 2}

On September 17, 2024, the court held a hearing on the pending motions to dismiss. At the hearing, Plaintiffs Utah Physicians for a Healthy Environment, American Bird Conservancy, Center for Biological Diversity, Sierra Club, and Utah Rivers Council (collectively Plaintiffs) were represented by Stuart Gillespie. The State Defendants were represented by Michael Begley (FFSL), Sarah Shechter (State Engineer), and Lance Sorenson (DNR). The Water Conservancy Districts were represented by Aaron Lebenta. The Water Users Intervenors were represented by David Wright and the State Agency Intervenors were represented by Shane Stroud.³

At the conclusion of the hearing, the court requested supplemental briefs regarding a potential narrowing of Plaintiffs' declaratory judgment claim and the Utah Supreme Court's decision in *Colman v. Utah State Land Bd.*, 795 P.2d 622 (1990). After supplemental briefing was complete, the parties submitted the motions to dismiss for decision on January 6, 2025.

Having now considered the briefing, the oral arguments, the applicable legal standards, and the relevant law,⁴ the Court hereby issues the following Ruling and Order:

I. SUMMARY OF RULING AND ORDER

The motions to dismiss are denied in substantial part.

As explained in more detail below, the court has subject matter jurisdiction to issue a limited declaratory judgment regarding (a) the scope of the public trust in Utah; (b) the scope of the State's duties as trustee of the public trust; and (c) the State's alleged breach of its trustee duties.

With respect to scope, the court concludes that Utah's public trust includes the navigable waters of the Great Salt Lake as well as the sovereign lands underlying those waters. Accordingly, the State, as trustee, has ongoing fiduciary duties to protect and preserve the waters of the Great Salt Lake from substantial impairment so that these waters can be used for the trust purposes of navigation, commerce, fishing, and recreation. The exact parameters of the State's trustee duties will need to be developed through additional briefing or further litigation.

¹ The Water Conservancy Districts, the Water Users Intervenors, and the State Agency Intervenors are sometimes collectively referred to as "Intervenors" and the State Defendants and Intervenors are sometimes collectively referred to as "Defendants."

² The court also permitted the filing of an amicus curiae brief by law professors and responses to the amicus curiae brief by Defendants.

³ The court is only referencing the attorneys who made arguments on behalf of Plaintiffs, the State Defendants, and the Intervenors. Several other attorneys made appearances for the record but did not argue at the hearing.

⁴ As the court was preparing to issue the Ruling and Order, the Utah Supreme Court issued its decision in *Roussel v. State*, 2025 UT 5. Although this decision does not change the court's conclusion regarding its subject matter jurisdiction, the Court's holding in *Roussel* is briefly discussed in footnotes in Section IX below.

The court further concludes that Plaintiffs have stated a claim for breach of the State's trustee duties, *i.e.*, that the State has failed or refused to take feasible steps to protect the waters of the Great Salt Lake and to preserve them for trust purposes. Of course, at the motion to dismiss stage, the court is not ruling that the State has, in fact, breached its duties as trustee of the public trust. This aspect of Plaintiffs' claim requires further litigation.

However, the court concludes that Plaintiffs are not entitled to additional specific declaratory relief in the form of an order directing the State to "review, and where necessary, modify [upstream] diversions to protect and preserve the public trust." While it may be true that upstream water diversions are "by far the most significant cause" of the Great Salt Lake's "precipitous decline," the court is not persuaded that these upstream diversions "remain subject to the public trust" or that mandatory modifications of perfected water rights are "feasible" given Utah's prior appropriation system. Consequently, the court grants the motions to dismiss with respect to this aspect of Plaintiffs' declaratory judgment claim.

II. THE GREAT SALT LAKE

The Great Salt Lake is a national treasure. It is the largest saline lake in North America and the eighth largest terminal lake in the world. The Great Salt Lake plays a critical role in Utah's economic, ecological, and environmental well-being. A variety of industries – including brine shrimp fishing, recreation, mineral extraction, tourism, and skiing – depend on the Great Salt Lake. These industries collectively contribute billions of dollars each year to Utah's economy and provide thousands of jobs to Utah workers. In addition, a diversity of wildlife depends on the Great Salt Lake, which also provides essential resting, feeding, and breeding habitat for up to 12 million migratory birds each year.

As with other terminal saline lakes, the Great Salt Lake's water level has historically fluctuated because of natural and human influences.⁵ The Great Salt Lake is primarily fed by inflows from freshwater tributaries that also support municipal and agricultural uses. The Great Salt Lake is broad and shallow. Consequently, even small changes in water level bring about significant changes in its surface area.⁶ Compared to its historic baseline, the Great Salt Lake had lost approximately 73% of its water and 60% of its surface area when it hit record low levels in the fall of 2022.⁷

As Plaintiffs allege in their Complaint and further explain in their opposition to the motions to dismiss, the State's own experts have determined that the Great Salt Lake's "healthy range" for

⁵ See *Great Salt Lake Strike Team, Great Salt Lake Policy Assessment* 11 (Feb. 9, 2023), <https://gardner.utah.edu/wp-content/uploads/GSL-Assessment-Feb2023.pdf?x71849> ("Policy Assessment"); see also *Utah State Rd. Comm'n v. Hardy Salt Co.*, 26 Utah 2d 143, 145, 486 P.2d 391(1971).

⁶ Utah Dep't of Nat. Res., *Final Great Salt Lake Comprehensive Management Plan and Record of Decision* at § 2.3.1 (2013), <https://ffsl.utah.gov/wp-content/uploads/OnlineGSLCMPandROD-March2013.pdf> ("Comprehensive Management Plan").

⁷ Compl. at ¶ 3; Benjamin W. Abbott et al., *Emergency Measures Needed to Rescue Great Salt Lake from Ongoing Collapse*, at 2 (Jan. 4, 2023), <https://pws.byu.edu/GSL%20report%202023>.

human and ecological interests is between 4,198 and 4,205 feet above sea level.⁸ Elevations below 4,198 feet are associated with increased salinity levels and significant exposure of the lakebed, resulting in serious ecological, economic, and public health impacts. More specifically, brine fly and shrimp populations are harmed by declining lake levels, which in turn threatens the brine shrimp industry and imperils the many bird species that depend on brine shrimp as a food source. Exposure of the lakebed results in the emission of harmful lakebed dust pollution, which creates a public health hazard. And lowered water levels of the already shallow lake result in the loss of boating access and difficulties in navigation.

Economically, the Great Salt Lake directly supports approximately \$1.3 billion in economic activity and provides around 7,700 jobs, primarily through mineral extraction, brine shrimp fishing, and recreation.⁹ The Great Salt Lake's evaporation increases annual snowfall by 5 to 10 percent, bolstering the local ski industry and providing another 20,000 jobs and approximately \$1.2 billion in economic activity.¹⁰ Accordingly to one assessment, "the monetized potential costs of a drying Great Salt Lake" could be as much as \$1.69 billion to \$2.17 billion per year and over 6,500 job losses, with costs increasing substantially over time.¹¹

According to Plaintiffs, the decline of the Great Salt Lake is the result of "excessive water diversions" related to "agriculture, extractive industry, and unsustainable outdoor use."¹² They allege the State has failed to "adopt or implement" strategies identified by the Great Salt Lake Strike Team involving reduction of water use in these areas or "any other strategy to limit upstream diversions sufficiently to prevent further losses to the Lake" or restore it to 4,198 feet.

Defendants do not dispute the importance of the Great Salt Lake or the gravity of the situation presented by its significantly declining water levels. Indeed, in their motions to dismiss, Defendants recognize that the Great Salt Lake is a critical resource and detail the State's voluntarily efforts to address the health of the Lake. Nevertheless, Defendants are adamant that the State has no legal obligation to protect and preserve the waters of the Great Salt Lake under the public trust doctrine or otherwise. Defendants even go so far as to insist that the State, if it chooses to do so, can de-water the Great Salt Lake so that it is nothing but a dry lakebed.¹³

Consequently, Plaintiffs have filed this action to correct the State's fundamental misunderstanding of the public trust doctrine and to force the State to acknowledge and fulfill its duties as trustee of Utah's public trust, which includes the waters of the Great Salt Lake.

⁸ Compl. at ¶ 13; *see generally* Comprehensive Management Plan.

⁹ Comprehensive Management Plan at 2-165.

¹⁰ Compl. at ¶ 34.

¹¹ Martin & Nicholson Env't Consultants, *Assessment of Potential Costs of Declining Water Levels in Great Salt Lake*, prepared for Great Salt Lake Advisory Council at iii (Sept. 2019), <https://lf-public.deq.utah.gov/WebLink/DocView.aspx?id=392796&eqdocs=DWQ-2019-012913>; Compl. at ¶ 104.

¹² Compl. at ¶¶ 63-65.

¹³ *See e.g.*, Transcript of Hearing at 45, UPHE et al. v. DNR et al., No. 230906637 (3rd Dist. filed Sept. 26, 2024).

III. THE PARTIES

Plaintiff Utah Physicians for a Healthy Environment (UPHE) is a 501(c)(3) non-profit organization of health care providers dedicated to reducing the public health consequences of environmental degradation, particularly air pollution.

Plaintiff American Bird Conservancy (ABC) is a 501(c)(3) non-profit organization dedicated to conserving wild birds and their habitats throughout America. Its members in Utah derive recreational, conservation, aesthetic, and other benefits from the bird life breeding, migrating through, and wintering in the Great Salt Lake.

Plaintiff Center for Biological Diversity (CBD) a 501(c)(3) non-profit environmental organization dedicated to the protection of native species and their habitats through science, policy, creative media, and environmental laws.

Plaintiff Sierra Club is a 501(c)(4) non-profit organization and the nation's oldest grassroots environmental organization. Its Utah Chapter has more than 5,000 members.

Plaintiff Utah Rivers Council is a 501(c)(3) non-profit organization that advocates for the protection of Utah's watersheds and the communities they support.

Members of these groups use the Great Salt Lake for navigation, brine shrimp fishing, commerce, and recreation.

Defendant DNR is the governmental body responsible for protecting the State's natural resources. It houses the DWR, which is responsible for overseeing water appropriations, and FFSL, which is responsible for managing Utah's sovereign lands.

Defendant DWR is the water rights authority of the State of Utah and is responsible for administering and supervising the appropriation of the waters of the State. The State Engineer "is the water rights authority of the State of Utah . . . endowed with the power and obligation to oversee water appropriations across the state."¹⁴

Defendant FFSL is the executive authority for the management of sovereign lands, which are defined as those lands lying below the ordinary high-water mark of navigable bodies of water at the date of statehood and owned by the State by virtue of its sovereignty. Thus, FFSL is responsible for managing the bed of the Great Salt Lake.

IV. THE COMPLAINT

In the Complaint, Plaintiffs assert a claim for "breach of trust duty to undertake feasible means of achieving a lake level consistent with continued trust uses." They seek declaratory relief and injunctive relief. More specifically, they seek a declaratory judgment that:

¹⁴ Compl. at ¶ 29.

- a. "The public trust doctrine imposes a duty on [State] Defendants to maintain the Great Salt Lake at least at the minimum elevation consistent with public trust uses";¹⁵
- b. "[State] Defendants have failed to protect public trust resources, and thus they have violated the public trust duty" by "allowing the water level of the Great Salt Lake to decline in a manner that adversely impacts the Lake, its ecosystem, and trust uses of the Lake";¹⁶
- c. "The public trust doctrine imposes a duty on [State] Defendants to identify and implement feasible means of maintaining the Great Salt Lake at least at the [4,198 feet] level, including the reduction of unsustainable upstream diversions";¹⁷ and
- d. "The public trust doctrine creates a duty of continuing supervision over the taking and use of appropriated water and requires [State] Defendants to modify water allocations based on new information as necessary to protect and preserve the public trust."¹⁸

With respect to their request for injunctive relief, Plaintiffs request an order that:

- a. "[State] Defendants must take action sufficient to ensure that any further decline in the Lake's average annual elevation ceases within two years" and "to restore the Great Salt Lake to at least the minimum elevation consistent with continued public trust uses";¹⁹
- b. "[State] Defendants must review all existing water diversions from the Great Salt Lake watershed and determine feasible means to ensure compliance with their mandatory public trust duties" and "modify any existing diversions that are inconsistent with the restoration and maintenance of the Lake";²⁰
- c. "[State] Defendants must continue to monitor water usage consistent with their duty of continuing supervision and manage water diversions as necessary to protect the public trust";²¹ and
- d. "[State] Defendants must facilitate public involvement in the identification and implementation of these modifications through maintenance of a public record, the

¹⁵ Compl. at 27-28.

¹⁶ *Id.* at 28.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 29.

²¹ *Id.*

establishment of a process for public comment, and the publication of documents describing state activities in a medium accessible to the general public.”²²

V. STATE DEFENDANTS’ MOTIONS TO DISMISS²³

In their motions to dismiss, the State Defendants argue the court “should dismiss the Complaint because it lacks subject matter jurisdiction” or, alternatively, the court “should decline jurisdiction in a declaratory judgment action such as this where the declaration would not resolve the controversy or uncertainty between the parties.”

The State Defendants also argue Plaintiffs “lack standing because their claim is not redressable.” They further argue Plaintiffs’ claims are barred by “res judicata and laches” and “failure to exhaust administrative remedies.” Finally, they argue “Plaintiffs have failed to join necessary parties as required by rule and statute.”

Defendant FFSL further argues Plaintiffs have failed to state a claim upon which relief can be granted because Utah’s public trust doctrine is limited to protection of sovereign lands and excludes water. Defendant DWR further argues that “inserting water rights into Utah’s public trust doctrine goes against the long-standing water public policy of the state” and “the State Engineer lacks legal authority to curtail water rights to maintain lake levels.”

VI. INTERVENORS’ MOTIONS TO DISMISS

A. State Agency Intervenor’s Motions to Dismiss.

In addition to joining in the arguments of the State Defendants, the State Agency Intervenor also argues that Plaintiffs’ requested relief undermines their statutory mandates.

B. Water Conservancy Districts’ Motion to Dismiss.

The Water Conservancy Districts also argue the court lacks subject matter jurisdiction because “(1) federally owned water rights and related facilities are subject to sovereign immunity; (2) by seeking to ‘modify’ the legal extent of every water right in the GSL Basin, Plaintiffs are effectively seeking a general adjudication of water rights, but general adjudications are special statutory civil actions which can only be brought pursuant to Title 73, Chapter 4; and (3) District projects include trans-basin diversions that import hundreds of thousands of acre-feet of water from the Colorado River Basin to the Wasatch Front, and issues related to such ‘imported water’ can only be determined in a general adjudication proceeding.” The Water Conservancy Districts further argue the Complaint must be dismissed for failure to join “the tens of thousands of water right appropriators in the GSL Basin or, in the alternative, the United States.”

²² *Id.*

²³ The Intervenor incorporates and adopts the arguments of the State Defendants. For the sake of brevity, the court is not including these duplicative arguments in its summary of the Intervenor’s Motions to Dismiss.

C. Water Users Intervenor's Motion to Dismiss.

The Water Users Intervenor's also argue that modifying water rights is constitutionally prohibited, that Plaintiffs' proposed remedy is an uncompensated taking of private property and creates impossible conflicts among state agencies, that article XX, section 1 of the Utah Constitution is not self-executing, and Plaintiffs have no claim under Utah's Uniform Trust Code.

VII. RELEVANT PROVISIONS OF UTAH CONSTITUTION

The Enabling Act authorized "the People of Utah to form a Constitution and State Government, and to be admitted into the Union on an equal footing with the original States." The Enabling Act provides that, upon admission into the Union, the State will receive certain lands for certain purposes, including for the support of common schools, for the purposes of erecting public buildings, for the establishment of the University of Utah and an agricultural college, to be sold to create a permanent fund to support the common schools, and for other governmental purposes. See Utah Enabling Act, ch. 138, 28 Stat. 107 (1894) §§ 6-10, 12.

The Enabling Act further provides that the State "shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act; and the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the Legislature of the State may provide." *Id.* at § 12.

Article V, Section 1 of the Utah Constitution provides as follows:

The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

Article XVII, Section 1 of the Utah Constitution provides as follows:

All existing rights to the use of any of the waters in this State for any useful or beneficial purpose, are hereby recognized and confirmed.

The Utah Constitution includes the following articles regarding sovereign lands:

Article III, Ordinance, Second provides, in relevant part, as follows:

The people inhabiting this State do affirm and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries hereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United

States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States[.]

Article X, Section 7 of the Utah Constitution provides as follows:

The proceeds from the sale of lands reserved by Acts of Congress for the establishment or benefit of the state's universities and colleges shall constitute permanent funds to be used for the purposes for which the funds were established. The funds' principal shall be safely invested and held by the state in perpetuity. Any income from the funds shall be used exclusively for the support and maintenance of the respective universities and colleges. The Legislature by statute may provide for necessary administrative costs. The funds shall be guaranteed by the state against loss or diversion.

Article XX, Sections 1 and 2 of the Utah Constitution provides as follows:

All lands of the State that have been, or may hereafter be granted to the State by Congress, and all lands acquired by gift, grant or devise, from any person or corporation, or that may otherwise be acquired, are hereby accepted, and, except as provided in Section 2 of this Article, are declared to be the public lands of the State; and shall be held in trust for the people, to be disposed of as may be provided by law, for the respective purposes for which they have been or may be granted, donated, devised or otherwise acquired.

Lands granted to the State under Sections 6, 8, and 12 of the Utah Enabling Act, and other lands which may be added to those lands pursuant to those sections through purchase, exchange, or other means, are declared to be school and institutional trust lands, held in trust by the State for the respective beneficiaries and purposes stated in the Enabling Act grants.

VIII. LEGAL STANDARD

Defendants filed their motions to dismiss pursuant to rules 12(b)(1) (lack of jurisdiction over the subject matter), (6) (failure to state a claim upon which relief can be granted), and (7) (failure to join an indispensable party). Utah R. Civ. P. 12(b)(1), (6), (7).

"A dismissal is a severe measure and should be granted by the trial court only if it is clear that a party is not entitled to relief under any state of facts which could be proved in support of its claim." *Am. W. Bank Members, L.C. v. State*, 2014 UT 49, ¶ 13, 342 P.3d 224 (citing *Colman v. Utah State Land Bd.*, 795 P.2d 622, 624 (Utah 1990)). When ruling on a motion to dismiss for failure to state a claim, the court must construe the Complaint in the light most favorable to Plaintiffs and indulge all reasonable inferences in their favor. See *Mack v. Utah State Dep't of Com.*, 2009 UT 47, ¶ 17, 221 P.3d 194.

Additionally, Utah has adopted the concept of “notice pleading,” which is embodied in rule 8 of the Utah Rules of Civil Procedure and requires only that a complaint contain a “short and plain . . . statement of the claim showing that the party is entitled to relief” and a “demand for judgment for specified relief.” See Utah R. Civ. P. 8(a); *Zubiate v. American Family Ins. Co.*, 2022 UT App 144, ¶ 11, 524 P.3d 148. Under this standard, a complaint is sufficient if it provides “fair notice of the nature and basis or grounds of the claim and a general indication of the type of litigation involved.” *Mack*, 2009 UT at ¶ 17.

When considering a motion to dismiss, the court “must keep this ‘notice pleading’ standard in mind” and “liberally construe” both the applicable rules of civil procedure as well as the Complaint “to favor finding a pleading sufficient.” See *Zubiate*, 2022 UT App. at ¶ 12. Even if the Complaint is “vague, inartfully drafted, a bare-bones outline or not a model of specificity, [it] may still be adequate so long as it can reasonably be read as supporting a claim for relief.” See *Casaday v. Allstate Ins. Co.*, 2010 UT App 82, ¶ 16, 232 P.3d 1075 (internal quotations omitted).

Finally, “it need not appear that [P]laintiff[s] can obtain the particular relief prayed for in the complaint, as long as the [court] can ascertain from what has been alleged that some relief may be granted by the court.” See Wright & Miller, 5B Fed. Prac. & Proc. Civ. § 1357 (4th ed. 2024). Accordingly, the court need not decide the precise remedies available to Plaintiffs on a motion to dismiss if some relief may be granted. See *Immigrant Defs. L. Ctr. v. Mayorkas*, No. 20-cv-09893, 2023 WL 3149243, at *14 (C.D. Cal. Mar. 15, 2023).

IX. SUBJECT MATTER JURISDICTION

Defendants first argue the court lacks subject matter jurisdiction. The court respectfully disagrees.

“Subject matter jurisdiction can mean ‘statutory limits on the class of cases assigned to the authority of a certain court’” or “other limits that go to the concept of justiciability.” *In re Adoption of B.B.*, 2017 UT 59, ¶ 129, 417 P.3d 1 (Lee, A.C.J., opinion of the court on this issue). Stated differently, one category of subject matter jurisdiction involves whether the court has statutory authority to hear a particular class of cases. *Id.* Another category embodies concepts of justiciability. *Id.* Justiciability issues that affect the court’s jurisdiction include standing, failure to exhaust administrative remedies, and the political question doctrine. *Id.* at ¶ 121, 123.

Here, Defendants do not contend the court lacks statutory authority to hear this case. Rather, Defendants assert that Plaintiffs’ declaratory judgment claim is a nonjusticiable political question. They also maintain that Plaintiffs lack standing because their claim is not redressable and/or because they failed to exhaust their administrative remedies.

A. Plaintiffs’ Declaratory Judgment Claim.

Because the framing of Plaintiffs’ declaratory judgment claim impacts the justiciability analysis, the court first addresses the relief requested by Plaintiffs.

In their Complaint, Plaintiffs seek a declaratory judgment specifying, among other things, that “the public trust doctrine imposes a duty on [the State] Defendants to maintain the Great Salt Lake at least at the minimum elevation consistent with public trust uses – that is, 4,198 feet,” that “[the State] Defendants have failed to protect public trust resources, and thus they have violated the public trust duty” by allowing the water level of the Great Salt Lake to decline in a manner that adversely impacts it, and that “[t]he public trust doctrine imposes a duty on [the State] Defendants to identify and implement feasible means of maintaining the Great Salt Lake at least at [4,198 feet].”

At the hearing, the court questioned whether Defendants’ justiciability arguments were moot if Plaintiffs’ declaratory judgment claim was limited to (a) the scope of the public trust doctrine in Utah; (b) the scope of the State’s duties as trustee of the public trust; and (c) the State’s alleged breach of its trustee duties.

In their supplemental briefing, Plaintiffs argue the court “can declare, at the very least, that (a) the trust res encompasses the Great Salt Lake’s navigable waters and submerged lands; (b) the State has a duty to preserve that res from substantial impairment; and (c) that duty includes considering the public trust in planning and administering water resources.” And given the State Defendants’ “unanticipated insistence that the public trust excludes navigable waters,” this limited declaratory judgment would “award meaningful relief, and dismissal is not warranted for this reason alone.”²⁴

In their supplemental briefing, the State Defendants insist that such a “naked” declaration “would not redress [Plaintiffs’] injuries” or “avoid application of the political question doctrine.” More specifically, the State Defendants first assert that Plaintiffs are the “master of the complaint” and “[i]t is not for the court to reframe [Plaintiffs’] complaint to ask for relief that a court thinks the plaintiff should have asked for.”²⁵ From this assertion, and citing *Hunter v. Finau*, 2024 UT App 17, 545 P.3d 294, the State Defendants suggest it would be improper for the court to consider whether Plaintiffs may be entitled to a declaratory judgment that the navigable waters of the Great Salt Lake are part of the public trust because Plaintiffs also ask for “far more specific relief” in terms of establishing a “specific minimum elevation . . . by curtailing upstream diversions.”

The court rejects this argument for several reasons.

First, in *Hunter*, the plaintiff argued that the district court should not have considered certain factual allegations in his complaint in determining whether the statute of limitations had run on his contract claims. The court of appeals disagreed because courts are required to accept the factual allegations in the complaint as true when considering a motion to dismiss. *Id.* at 29.²⁶

²⁴ Pl.s’ Suppl. Br. 1.

²⁵ DNR’s Suppl. Br. 5.

²⁶ The State Defendants also cite *Utah Stream Access Coal. v. VR Acquisitions, LLC*, 2019 UT 7, 439 P.3d 593. In that case, the Utah Supreme Court noted “[t]he public has a right to use streambeds underlying navigable waters within its borders. USAC could thus have asserted a claim that the relevant portion of the Provo River is navigable and that VR does not own the streambed. Yet it chose not to assert such a claim. Instead, it asserted claims for relief under an

But here, this is not a situation where Plaintiffs are attempting to distance themselves from their factual allegations or have failed to assert an alternative claim. *Id.* Nor is the court being asked to dismiss a viable alternative claim²⁷ or “close one door simply because another one exists” that may be more efficient.²⁸ Rather, the court is doing what it is required to do on a motion to dismiss: determine whether the Complaint can be reasonably read to support a limited declaratory judgment claim that would be justiciable.

Second, Plaintiffs’ declaratory judgment claim presumes the navigable waters of the Great Salt Lake are part of the public trust. At the time they filed the Complaint, Plaintiffs had no idea the State Defendants would assert the waters are excluded, which is contrary to the State’s position in *Colman v. Utah State Land Bd.*, 795 P.2d 622 (Utah 1990). In *Colman*, the State argued that “[t]he Public Trust Doctrine holds that the State must manage its navigable waters and their beds (like the Great Salt Lake) for the public good. Colman’s position would essentially nullify that principle and would undermine both the State’s public trust authority and initiative in dealing with natural disasters.”²⁹ Plaintiffs were not required to anticipate the State Defendants’ change of position and plead accordingly. *Cf. Bright v. Sorenson*, 2020 UT 18, ¶¶ 33-38, 463 P.3d 626 (plaintiff not required to plead in anticipation of possible affirmative defense).

Third, the State Defendants’ position is inconsistent with rule 8(a), which merely requires a “short and plain statement of the claim showing the party is entitled to relief,”³⁰ and the motion to dismiss standard, which requires the court to construe the Complaint in the light most favorable to Plaintiffs and to indulge all reasonable inferences in their favor.

And finally, the State Defendants’ position is undermined by rule 54(c), which provides that a prevailing party may obtain any relief to which it is entitled, “even if the party had not demanded such relief in his pleadings.” Utah R. Civ. P. 54(c)(1).

As explained further below, the court is not persuaded that it lacks subject matter jurisdiction to issue a limited declaratory judgment regarding the scope of the public trust, the State’s duties as trustee of the public trust, and the State’s alleged breach of these duties. Such a limited declaratory judgment would redress Plaintiffs’ alleged injuries³¹ and would not involve a

alternative, easement-based theory of relief. And that was USAC’s prerogative as the plaintiff and master of its complaint.” *Id.* at ¶ 34.

²⁷ *Ramon v. Nebo School Dist.*, 2021 UT 30, ¶ 16, 493 P.3d 613 (reversing district court’s dismissal of viable alternative claims of negligent employment and negligence because they are not redundant and “plaintiff has the prerogative of identifying the claims or causes of action she seeks to sustain in court.”).

²⁸ *In re Interest of Z.C.W. and C.C.W.*, 2021 UT App 98, ¶ 18, 500 P.3d 94.

²⁹ See Br. of State Resp., *Colman v. Utah State Land Bd.* (Jan. 14, 1987) (attached as Exhibit 1 to Plaintiffs’ Combined Opposition in Response to Motions to Dismiss).

³⁰ Utah R. Civ. P. 8(a).

³¹ Plaintiffs continue to press their argument that “upstream diversions remain subject to the public trust, thereby preserving the State’s continuing authority to assess and, where necessary, undertake feasible modifications of upstream water usage to protect public trust uses from impairment.” However, Plaintiffs also acknowledge that the State’s experts have “identified multiple viable pathways to modify water usage and restore the Great Salt Lake to its minimum healthy elevation, thereby averting the looming crisis and safeguarding trust uses.” Pl.s’ Opp. at 3.

political question or implicate the doctrines of res judicata and laches. Nor would such a limited declaratory judgment require the joinder of indispensable parties or exhaustion of administrative remedies or result in an unconstitutional taking of private property for public use.

However, the court concludes that Plaintiffs' request for a declaratory judgment requiring the State Defendants to "review all existing water diversions from the Great Salt Lake watershed" and "modify any diversions that are inconsistent with the restoration and maintenance of the [Great Salt] Lake" at 4,198 feet may violate the political question doctrine.³²

B. Utah's Declaratory Judgment Act.

The court has broad authority to issue declaratory relief when presented with a "genuine justiciable controversy." *Salt Lake Cnty. v. Salt Lake City*, 570 P.2d 119, 120-21 (Utah 1977). Utah's Declaratory Judgment Act grants the court "the power to issue declaratory judgments determining rights, status, and other legal relations within its respective jurisdiction." Utah Code § 78B-6-401(1)(a). The purpose of a declaratory judgment is to "provide a means for resolving uncertainties and controversies before trouble has developed or harm has occurred, and in order to avoid future litigation." *Salt Lake Cnty.*, 570 P.2d at 120-21. The court, however, is not permitted to reach "moot or abstract questions." *Id.* at 121; *see also Williamson v. Farrell*, 2019 UT App 123, ¶ 11, 447 P.3d 131, 134-5 (quoting *Baird v. State*, 574 P.2d 713, 715 (Utah 1978)) ("The courts are not a forum for hearing academic contentions or rendering advisory opinions.").³³

In order for the court to render a declaratory judgment, four threshold elements must be met: "(1) there must be a 'justiciable controversy' presented for resolution; (2) the parties to the action must have interests that are adverse; (3) the party seeking relief must have a 'legally protectible interest'; and (4) the issues presented must be 'ripe for judicial determination.'" *Williamson*, 2019 UT App at ¶ 11.³⁴ "Nested within the second and third requirements are the traditional standing requirements – injury, causation, and redressability." *Roussel v. State*, 2025 UT 5, ¶ 5.

³² With respect to Plaintiffs' request for an order setting a specific lake level, the court acknowledges that a specific lake elevation may be relevant to a determination of whether the State breached its trustee duties in subsequent proceedings. For example, Plaintiffs might be able to prove that the State's experts have determined this minimum lake elevation is necessary to prevent substantial impairment of trust uses, there are feasible steps the State can take to increase the lake elevation to this minimum, and the State has failed or refused to undertake them. Alternatively, as DNR points out in its supplemental brief, the State's experts may determine that "maintaining the Lake for navigability, which is at the heart of the public trust doctrine," requires a lower elevation than "maintaining the Lake for a healthy eco-system." DNR's Suppl. Br. at 2, n.2. Accordingly, the court declines to address this aspect of Plaintiffs' requested relief at this juncture.

³³ An "abstract question" is a question that is to be "considered apart from application to or association with a particular instance." *Salt Lake Cnty. v. State*, 2020 UT 27, ¶ 38, 466 P.3d 158. A "controversy" means a "case that requires a definitive determination of the law on the facts alleged for the adjudication of an actual dispute, and not merely a hypothetical, theoretical, or speculative legal issue." *Id.* at ¶ 40.

³⁴ *See also Salt Lake Cnty.*, 570 P.2d at 121 ("[T]here must be a genuine justiciable controversy in that (1) the interests of the parties involved are adverse, (2) the party seeking relief must have, or assert a bona fide claim, of a legally protectable interest therein, and (3) the issues must be ripe for judicial determination. That is, it must appear either that there is actual controversy, or that there is a substantial likelihood that one will develop so that the adjudication will serve a useful purpose in resolving or avoiding controversy or possible litigation.").

Where a declaratory judgment “would not terminate the uncertainty or controversy giving rise to the proceeding,” the court may refuse to enter such judgment. Utah Code § 78B-6-404. Importantly, the Declaratory Judgment Act “is to be liberally construed” and courts should be “indulgent in entertaining actions brought to achieve that objective; and more particularly so, where there is a substantial public interest to be served by the settlement of such an issue.” Utah Code § 78B-6-412; *see also Salt Lake Cnty.*, 570 P.2d at 121. Finally, courts should not decline to hear an action “merely because the sought-after judgment would fail to establish global peace between the parties.” *Williamson*, 2019 UT App 123, ¶ 15. If the declaratory judgment resolves the specific controversy giving rise to a claim, it is not required to terminate any and all underlying disputes that may exist or arise between the parties. *Id.*

Plaintiffs have demonstrated that the four threshold elements are met in this case. As a preliminary matter, Defendants do not dispute that Plaintiffs have legally protectible interests that are adverse to their own interests. Thus, the second and third elements are met.³⁵

Nor do Defendants seriously contend that the issues are not ripe for judicial determination. Ripeness exists when “a conflict over the application of a legal provision [has] sharpened into an actual or imminent clash of legal rights and obligations between the parties thereto.” *Carter v. Lehi City*, 2012 UT 2, ¶ 93, 269 P.3d 141.

Rather, Defendants argue that a limited declaratory judgment regarding the scope of Utah’s public trust doctrine and the State’s duties as trustee of the public trust would not raise the level of the Great Salt Lake or otherwise resolve the controversy between the parties. Thus, Defendants argue, the court would be issuing an advisory opinion or “naked” declaration. The court respectfully disagrees.

Here, the conflict over the scope of the public trust doctrine and the State’s fiduciary duties as trustee is more than a “difference of opinion regarding a hypothetical application of [the public trust doctrine] to a situation in which the parties might, at some future time, find themselves.” *See Redwood Gym v. Salt Lake Cnty. Comm’n*, 624 P.2d 1138, 1148 (Utah 1981). And the court’s determination of the threshold question – whether the waters of the Great Salt Lake are part of the public trust – would not be an advisory opinion on a matter that might not impact the parties. *See Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Lindberg*, 2010 UT 51, ¶ 40, 238 P.3d 1054. To the contrary, the court’s resolution of this legal issue will serve a useful purpose in resolving an important dispute over the State’s alleged failure to protect and preserve the waters of the Great Salt Lake. Further, courts routinely define the contours of legal duties, instruct fiduciaries on them, and apply the specific facts of the case to determine whether the fiduciary has breached its duties.³⁶

³⁵ They do, however, challenge redressability, which is “nested” in these requirements. *See Roussel* at ¶ 5. However, because of the way the parties briefed these issues, redressability will be addressed separately.

³⁶ *See e.g., Russell v. Lundberg*, 2005 UT App 315, ¶¶ 17-24, 120 P.3d 541 (in deciding whether there was a breach of trustee duties, the court “identif[ied] the nature and scope of duty owed” by trustee, finding the trustee had no fiduciary duty, but did owe other duties as trustee); *Five F, L.L.C. v. Heritage Sav. Bank*, 2003 UT App 373, ¶¶ 13-20, 81 P.3d 105 (determining the existence and extent to trustee’s fiduciary duty to the beneficiary to decide whether

This conclusion is not undermined by the Utah Supreme Court's recent decision in *Roussel*. In *Roussel*, several youth plaintiffs brought an action challenging certain statutory provisions and government conduct relating to fossil fuel development. 2025 UT 5 at ¶ 1. The plaintiffs allege the challenged provisions and conduct are designed to maximize fossil fuel development in Utah, which endangers their health and shortens their lifespans by exacerbating the effects of climate change. Based on this harm, the plaintiffs asked the district court to declare that the provisions and conduct violated their fundamental rights "to life" and "to liberty" under the Utah Constitution. *Id.* The Court held that the plaintiffs lack standing because "striking the provisions as unconstitutional would not redress their injuries." *Id.* at ¶ 24.

The Court then turned to the plaintiffs' alternative argument that "their challenges to the statutory provisions ought to move forward even if . . . striking the provisions would not redress their injuries" in order to provide "judicial guidance about the constitutionality of the government defendants' subsequent conduct . . . and pronounce judgment on the hypothetical question of whether the government defendants' future actions would be [constitutional]." *Id.* at ¶ 48. Unsurprisingly, the Court concluded that the plaintiffs' "request is better characterized as a request for an advisory opinion" and the district court therefore lacked subject matter jurisdiction to answer "such a hypothetical question [because it] would require the court to divorce the question from the facts." *Id.*

In this case, Plaintiffs are not asking for advisory opinion. They are asking the court to define the scope of Utah's public trust doctrine and enforce the State's legal obligation to protect the navigable waters of the Great Salt Lake. Thus, the fourth element is met in this case.

Finally, as explained further below, the court determines that the controversy is justiciable.

C. Justiciability and the Political Question Doctrine.

The Utah Supreme Court has "repeatedly recognized that a justiciable controversy is the keystone of our judicial framework." *Carlton v. Brown*, 2014 UT 6, ¶ 29, 323 P.3d 571, 579-80. A justiciable controversy "is one wherein the plaintiff is possessed of a protectible interest at law or in equity and the right to a judgment, and the judgment, when pronounced, must be such as would give specific relief." *Baird v. State*, 574 P.2d 713, 716 (Utah 1978).

The State Defendants argue the court "lacks jurisdiction under the political question doctrine because (1) there are not judicially discoverable and manageable standards for resolving Plaintiffs' claim; (2) to grant Plaintiffs' requested relief, the court would need to weigh into policy considerations regarding water use, water management, and competing public interests in the State of Utah; and (3) granting Plaintiffs' requested relief would demonstrate a lack of respect for the myriad efforts the State is already taking to enhance the Lake."³⁷

the trustee breached a fiduciary duty); *Sabour v. Koller*, 2024 UT App 26, 546 P.3d 28 (reviewing determination that trustee breached fiduciary duties).

³⁷ See DNR's Mot. to Dismiss 4.

In so arguing, the State Defendants focus almost exclusively on Plaintiffs' request that the court order the State to review all upstream water diversions. When this proposed relief is divorced from Plaintiffs' declaratory judgment claim, however, these arguments lose all of their force.

1. Separation of Powers Clause and Political Question Doctrine.

The Separation of Powers Clause of the Utah Constitution provides that the "powers of the government of the State of Utah shall be divided into three distinct departments . . . and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted." Utah Const. art. V, § 1. The Separation of Powers Clause "regulates and guides the apportionment of authority and function between the branches of government." *Vega v. Jordan Valley Med. Ctr., LP*, 2019 UT 35, ¶ 15, 449 P.3d 31.

The political question doctrine, which is rooted in this separation-of-powers premise, is "a tool for maintenance of governmental order." *Skokos v. Corradini*, 900 P.2d 539, 541 (Utah Ct. App. 1995) (citing *Baker v. Carr*, 369 U.S. 186, 210-11 (1962); *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 165-66, 2 L.Ed. 60 (1803)). "[B]oth focus on the proper roles of each branch of government and aim to curtail interference of one branch in matters controlled by the others." *Matter of Childers-Gray*, 2021 UT 13, ¶ 64, 487 P.3d 96 (citing *Skokos*, 900 P.2d at 541).

The political question doctrine "prevents judicial interference in matters wholly within the control and discretion of other branches of government." *Skokos*, 900 P.2d at 541. And it "preserves the integrity of functions lawfully delegated to political branches of the government and avoids undue judicial involvement in specialized operations in which the courts may have little knowledge and competence." *Id.* Thus, courts must hold "strictly to an exercise and expression of [their] delegated or innate power to interpret and adjudicate." *Trade Comm'n v. Skaggs Drug Ctrs., Inc.*, 21 Utah 2d 431, 439, 446 P.2d 958, 963 (1968).

The United States Supreme Court has identified a political question as involving:

a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government[.]

Baker v. Carr, 369 U.S. 186, 217, 82 S.Ct. 691 (1962).

Under the *Baker* test, a case may not be dismissed for non-justiciability on political question grounds unless one of these factors is demonstrated.

Importantly, the *Baker* Court distinguished "political questions" from "political cases." *Baker*, 369 U.S. at 218. Courts typically will not find a political question "merely because [a] decision may have significant political overtones." *Japan Whaling Ass'n v. Am. Cetacean Soc'y*,

478 U.S. 221, 230 (1986). Similarly, the Utah Supreme Court observed that while judicial roles may have political overtones, that does not mean the courts should “simply ‘shirk’ those roles by announcing them nonjusticiable.” *Matter of Childers-Gray*, 2021 UT at ¶ 67. Thus, “claims involving policies and decisions promulgated by government officials or entities are not automatically barred from judicial review as nonjusticiable political issues.” *Skokos*, 900 P.2d at 541 (citing *Ukrainian-American Bar Ass’n v. Baker*, 893 F.2d 1374, 1380 (D.C.Cir. 1990)).

Further, because common law matters are within the court’s authority, the judiciary has the responsibility “to examine those causes of action which it has created, to alter them when appropriate, and to abolish them when necessary.” *Matter of Childers-Gray*, 2021 UT at ¶ 67 (citing *Norton v. Macfarlane*, 818 P.2d 8, 17 (Utah 1991)). Finally, the court’s “exercise of common-law authority, when not abrogated by statute, neither runs afoul of the political question doctrine nor violates the separation-of-powers requirements of article V, section 1.” *Id.* at ¶ 68. “If a claim involves the interpretation of a statute or questions the constitutionality of a particular political policy, courts are acting within their authority in scrutinizing such claims ‘so long as there are ... ‘judicially discoverable and manageable standards for resolving’ the dispute.’” *Skokos*, 900 P.2d at 541 (quoting *Baker*, 369 U.S. at 217).³⁸

2. Determining Scope of Public Trust Doctrine and State’s Duties as Trustee Do Not Present Political Questions.

The parties dispute whether the *Baker* test applies. But regardless of whether Utah has “embraced” or “rejected” the *Baker* test, the court concludes that Plaintiffs’ request for a declaratory judgment regarding (a) the scope of the public trust doctrine in Utah; (b) the scope of the State’s duties as trustee of the public trust; and (c) the State’s alleged breach of its trustee duties does not present a political question. There are “judicially discoverable and manageable standards” for resolving these questions.³⁹ And such limited declaratory relief does not require the court to wade into policy discussions or intrude upon the other branches of government or otherwise express a lack of respect for them. Nor would the court be developing water policy, creating a new water code, or ignoring the State’s “extensive efforts” in connection with the Great Salt Lake.

As discussed further below, the public trust doctrine is an inherent attribute of sovereignty that predates Utah’s statehood, is firmly established in Utah common law, and is harmonious with the Utah Constitution. There is no question that courts are empowered to analyze the common law and interpret constitutional provisions and to exercise their common law authority, including determining whether a legal duty exists and, if so, the contours of that duty. And if a legal duty exists, courts are empowered to instruct the trustee on its duties and determine whether those duties have been breached. *See, e.g., Japan Whaling Ass’n*, 478 U.S. at 230 (courts are well-equipped to

³⁸ *See, e.g., Baker v. Carr*, 369 U.S. at 228 (complaint about reapportionment of state legislative districts justiciable under Equal Protection Clause); *Chiles v. Thornburgh*, 865 F.2d 1197, 1216 (11th Cir.1989) (claim alleging improper operation of detention center justiciable because resolution requires interpretation of statutes and Constitution); *State Highway Comm’n v. Volpe*, 479 F.2d 1099, 1106 (8th Cir.1973) (claim concerning executive branch’s power to control expenditures justiciable because resolution turns on interpretation of Federal-Aid Highway Act).

³⁹ Defendants do not argue that there has been “a textually demonstrable constitutional commitment of the issue to a coordinate political department.” Nor could they because courts play an essential role in declaring and enforcing the public trust.

“first determine the nature and scope of the duty” and “then apply[] this analysis to the particular set of facts” of the case). Indeed, courts routinely issue these types of declaratory judgments because they involve claims of legal rights, resolvable according to legal principles.

Importantly, when properly focused on the court’s role in resolving this controversy – determining the scope of the public trust and the nature of the trustee’s duties, not dictating how the trustee exercises its discretion in fulfilling these duties – there are clearly judicially discoverable and manageable standards for these important questions. Such judicially discoverable and manageable standards include the extensive public trust doctrine case law and the whole body of law setting forth standards applicable to trustees.⁴⁰

Nevertheless, relying heavily on *Iowa Citizens for Community Improvement v. State of Iowa*, 962 N.W.2d 780 (Iowa 2021), the State Defendants insist that this court lacks “judicially discoverable or manageable standards” for resolving Plaintiffs’ claim. In that case, the plaintiffs were asking the court to declare that the Iowa legislature must “broadly protect the public’s use of navigable waters,” including from pollution. *Iowa Citizens*, 962 N.W.2d at 796.

The court is not persuaded by the majority’s analysis in *Iowa Citizens*, which is not binding on the court and easily distinguishable. In *Iowa Citizens*, the plaintiffs sought to “expand” the public trust doctrine to “impose a duty on the State to pass laws that regulate those waters in the best interests of the public.” *Id.* The majority “perceiv[ed] ‘a lack of judicially discoverable and manageable standards’” because an order directing the legislature to “‘broadly protect[] the public’s use of navigable waters’ provides no meaningful standard at all.” *Id.*

Here, Plaintiffs are not seeking to “dramatically expand” the “traditional” public trust doctrine. Thus, the court would not be determining whether “the public trust doctrine can be channeled in a new direction” beyond “its origins related to navigation and commerce” to “protect navigable waters from effective alienation through pollution.” *Iowa Citizens*, 962 N.W.2d at 805 (Appel, J., dissenting). Nor would the court be ordering the legislature to enact specific legislation or dictating a specific outcome. It would be correcting the State’s foundational legal error regarding the scope of the public trust, instructing the State on the nature of its duties as trustee, and determining whether the State breached them based on the facts and other evidence elicited in this case.

Thus, for the reasons set forth in the dissents in *Iowa Citizens*, such a limited declaratory judgment does not implicate a nonjusticiable political question because courts have “never shied away from declaring rights of beneficiaries and obligations of trustees.” *Id.* at 809. And “courts around the country recognize the importance of the judiciary’s role in defining the scope and applicability of the public trust doctrine.” *Id.* Consequently, while “the constitutionality, feasibility, and efficacy of potential remedies” may ultimately “militate against expansion of the public trust doctrine,” the court concludes that is not a basis for dismissing the entirety of Plaintiffs’ claim for declaratory relief under the political question doctrine.

⁴⁰ The court also rejects any purported attempt to “frame up” a future political question by asserting that there are no judicially manageable standards to “supervise” the State’s obligation to protect the Great Salt Lake.

3. Aspects of Requested Relief May Present Political Questions.

In their supplemental briefing, Plaintiffs continue to insist that they are entitled to additional declaratory relief in the form of an order directing the State Defendants to review and modify diversions inconsistent with maintaining the Great Salt Lake at a certain level.

The court agrees with the State Defendants that this additional declaratory relief may be non-justiciable under the *Baker* test because such relief implicates policy decisions belonging to the other branches of government.⁴¹ However, because this specific request for relief is extricable from Plaintiffs' declaratory judgment claim, the court is not required to dismiss the Complaint just because this relief may involve a political question. See *Baker*, 369 U.S. at 217 ("Unless one of these formulations is inextricable from the case at bar, there should be no dismissal for non-justiciability on the ground of a political question's presence. The doctrine of which we treat is one of 'political questions,' not one of 'political cases.'").

D. Standing and Redressability.

The State Defendants next argue Plaintiffs "lack standing because their claim is not redressable." "Standing is a flexible legal concept designed to preserve the integrity of judicial adjudication by requiring that legal issues be adequately defined and crystalized so that judicial procedures focus on specific, well-defined legal and factual issues." *Nat'l Parks & Cons. Ass'n v. Bd. of State Lands*, 869 P.2d 909, 913 (Utah 1993). Standing is a threshold requirement. *Berg v. State*, 2004 UT App 337, ¶ 6, 100 P.3d 261, 264. Standing comprises three components: injury, causation, and redressability. *Carlton*, 2014 UT at ¶ 31.

When considering motions to dismiss brought prior to discovery, courts "do not hold plaintiffs to a high standard of proof." *Alpine Homes, Inc. v. City of W. Jordan*, 2017 UT 45, ¶ 32, 424 P.3d 95, 106. Rather "all allegations in [the] complaint, and all reasonable inferences drawn from those allegations, are taken as true." *Id.* A plaintiff satisfies the standing test "by alleging that . . . they [have been] injured by the defendant's conduct, so long as the complaint contains adequate factual context to satisfy [Utah's] notice pleading requirements." *Brown v. Div. of Water Rts. Of Dep't of Nat. Res.*, 2010 UT 14, ¶ 21, 228 P.3d 747. "For purposes of a motion to dismiss," such an allegation "will be assumed to 'embrace those specific facts that are necessary to support the claim.'" *Id.* Importantly, standing does not depend on the merits of the plaintiff's claim. *S. Utah Wilderness All. v. San Juan Cnty. Comm'n*, 2021 UT 6, ¶ 26, 484 P.3d 1160, 1168.

Even if a plaintiff shows injury and causation, a plaintiff nevertheless lacks standing if the alleged injury "is not redressable by a favorable ruling from [the] court" because the court "simply [cannot] grant the relief requested"⁴² or because the relief requested is not "substantially likely to redress the injury claimed." *Utah Chapter of Sierra Club v. Utah Air Quality Bd.*, 2006 UT 74, ¶ 19, 148 P.3d 960 (citing *Jenkins v. Swan*, 675 P.2d 1145, 1149 (Utah 1983)). Declaratory relief

⁴¹ An order requiring the State Engineer to implement mandatory curtailments of upstream diversions would raise a myriad of questions regarding, among other things, the order of curtailment, the amount of curtailment, and the "higher" beneficial uses that might be insulated from curtailment. See DNR's Mot. to Dismiss at 19-20.

⁴² *Juliana v. United States*, 947 F.3d 1159, 1171 (9th Cir. 1983).

satisfies this requirement where it affects a “change in legal status,” and the “practical consequence[s]” of that change would “amount to a significant increase in the likelihood that the plaintiff would obtain relief that directly redresses the injury suffered.” *Utah v. Evans*, 536 U.S. 452, 464 (2002).

The State Defendants do not dispute that Plaintiffs satisfy the first and second requirements. Instead, the State Defendants maintain that even a narrow declaratory judgment “would not redress Plaintiffs’ alleged injuries” because they have “chosen not to ground their Complaint in an actual controversy by, say, challenging a particular decision on an application.”⁴³ Nor would it “alter the actions of the State in any way because such a declaration would not put the State on notice of anything it must do to comply with undefined public trust requirements.”⁴⁴ Additionally, the State Defendants contend that Plaintiffs’ declaratory judgment claim “is not redressable because their requested relief exceeds the equitable power of the court” and “parties whose rights would be adversely affected by the requested relief are absent.”⁴⁵

The court concludes that Plaintiffs satisfy the “redressability” requirement.

Given the State Defendants’ insistence that Utah’s public trust does not include the navigable waters themselves and that they have no duty to preserve the Great Salt Lake as a lake, a limited declaratory judgment regarding the scope of the public trust doctrine and the State’s fiduciary duties under it would afford Plaintiffs meaningful relief from the alleged real-world harms due to the State’s refusal to acknowledge that it has any such duties. See Wright & Miller, 5B Fed. Prac. & Proc. Civ § 1347 (4th ed. 2024) (Dismissal is not warranted where “the district judge can ascertain from what has been alleged that *some* relief may be granted by the court.”) (emphasis added).

It may be that the State’s voluntary efforts satisfy their public trust duties because they are the only feasible means available to it. If that is the case, the State Defendants may be correct that a declaration that the water of the Great Salt Lake is part of the public trust would not have any effect on the State’s future actions. But given the State’s refusal to acknowledge *any* duty with respect to the waters of the Great Salt Lake and its mistaken belief that it can dredge and fill it if it wants to do so, the court is not persuaded that Plaintiffs would not be afforded *any* relief through the exercise of its common law power or that their declaratory judgment claim is otherwise not redressable. And it would not be appropriate for the court, at the motion to dismiss stage, to simply accept the State Defendants’ self-serving statements that nothing would change if they were forced to address this crisis as a trustee rather than a volunteer. Finally, if Plaintiffs are ultimately able to prove that the State’s current voluntary actions do not fulfill their trustee duties, then the court may order the State to implement additional feasible measures to protect and preserve the Great Salt Lake, providing additional meaningful relief.⁴⁶

⁴³ DNR’s Suppl. Br. 9.

⁴⁴ *Id.*

⁴⁵ DNR’s Mot. to Dismiss at 24-25.

⁴⁶ The Court in *Roussel* also determined the district court lacked subject matter jurisdiction because plaintiffs’ success on their challenges to statutory provisions relating to fossil fuels would not redress their injuries. In contrast to the public trust doctrine at issue in this case, the challenged provisions in *Roussel* did not impose “directives” or

E. Failure to Exhaust Administrative Remedies.

In their final attack on subject matter jurisdiction, the State Defendants argue that Plaintiffs have failed to exhaust their administrative remedies.

Under Utah's Administrative Procedures Act (UAPA), "[a] party aggrieved may obtain judicial review of final agency action ..." and "may seek judicial review only after exhausting all administrative remedies available[.]" Utah Code § 63G-4-401(1)-(2). The "basic purpose underlying the doctrine of exhaustion of administrative remedies 'is to allow an administrative agency to perform functions within its special competence – to make a factual record, to apply its expertise, and to correct its own errors so as to moot judicial controversies.'" *Maverik Country Stores, Inc. v. Indus. Comm'n*, 860 P.2d 944, 947 (Utah Ct. App. 1993) (quoting *Parisi v. Davidson*, 405 U.S. 34, 37, 92 S.Ct. 815, 818 (1972)).

If the legislature has delegated adjudicative authority over a legal claim to an administrative agency, the district court lacks subject matter jurisdiction over that claim unless and until a plaintiff has exhausted its administrative remedies. See UAPA, Utah Code § 63G-4-101 *et seq.*; *Ramsay v. Kane Cnty. Human Res. Special Serv. Dist.*, 2014 UT 5, ¶ 8, 322 P.3d 1163 ("a district court has subject matter over a legal claim unless adjudicative authority for that claim is specifically delegated to an administrative agency.") (quoting *Mack*, 2009 UT at ¶ 33); *Nebeker v. Utah State Tax Comm'n*, 2001 UT 74, ¶ 14, 34 P.3d 180, 184 (UAPA's general exhaustion requirement depends on the existence of "applicable administrative remedies," which were not available to address Plaintiffs' claims). However, UAPA "does not affect a legal remedy otherwise available to . . . compel an agency to take action." See Utah Code § 63G-4-102(3)(a).

As a preliminary matter, the State Defendants have not identified any applicable statute expressly delegating adjudicative authority over Plaintiffs' declaratory judgment claim to an administrative agency and the cases cited by them are easily distinguishable. In these cases, the court lacked subject matter jurisdiction either because a statute specifically delegated the plaintiff's claim to an administrative agency or the plaintiff commenced, but failed to complete, the administrative proceedings prior to filing an action in district court.

For example, in *Ramsay* and *Hom v. Utah Dep't of Pub. Safety*, 962 P.2d 95 (Utah Ct. App. 1998), the district court lacked subject matter jurisdiction because the plaintiffs were statutorily required to pursue administrative remedies first but failed to do so. See *Ramsay*, 2014 UT at ¶¶ 13, 18; *Hom*, 962 P.2d at 101. Similarly, in *Patterson v. American Fork City*, 2003 UT 7, 67 P.3d 466, the plaintiffs "failed to pursue any administrative remedies prior to filing suit, despite the fact that the City's Development Code clearly contemplates that land use decisions are to be directed through the Planning Commission and City Council." *Patterson*, 2003 UT at ¶ 17.

"mandates" on the government defendants. Consequently, declaring the provisions unconstitutional would not limit the State's ability to promote fossil fuel development or effect any change in the State's action and, therefore, the plaintiffs' alleged injuries were not redressable. 2025 UT 5, ¶ 9.

In *Nebeker and Christensen v. Utah State Tax Comm'n*, 2020 UT 45, 469 P.3d 962, the plaintiffs participated in underlying administrative actions but filed their claims in court without exhausting administrative remedies. See *Nebeker*, 2001 UT at ¶ 17; *Christensen*, 2020 UT at ¶ 19 (“[A]ny party that has participated in an initial hearing and is unhappy with the results of that hearing must timely request a formal hearing before seeking judicial review.”). And in *Friends of Great Salt Lake v. Utah Dept. of Natural Res.*, 2017 UT 15, 393 P.3d 291, the plaintiff’s claims were not preserved in the underlying administrative action so the court was precluded from reviewing them. *Friends*, 2017 UT at ¶¶ 58 and 59.

The State Defendants also rely on Utah Administrative Code R652-7 and R652-9 to argue that Plaintiffs were required to submit a petition for a declaratory order to the FFSL and a petition for consistency review to DNR prior to filing this action. More specifically, the State Defendants argue that “Plaintiffs could have, and should have, petitioned FFSL for a declaratory order to determine whether Utah Code 65A-10-203, requiring FFSL to develop strategies to manage a fluctuating Lake level, directs FFSL to establish or maintain a minimum Lake level.”⁴⁷ See Utah Code § 65A-17-201(1) (formerly § 65A-10-203).

But these administrative code provisions do not assign adjudicative authority over public trust claims to any state agency. And Plaintiffs are not otherwise seeking a declaratory judgment regarding the applicability of a statute, rule, or order governing or issued by FFSL. See Utah Admin. Code R652-7-200(4). Nor are Plaintiffs seeking a review of an agency action – whether by FFSL or the State Engineer – for “consistency with statutes, rules and division policy.” See Utah Admin. Code R652-9-100 (provides procedure for parties “aggrieved” by an agency action); Utah Code § 73-3-14(1)(a) (“[a] person aggrieved by an order of the state engineer may obtain judicial review in accordance with [UAPA] and this section.”). Finally, Plaintiffs do not claim to be “aggrieved” by a particular action or a specific order of the FFSL or State Engineer. See, e.g., *Utah Alunite Corp. v. Jones*, 2016 UT App 11, ¶ 7, 366 P.3d 901 (“[A]lthough a person may be negatively impacted by a decision from the State Engineer that is adverse to his or her interests—and thus be ‘aggrieved’ in a general sense—that person does not have standing to seek judicial review unless he or she becomes a party, pursuant to UAPA, in the proceeding sought to be reviewed.”)⁴⁸

Given that there is no statute or rule expressly delegating adjudicative authority over Plaintiffs’ public trust claim to an administrative agency and Plaintiffs are not seeking a review of an agency rule or decision, exhaustion of administrative remedies is not required in this case.

⁴⁷ FFSL’s Mot. to Dismiss at 21.

⁴⁸ In *Friends*, the plaintiff filed a motion in the district court to add various constitutional and statutory claims regarding DNR’s decision to grant a mining lease covering a small portion of the Great Salt Lake. The Court affirmed the district court’s determination that it did not have subject matter over these claims because it filed a statutory proceeding for judicial review under UAPA and “review implies an analysis of the claims and defenses raised in the proceeding under review.” However, the Court did not “foreclose the possibility of a future filing by Friends invoking the district court’s original jurisdiction under Utah Code section 78A-5-102.” *Friends*, 2017 UT 15, ¶¶ 1, 58-59.

X. FAILURE TO JOIN INDISPENSABLE PARTIES

Defendants argue that the court should dismiss the Complaint because Plaintiffs failed to join indispensable parties, *i.e.*, the federal government and upstream water right holders.

Rule 19 of the Utah Rules of Civil Procedure requires the court to determine (1) if these non-parties are necessary, (2) if so, is joinder of these necessary parties feasible, and (3) if not, are these necessary parties indispensable. Utah R. Civ. P. 19; *Harvey v. Ute Indian Tribe of Uintah & Ouray Rsrv.*, 2017 UT 75, ¶ 35, 416 P.3d 401, 416-17. If a party is necessary but joinder is not feasible, “the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable.” *Id.* at ¶ 35; Utah R. Civ. P. 19(b).

A party will be deemed necessary under Rule 19(a) if: “(1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.” Utah R. Civ. P. 19(a).

Given its narrowing of Plaintiffs’ declaratory judgment claim, the court is not persuaded the federal government or the holders of upstream water rights are necessary, much less indispensable, parties.

A. The Federal Government.

In support of their argument that the United States is indispensable, Intervenor Defendants focus on its title to water rights and ownership of reclamation project facilities in the Great Salt Lake basin. Intervenor Defendants insist the United States is an indispensable party because any declaratory relief “that would require bringing additional water to the Lake” impacts the federal government’s interests and puts the Intervening Defendants at risk of incurring inconsistent contractual obligations with respect to reclamation project water. However, joinder is infeasible because of the doctrine of federal sovereign immunity, which protects the United States from suit without its consent or waiver. *In re Uintah Basin*, 2006 UT 19, ¶ 23, 133 P.3d 410, 417, *abrogated on other grounds by Energy Claims Ltd. v. Catalyst Inv. Grp. Ltd.*, 2014 UT 13, 325 P.3d 70.

Here, Plaintiffs are not asserting a claim against the United States or its interests. Consequently, the cases cited by Intervenor Defendants are easily distinguishable because they involve claims asserted directly against federal interests⁴⁹ or claims advanced by the federal

⁴⁹ In *City of Mesa v. Salt River Project Agr. Imp. & Power Dist.*, 101 Ariz. 74, 416 P.2d 187 (1966), the court dismissed an eminent domain proceeding brought against an agricultural improvement district to condemn an electrical plant and distribution system owned by the United States. In *Dugan v. Rank*, 372 U.S. 609, 610-11 (1963), the Supreme Court affirmed the dismissal of an action to enjoin the Bureau of Reclamation from storing and diverting water in a dam, which was part of a federal reclamation project.

government to protect its interests.⁵⁰ And Intervenor Defendants' purported concerns about the possible impact of a declaratory judgment on the federal government are based on mere speculation about how the State may ultimately fulfill its trustee duties under the public trust doctrine. Thus, the Intervenor Defendants have not shown that the United States is an indispensable party.

B. Holders of Upstream Water Rights.

Similarly, a determination by the court that Utah's public trust includes the waters of the Great Salt Lake and/or that the State has breached its duties as trustee will not impair the interests of upstream water right holders. If the State, as trustee, takes any future action with respect to perfected water rights, the holders of those water rights would have an opportunity to challenge the action through appropriate administrative or judicial proceedings at that time. Accordingly, as acknowledged by the Intervenor Defendants at the hearing, the court's narrowing of Plaintiffs' declaratory judgment claim renders this argument moot.⁵¹

XI. FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

The court now turns to the merits of the important question raised in this case: whether Utah's public trust includes the waters of the Great Salt Lake. The court concludes that it does.

Defendants argue that Plaintiffs' declaratory judgment claim fails to state a claim upon which relief may be granted because "the common-law public trust doctrine, as recognized in Utah, is limited to public lands underlying navigable lakes and rivers." According to Defendants, Utah has "adopted" a "unique version" of the "modifiable common-law public trust doctrine recognized in *Illinois Central* when it enacted article XX, section 1 of the Utah Constitution," "which speaks only to 'lands' and notably does not mention or cover water resources."⁵² Consequently, Defendants categorically deny that the State has any legal duty to protect the waters of the Great Salt Lake or preserve the Great Salt Lake as a lake.

The court respectfully rejects these arguments. As discussed further below, the public trust doctrine is a longstanding doctrine of public rights and governmental duties to ensure access to, and protection of, important trust resources like navigable waters and their submerged lands. These public rights and governmental duties are inherent in state sovereignty. They may be recognized in constitutions and statutes, but they are not created by them, and they are inalienable. Thus, while states may expand the public trust doctrine – and many have done so – a state cannot limit it, whether in a constitution, statute, case, or otherwise. Indeed, the court has been unable to find any persuasive authority for Defendants' position that the State can excise navigable waters from the public trust. But even if it could, the court is not persuaded that Utah has done so. Finally, the court is not persuaded that Utah's prior appropriation doctrine is hostile to the public trust doctrine or

⁵⁰ See *California v. United States*, 438 U.S. 645 (1978) (action by United States challenging a decision of a state agency on appropriating water for reclamation project); see also *United States v. Rio Grande Dam & Irrigation Co.*, 174 U.S. 690, 703, 706 (1899) (action by United States to enjoin an irrigation company from constructing dam across the Rio Grande River because of threat to federally-owned property).

⁵¹ For these same reasons, the Water Users Intervenor's uncompensated takings argument is moot.

⁵² DNR's Rep. Mem. at 5-6.

fundamentally incompatible with the State's duties as trustee of Utah's public trust, which includes the waters of the Great Salt Lake.

A. Origins and Historical Background.

The parties have extensively briefed the origins and historical background of the public trust doctrine, which the court will briefly summarize here. The public trust doctrine has frequently been described as having roots in ancient Roman Law and English common law. Under English common law, all lands and tidal, or navigable, waters were under the exclusive control of the King, and private parties could acquire title through grants from the Crown. See *Shively v. Bowlby*, 152 U.S. 1, 13, (1894). After American Independence, the states adopted much of the English common law, including the law relating to navigable waters and "the principle that submerged lands are held for a public purpose." *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 284 (1997). Consistent with this principle, the submerged lands of navigable waters were presumptively owned by the states unless they had been previously granted to a private party.

The public trust doctrine was first articulated in several early nineteenth century cases.

In *Arnold v. Mundy*, 6 N.J.L. 1, 53 (1821), the supreme court of New Jersey held that the power exercised by the state over the navigable waters and lands under them, "is nothing more than what is called the 'jus regium,' the right of regulating, improving, and securing them for the benefit of every individual citizen." Thus:

The sovereign power itself, therefore, cannot, consistent with the principles of the law of nature and the constitution of a well-ordered society, make a direct and absolute grant of the waters of the state, divesting all the citizens of their common right. It would be a grievance which never could be long borne by a free people.

In *Martin v. Waddell's Lessee*, 41 U.S. 367, 410 (1842), the U.S. Supreme Court explained that:

When the Revolution took place the people of each state became themselves sovereign, and in that character hold the absolute right to all their navigable waters, and the soils under them, for their own common use, subject only to the rights since surrendered by the constitution to the general government.

The U.S. Supreme Court then issued its seminal ruling in *Illinois Central Railroad Co. v. Illinois*, which is frequently described as the foundational public trust case. In *Illinois Central*, the Court was faced with the question of "whether the legislature was competent to . . . deprive the state of its ownership of the submerged lands in the harbor of Chicago, and of the consequent control of its waters." 146 U.S. 387, 452. In determining that the legislature was not, the Court explained the public trust doctrine as follows:

[T]he state holds the title to the lands under [] navigable waters . . . and that title necessarily carries with it control over the waters above them, when the lands are subjected to use. But it is a title different

in character from that which the state holds title in lands intended for sale . . . *It is a title held in trust for the people of the state, that they may enjoy the navigation of the waters, carry on commerce over them, and have the liberty of fishing therein, free from the obstruction or interference of private parties.* The interest of the people in the navigation of the waters and in commerce over them may be improved in many instances by the erection of wharves, docks, and piers therein, for which purpose the state may grant parcels of the submerged lands . . . so long as their disposition is made for such purpose [and such grants] do not substantially impair *the public interest in the lands and the waters remaining* But that is a very different doctrine from the one which would sanction the abdication of the general control of the state over the lands under the navigable waters of an entire harbor or bay, or of a sea or lake. *Such abdication is not consistent with the exercise of that trust which requires the government of the state to preserve such waters for the use of the public.*

* * *

The control of the state for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interests of the public therein, or can be disposed of without any substantial impairment of *the public interest in the lands and water remaining.*

* * *

The state can no more abdicate its trust over property in which the whole people are interested, *like navigable waters and soils under them*, so as to leave them entirely under the use and control of private parties, except in the instance of parcels mentioned for the *improvement of the navigation and use of the waters*, or when parcels can be disposed of without impairment of the public interest in what remains, than it can abdicate its police powers in the administration of government and the preservation of peace.

* * *

[T]he decisions are numerous which declare that such property is held by the state, by virtue of its sovereignty, in trust for the public. *The ownership of the navigable waters of the harbor, and of the lands under them, is a subject of public concern to the whole people of the state.* The trust with which they are held, therefore, is governmental, and cannot be alienated, except in those instances mentioned[.]

Id. at 452, 453, and 455 (emphasis added).

In *Illinois Central*, the Court was clear not only that the public trust included both submerged lands and overlying waters, but that the state's trustee obligations were inalienable, as they required state management and control of trust resources to ensure against "any substantial impairment of the public interests in the lands and waters remaining." *Illinois Central*, 146 U.S. at 453. And since *Illinois Central*, no court has ever ruled that the public trust doctrine does not include the navigable waters themselves or that a state has the authority to remove the navigable waters from its public trust.

B. The Equal Footing Doctrine.

The equal footing doctrine is related to, but distinct from, the public trust doctrine. Under the equal footing doctrine, newly admitted states entering the Union after 1789 had the same rights, privileges, and authority as the original thirteen states. Thus, "the people of each state became themselves sovereign; and in that character, held the absolute right to all their navigable waters, and the soil under them; for their own common use, subject only to the rights since surrendered by the constitution to the general government." *Martin*, 41 U.S. at 410.

State ownership of land underlying navigable waters has been "considered an essential attribute of sovereignty," founded upon the principle "that navigable waters uniquely implicate sovereign interests." *Coeur d'Alene Tribe*, 521 U.S. at 283 (quoting *Utah Div. of State Lands v. United States*, 482 U.S. 193, 195 (1987)). The right to rivers and shores "is held in trust for every individual proprietor in the state or the United States, and requires a trustee of great dignity." *Pollard v. Hagan*, 44 U.S. 212, 216 (1845).

While the equal footing doctrine relates to a state's *title* to the lands underlying navigable waters, the public trust doctrine also protects the public's *right to use* the waters for navigation, commerce, and fishing "freed from the obstruction or interference of private parties." *Illinois Central*, 146 U.S. at 452. Thus, the public trust doctrine not only prohibits the disposition of submerged lands that would "substantially impair the public's interest in the lands and the waters remaining," it requires the state to affirmatively "preserve such waters for the use of the public." *Id.* at 453. Consequently, while many public trust cases deal with an attempted conveyance of submerged lands, such a conveyance is not a prerequisite to asserting a breach of the state's duties as trustee of the public trust.⁵³

⁵³ Many public trust cases do not involve an attempted disposition of submerged lands. See e.g., *Min. Cnty. v. Lyon Cnty.*, 136 Nev. 503, 473 P.3d 418 (2020) (based on tribe's action seeking recognition of additional water under decree, the court addressed question of "whether, and to what extent, the public trust doctrine applied to water rights already adjudicated"); *Shokal v. Dunn*, 109 Idaho 330, 707 P.2d 441 (1985) (reviewing grant of application to appropriate water, the court observed that "dewatering" of creek raised public trust concerns); *Kramer v. City of Lake Oswego*, 365 Or. 422, 446 P.3d 1, *opinion adhered to as modified on reconsideration*, 365 Or. 691, 455 P.3d 922 (2019) (plaintiffs sought declaration of public access right in lake despite the city's holding on title to riparian rights to lake); *Env't L. Found. v. State Water Res. Control Bd.*, 26 Cal. App. 5th 844, 237 Cal. Rptr. 3d 393 (2018) (the court addressed whether "State Water Resources Board had the authority and duty under the public trust doctrine to regulate extractions of groundwater that affected public trust uses in river").

C. The Great Salt Lake is a Navigable Body of Water.

Defendants do not dispute that the Great Salt Lake has been deemed “navigable in fact,” which the Supreme Court in *The Daniel Ball* has defined as:

[Waters] are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

The Daniel Ball, 77 U.S. 557, 563, 19 L. Ed. 999 (1870).

Applying this navigable in fact test, the Supreme Court held in *Utah v. United States*, 403 U.S. 9, 10 (1971), that the Great Salt Lake is navigable and therefore owned by the State. Thus, there is no genuine dispute that if Utah’s public trust doctrine includes navigable water, then the State has a duty as trustee to protect and preserve the waters of the Great Salt Lake.

D. Utah’s Articulation of the Public Trust Doctrine.

Certain Defendants contend the “sole origin of Utah’s public trust doctrine” is article XX, section 1 of the Utah Constitution. And because this provision only references land, Utah’s public trust does not include navigable waters and the State can “divert or allocate all water that goes to the Great Salt Lake and essentially eliminate it as a lake.”^{54, 55}

The court rejects this contention for several compelling reasons.

First, while it is true that article XX, section 1 references “land grants accepted on terms of trust,” Defendants have not provided the court with any authority, much less persuasive authority, that the framers of Utah’s constitution intended this provision to be *the* definitive statement of Utah’s public trust doctrine, as opposed to a provision adopted “largely to comply with Utah’s Enabling Act.”⁵⁶

Second, assuming the framers intended to address the public trust doctrine in the Utah Constitution at all, Defendants ignore article XVII, section 1, which confirmed “[a]ll existing rights to the use of any of the waters of this State for any useful or beneficial purposes.” While there is no question this provision includes rights acquired through “whatever method of

⁵⁴ Transcript of Hearing at 13, UPHE et al. v. DNR et al., No. 230906637 (3rd Dist. filed Sept. 26, 2024).

⁵⁵ The State Engineer acknowledges “the full scope of Utah’s public trust doctrine is a question of first impression.” She also acknowledges “[t]he Utah Supreme Court has considered but never articulated a clear constitutional basis for the public trust doctrine” and that article XX, section 1 merely provides a “potential” articulation of the public trust doctrine. See State Engineer Reply at 11. As explained above, the public trust doctrine exists regardless of whether it is explicitly or implicitly referenced in a state’s constitution. Thus, the court is not necessarily limited to looking at “the plain language of the constitutional provisions to determine” the scope of Utah public trust doctrine.

⁵⁶ FFSL reply at 20.

procedure”⁵⁷ prior to statehood, its plain language easily encompasses public rights to navigable waters under the public trust doctrine. There is certainly nothing in this broad language, or the framers’ discussion of it, that limits its reach to perfected water rights or that explicitly excludes the public’s rights in navigable waters under the public trust doctrine.

Third, the Utah Supreme Court confirmed in *Colman* that Utah’s public trust includes navigable waters. While Defendants attempt to dismiss *Colman* – curiously insisting that the case “had nothing, absolutely nothing, to say about water”⁵⁸ or suggesting the court simply ignore it as mere obiter dicta – the court cannot so easily cast it aside, particularly when the Court’s articulation of the public trust doctrine is consistent with *Illinois Central* and all other cases addressing the minimum scope of the public trust doctrine.

Fourth, even if *Colman*’s statement of Utah’s public trust is obiter dicta, the court is not persuaded that Utah may excise water from the public trust or otherwise abdicate its trustee duties over the navigable waters in which the whole people of the State are interested.

And finally, Utah’s prior appropriation doctrine is not hostile to the public trust doctrine or fundamentally inconsistent with it. Indeed, no prior appropriation state has attempted to exclude navigable waters from its public trust doctrine. While Utah’s prior appropriation doctrine may prevent the State, as trustee, from imposing mandatory curtailments of perfected water rights in furtherance of its duties to the Great Salt Lake – and therefore render the *Mono Lake* approach unfeasible – it does not require the removal of navigable waters from the public trust or excuse the State from preserving and protecting them.

1. Article XX, Section 1 [Land grants accepted on terms of trust].

Pursuant to the Enabling Act, the State was “to be admitted into the Union on an equal footing with the original States.” And “upon admission,” the State was “granted” certain lands for specified purposes. See Enabling Act §§ 6, 7, 8, and 12. Consistent with the Enabling Act, article XX, section 1 provides as follows:

All lands of the State that have been, or may hereafter be granted to the State by Congress, and all lands acquired by gift, grant or devise, from any person or corporation, or that may otherwise be acquired, are hereby accepted, and, except as provided in Section 2 of this Article, are declared to be the public lands of the State; and shall be held in trust for the people, to be disposed of as may be provided by law, for the respective purposes for which they have been or may be granted, donated, devised or otherwise acquired.

Some Defendants insist this provision is the exclusive basis for Utah’s public trust and, therefore, the lack of any reference to water demonstrates the framers’ intent to remove navigable waters from the public trust. But these Defendants do not point to any historical evidence that the

⁵⁷ *Wrathall v. Johnson*, 86 Utah 50, 40 P.2d 755, 768 (1935).

⁵⁸ Transcript of Hearing at 117, *UPHE et al. v. DNR et al.*, No. 230906637 (3rd Dist. filed Sept. 26, 2024).

framers considered the public trust doctrine at all in the drafting of article XX, section 1. In fact, the Official Report of the constitutional convention, which was cited by Defendants in their briefing, does not mention the public trust doctrine, submerged lands, or navigable waters.⁵⁹ Rather, the framers discussed Utah's Enabling Act, which similarly does not mention the public trust doctrine, submerged lands, or navigable waters. Consequently, the court does not find this provision to be a clear statement that the framers were defining the scope of Utah's public trust, much less intentionally removing navigable waters from it.⁶⁰

2. Article XVII, Section 1 [Existing rights confirmed].

But even if a mere reference to "public lands" being "held in trust for the people" is enough to invoke the public trust doctrine, the court questions why article XVII, section 1's similarly general reference to "[a]ll existing rights to the use of any waters of this State for any useful or beneficial purpose" as being "hereby recognized and confirmed" could not also be a statement of the public trust doctrine.

The Utah Supreme Court has emphasized that "conventional methods of constitutional interpretation, [] dictate that when determining the meaning of a constitutional provision, 'other provisions dealing generally with the same topic . . . assist us in arriving at a proper interpretation of the constitutional provision in question.'" *Am. Bush v. City of S. Salt Lake*, 2006 UT 40, ¶ 18, 140 P.3d 1235, 1241 (quoting *In re Worthen*, 926 P.2d 853, 866–67 (Utah 1996)). See also *Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 675 (Utah 1985) (stating that the meaning of the constitutional provision "must be taken not only from its history and plain language, but also from its functional relationship to other constitutional provisions").

The court agrees with the State Defendants that these constitutional provisions are not in conflict and that "the court must review the entire structure of Utah's constitution when evaluating the meaning of a single provision."⁶¹ Thus, assuming the framers intended to define the scope of the public trust in the Utah Constitution notwithstanding the lack of any discussion of it, both provisions read together embody the basic public trust doctrine as articulated by the Supreme Court in *Illinois Central*.

⁵⁹ Utah, *Official Report of the Proceedings and Debates of the Convention Assembled at Salt Lake City on the Fourth Day of March, 1895, to Adopt a Constitution for the State of Utah* (Salt Lake City: Star Printing Company, 1898) [hereafter "Official Report"]; *Transcript of Proceedings; Thirty-Sixth Day: Monday, Constitutional Convention (1895) Records and Dockets* (April 8, 1895); *Transcript of Proceedings; Thirty-Seventh Day, Constitutional Convention (1895) Records and Dockets* (April 9, 1895).

⁶⁰ Some Defendants maintain that article XX, section 1 is not "self-executing" without a disposition of sovereign lands or implementing legislation. "To say that a constitutional provision is self-executing is to conclude only that it is judicially enforceable in the absence of statutory authority for a private claim." *Friends of Great Salt Lake v. Utah DNR*, 2017 UT 15, ¶60, 393 P.2d 291. The court rejects this argument for two reasons. First, the public trust exists regardless of whether it has been enshrined in any provision of Utah's Constitution. And it protects the public's interest in navigable waters in the absence of implementing legislation. Second, Plaintiffs possess a common law action to enforce the public trust doctrine, which the State Defendants implicitly concede.

⁶¹ FFSL's Suppl. Br. at 3 (citing *University of Utah v. Shurtleff*, 2006 UT 51, ¶ 17, 144 P.3d 1109, 1114).

3. The Colman Case and Utah's Public Trust Case Law.

The Utah Supreme Court provided the clearest expression of Utah's public trust in *Colman v. Utah State Land Board*. In *Colman*, the plaintiff sought to enjoin the state from breaching the causeway on the Great Salt Lake and to recover damages from the resulting harm to his brine canal. *Colman*, 795 P.2d 622 (Utah 1990). Among other arguments, the State asserted that breaching the causeway was "in furtherance of its public trust responsibilities" and that it could not be liable for damages. *Id.* at 635.

In its decision, the Court, referencing *Illinois Central* as the "controlling case" on the public trust doctrine, stated that "the essence of this doctrine is that navigable waters should not be given without restriction to private parties and should be preserved for the general public for uses such as commerce, navigation, and fishing." *Id.* Thus, "a state can grant certain rights in navigable waters if those rights can be disposed of without affecting the public interest in what remains." *Id.* at 635-36.

Although the State Defendants now attempt to distance themselves from the *Colman* case, the court believes they had it right the first time in their briefing in the *Colman* case. In their brief, the State argued that:

The Public Trust Doctrine holds that the State must manage its navigable waters and their beds (like the Great Salt Lake) for the public good. Colman's position would essentially nullify that principle and would undermine both the State's public-trust authority and initiative in dealing with natural disasters.

* * *

[Colman's] lease and right-of-way involve *the waters and bed of a navigable lake, and therefore are subject to the Public Trust Doctrine*. That Doctrine, whose origins and development are discussed in the margin,¹⁸ requires the State to manage the Lake and its resources in the public's best interest.⁶²

¹⁸ In England, the Crown and Parliament held in public trust all rights (proprietary and governmental) in all navigable waters and the lands beneath those waters. As a result of the American Revolution, the thirteen colonies succeeded to all rights of both the Crown and Parliament in and to navigable waters, their beds, and adjacent shores. When the colonies became the original States, they retained those rights and powers, while granting the federal government certain powers under the Constitution. All States, as a matter of constitutional 'equal footing,' enjoy the same proprietary and regulatory powers in their navigable waters and beds as the original States. The States, having assumed all incidents of ownership of

⁶² *Id.* at 33.

their navigable waters and beds, continue to hold them in public trust. (internal citations omitted).

* * *

Under the Public Trust Doctrine, all private interests in navigable waters and their beds are subject to a governmental servitude. The State cannot be held liable for enforcing that servitude against private interests.⁶³

The State also cited to *Kootenai* and *Mono Lake* for the proposition that grants of “public trust resources” are given “subject to the public trust doctrine” and, therefore, a state “is not precluded from determining in the future that this conveyance is no longer compatible with the public trust imposed on this conveyance.”⁶⁴

A decision by the Utah Supreme Court is binding precedent when it “confronts an issue germane to the eventual resolution of the case, and resolves it after reasoned consideration in a published opinion.” *State v. Robertson*, 2017 UT 27, ¶ 27, 438 P.3d 491. The mere articulation of alternative bases for a decision does not convert an opinion into dicta. *Id.* at ¶ 26. Nevertheless, the State Defendants now claim their position in the *Colman* case was wrong and the court should disregard the Court’s statements as mere obiter dicta because the case was not decided on public trust grounds.⁶⁵

“Dicta” refers to parts of judicial decisions that are “not critical to the holding.” *State v. Daniels*, 2002 UT 2, ¶ 35, 40 P.3d 611. Utah courts have recognized both “obiter dicta” and “judicial dicta.” Obiter dicta is generally not binding authority or precedent, and “refers to a remark or expression of opinion that a court uttered as an aside,” such as a “statement made by a court for use in argument, illustration, analogy or suggestion.” *Exelon Corp. v. Department of Revenue*, 234 Ill.2d 266, 917 N.E.2d 899, 907 (2009); *Ortega v. Ridgewood Est. LLC*, 2016 UT App 131, ¶ 14 n.4, 379 P.3d 18.

However, judicial dicta *is* binding on courts in deciding later cases. Judicial dicta refers to “statement[s] deliberately made for the guidance of the bench and bar,” or those “expression[s] of opinion upon a point in a case argued by counsel and deliberately passed upon by the court.” *Greyhound Lines, Inc. v. Utah Transit Auth.*, 2020 UT App 144, 486 P.3d 472, 477 (citing *Ortega*, 2016 UT App at ¶ 14 n.4).

The Court’s statements in *Colman* are not obiter dicta because it did not merely discuss the public trust doctrine “as an aside.” Rather, the Court’s explanation of the public trust doctrine was

⁶³ See Br. of State Resp. at 7 and 35, *Colman v. Utah State Land Bd.* (Jan. 14, 1987) (attached as Exhibit 1 to Plaintiffs’ Combined Opposition in Response to Motions to Dismiss) (emphasis added).

⁶⁴ *Id.* at 37 n.20 (quoting *Kootenai Env’tl, Inc. v. Panhandle Yacht Club Inc.*, 105 Idaho 622, 671 P.2d 1085, 1096 (1983); *Nat’l Audubon Soc’y v. Superior Court*, 658 P.2d 709, 723 (Cal. 1983)).

⁶⁵ Plaintiffs do not suggest, and the court does not otherwise find, that the State Defendants are estopped from changing their position on the scope of the public trust doctrine.

provided to the district court as a guide in determining on remand whether “Colman’s canal impaired the public interest [in the navigable waters] in any way at the time the State granted him the right to conduct his operation.” *Colman*, 795 P.2d at 636.

Nor can the Court’s articulation of the public trust doctrine be dismissed as “unfortunately imprecise” or somehow limited to flood conditions, particularly when it has not been repudiated in any subsequent Utah case, including *Nat’l Parks & Conservation Ass’n v. Bd. of State Lands* and the *VR Acquisition* cases.

Three years after *Colman*, the Utah Supreme Court in *Nat’l Parks* addressed the “central issue” of the case, which was “whether the scenic, aesthetic, and recreational value of school trust land should be given preference over maximization of income.” *Nat’l Parks*, 869 P.2d at 916. In holding that the Board did not breach its trustee duties by refusing to give priority to these values when it approved a land exchange, the Court noted the plaintiff was confusing “the public trust that applies to sovereign lands with school trust land” when it argued that “school trust land is public land ‘held in trust for citizens.’” *Nat’l Parks*, 869 P.2d at 919. Citing *Colman*, the Court then stated “the ‘public trust’ doctrine, discussed in *Colman* . . . protects the ecological integrity of public lands and their public recreational uses for the benefit of the public at large. The public trust doctrine, however, is limited to sovereign lands and perhaps other lands that are not subject to specific trusts, such as school trust lands.” *Id.*⁶⁶ In context, the Court was merely distinguishing between school trust lands and public trust lands, which have different beneficiaries and purposes.

This conclusion is further bolstered by the Court’s citation to certain law review articles which describe the public trust doctrine as including navigable waters, including Charles F. Wilkinson, *The Public Trust Doctrine in Public Land Law*, 14 U.C. Davis L.Rev. 269 (1980) and Joseph L. Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 Mich.L.Rev. 471 (1970). In his seminal law review article on the public trust, Mr. Sax concludes that the scope of the public trust includes navigable waters. He further asserts that public trust cases need not be limited by conventional public use interests “or to questions of disposition of public properties.” Sax at 556. Although Wilkinson specifically considered the public trust doctrine in the public land context, he also states that “the classic public trust doctrine seems to have applied to navigable waterways before they passed out of federal hands. That is, before new states took lands under navigable watercourses at statehood, the United States was bound by the limitations imposed by the public trust doctrine in much the same way that states have been limited by the trust since statehood.” Wilkinson at 301.

The parties also cite heavily to a pair of cases considered by the Utah Supreme Court, *Utah Stream Access Coalition v. VR Acquisitions, LLC (USAC I & USAC II)*. While the Court did not specifically reference *Colman* in these cases, nothing in its discussion or analysis is inconsistent with *Colman*’s articulation of Utah’s public trust. In *USAC I*, Utah Stream Access Coalition argued that the Public Waters Access Act unconstitutionally restricted the public easement rights in public waters. *USAC I*, 2019 UT 7, ¶ 2, 439 P.3d 593, 596; Utah Code §§ 73-29-101 to 208. Citing article XX, section 1 of the Utah Constitution, the plaintiffs argued that this provision’s protection of “lands of the state” extends to interests in land, including the purported easement. *Id.* at ¶¶ 20-22.

⁶⁶ The Court’s description of Utah’s public trust doctrine included “ecological integrity” and “recreational uses.”

However, the plaintiffs did not assert a claim that the public waterway at issue was navigable. As a result, the Court declined to consider whether the public had a right to touch the bed of the waterway on that basis. See *USAC I*, 2019 UT at ¶¶ 30, 37.

Critically, the Court never stated that article XX, section 1 embodied the entirety of Utah's public trust doctrine.⁶⁷ And its reference to *Illinois Central* was not a rejection of it. See *USAC I*, 2019 UT at ¶ 73. The Court appropriately observed that *Illinois Central* permitted the disposition of public waters or lands to the extent it does not "substantially impair the public interest in the lands and waters remaining." *Id.* at ¶ 75. Importantly, the Court noted that the disposition at issue in *Illinois Central* – a "restriction of public access to an entire waterway" – was "a classic infringement of the public trust." *Id.* at ¶ 76. Thus, there is nothing in *USAC I* that is inconsistent with the *Colman's* articulation of Utah's public trust doctrine or that suggests the Court viewed navigable waters as being excluded from the public trust.

In *USAC II*, the case returned to the Court on a single issue: "whether there was a 19th century basis for an easement providing the public with the right to touch privately owned streambeds underlying state waters." *USAC II*, 2023 UT 9, ¶ 1, 531 P.3d 195, 198. The Court ultimately decided there was an insufficient historical basis for the easement. Again, nothing in the Court's decision contradicts *Colman's* articulation of Utah's public trust doctrine.

Because *Colman's* statement of Utah's public trust doctrine cannot be dismissed as a mere "aside," the court is not free to disregard this binding precedent, which is faithful to *Illinois Central* and consistent with all other cases that have considered the issue. Accordingly, the court determines that Utah's public trust includes the navigable waters of the Great Salt Lake and that the State, as trustee, is required to protect and preserve them so that they can be used for the public trust purposes of navigation, commerce, fishing, and recreation.⁶⁸

4. Utah Cannot Remove Navigable Waters from the Public Trust.

Even if *Colman's* description of Utah's public trust is obiter dicta, the court is not persuaded that Utah has discretion to excise water from the public trust or otherwise abdicate its trust responsibilities over the navigable waters of the Great Salt Lake. As the U.S. Supreme Court emphasized in *Illinois Central*, "[t]he state can no more abdicate its trust over property in which the whole people are interested, like navigable waters and the soils under them . . . than it can abdicate its police powers in the administration of government and the preservation of the peace." *Illinois Central*, 146 U.S. at 453. Indeed, the public trust is an inherent attribute and defining element of state sovereignty that cannot be abdicated or relinquished. See *id.* at 455; *PPL Montana v. Montana*, 565 U.S. 576, 590 (2012).

⁶⁷ At most, the court observed that "to the extent the *Illinois Central* test is in line with the public's understanding of the public trust principles embraced in article XX, section 1, the district court may have erred in the standard of scrutiny that it applied." *USAC I*, 2019 UT at ¶ 77.

⁶⁸ To the extent the Court expanded the public trust doctrine in *Nat. Parks.*, the State, as trustee, may be required to protect the "ecological integrity" of the Great Salt Lake as well.

To support their extreme position, Defendants rely exclusively on two sentences at the end of the U.S. Supreme Court's decision in *PPL Montana*. These sentences must be considered in context.

PPL owned and operated hydroelectric facilities in Montana. Ten of its facilities were located on riverbeds underlying segments of the Missouri, Madison, and Clark Fork Rivers. For decades, PPL paid rent to the United States for the use of the riverbeds. In 2003, parents of Montana schoolchildren filed a federal lawsuit claiming that PPL's facilities were on riverbeds that were state owned and part of Montana's school trust lands. *Id.* at 579.

After the federal lawsuit was dismissed, PPL filed a state-court lawsuit seeking a declaratory judgment that Montana was barred from seeking compensation for PPL's riverbed use. Montana counterclaimed, contending that under the equal footing doctrine, it owned the riverbeds and could charge rent for their use. *Id.* The trial court granted summary judgment in favor of Montana and ordered PPL to pay Montana \$41 million in rent. In affirming the trial court, the Montana Supreme Court adopted a "liberal construction of the navigability test" and declared "the river stretches in question to be short interruptions of navigability that were insufficient as a matter of law to find nonnavigability, since traffic had circumvented those stretches by portage." *Id.*

The Supreme Court held the "Montana Supreme Court erred in its treatment of the question of river segments and portage" and "in relying on evidence of present-day, primarily recreational uses of the Madison River" because "questions of navigability for determining state riverbed title are governed by federal law" and "[n]avigability must be assessed as of the time of statehood." *Id.* at 579, 600. Thus, Montana could not "adopt a retroactive rule for determining navigability which . . . would enlarge what actually passed to the State, at the time of her admission, under the constitutional rule of equality here invoked." *Id.* at 604-05.

The Supreme Court then briefly addressed Montana's "final contention" that "denying the State title to the riverbeds here in dispute will undermine the public trust doctrine, which concerns public access to the waters above those beds for purposes of navigation, fishing, and other recreational uses."⁶⁹ In rejecting this contention, the Supreme Court stated as follows:

The public trust doctrine is of ancient origin. Its roots trace to Roman civil law and its principles can be found in the English common law on public navigation and fishing rights over tidal lands and in the state laws of this country. Unlike the equal-footing doctrine, however, which is the constitutional foundation for the navigability rule of riverbed title, *the public trust doctrine remains a matter of state law*, subject as well to the federal power to regulate vessels and navigation under the Commerce Clause and admiralty power. While equal-footing cases have noted that *the State takes title to the navigable waters and their beds in trust for the public*, the contours of that public trust do not depend on the Constitution. Under

⁶⁹ If, as the State Defendants argue, the "imprecise statements made by the Utah Supreme Court in *Colman* regarding the nature of the public trust doctrine" are "obiter dictum," the court has a difficult time understanding how this "casual" statement made "without analysis" would be "judicial dictum." See *Ortega*, 2016 UT App at ¶ 14 n.4.

accepted principles of federalism, *the States retain residual power to determine the scope of the public trust over waters within their borders*, while federal law determines riverbed title under the equal footing doctrine.

Id. at 603-04 (emphasis added) (internal citations omitted).⁷⁰

Given the context of the case – Montana’s attempt to expand the navigability test to “enlarge what actually passed” to it under the equal footing doctrine – and the Court’s unequivocal statement that “the State takes title to the navigable waters and their beds in trust for the public,” the court is not persuaded that *PPL Montana* allows the State to excise navigable waters from the public trust or disclaim its public trust obligations over them. Rather, the Court merely acknowledged that, unlike title to the submerged lands, states may expand the scope of the public trust over navigable waters.

As one commentator explained:

As a matter of state law, states can expand upon the federal public trust doctrine and they have done so in several ways. First, a state can apply its public trust doctrine to more waters than federal law requires, extending public rights upstream of tidal waters and navigable-in-fact waters. Second, a state can protect more public uses than federal law requires. States exercising this prerogative have done so most often to protect the rights of recreation. Finally, the state can extend the concept of a public trust to resources beyond surface waters.⁷¹

Consistent with this authority to expand the public trust, some states have extended the geographic scope of the public trust doctrine beyond navigable waters and submerged lands to include categories like beaches, groundwater, and non-navigable tributaries.⁷² Other states have expanded the public rights guaranteed by the doctrine to include recreational purposes or to prevent pollution or for scenic or ecological purposes.⁷³ Importantly, no state has attempted to remove the navigable waters from the public trust.

⁷⁰ Among other cases, the Court approvingly cited *Nat’l Audubon Soc’y v. Superior Court of Alpine Cty.*, 33 Cal.3d 419, 433-441, 658 P.2d 709, 718-724 (1983).

⁷¹ Robin K. Craig, *A Comparative Guide to the Eastern Public Trust Doctrines: Classifications of States, Property Rights, and State Summaries*, 16 Penn. State Env’tl L. Rev. 1, 11 (2007).

⁷² See e.g. *Just v. Marinette County*, 56 Wis. 2d 7, 16, 3 ELR 20167 (Wis. 1972) (holding lands adjacent to or near navigable waters subject to public trust powers); *Nat’l Audubon Soc’y v. Superior Court*, 658 P.2d 709, 719, 732-33 (Cal. 1983); *Mont. Coal. for Stream Access v. Curran*, 210 Mont. 38, 39, 53 (Mont. 1984) (extending public trust to any surface waters capable of use for recreational purposes); *In re Water Use Permit Applications*, 9 P.3d 409, 445-47 (Haw. 2000) (holding state’s public trust applies to “all water resources without exception or distinction[.]” including groundwater).

⁷³ See e.g., *Marks v. Whitney*, 6 Cal. 3d 251, 259, 2 ELR 20049 (Cal. 1971) (observing “[t]he public uses to which tidelands are subject are sufficiently flexible to encompass changing public needs” beyond the traditional uses of navigation, commerce, and fishing); *Just*, 56 Wis.2d at 16 (explaining state’s active public trust duty includes

But perhaps most critically, Defendants have never attempted to reconcile their “modified” public trust doctrine with the “main purpose of the equal footing doctrine,” which “is to ensure the state owns and controls submerged lands so that ‘navigable waters’ remain open and freely accessible as public highways.”⁷⁴ If a state is prohibited from disposing submerged lands because doing so would divest control over waters that must remain open and freely accessible, the court fails to understand why a state would be permitted to divest the waters themselves through other means. Indeed, the classic public trust infringement case does not involve impaired access to the submerged lands, but impaired access to the waters over them.

Defendants’ argument also defies common sense. Despite hundreds of pages of briefing, Defendants have failed how to explain how the public trust doctrine can possibly protect the acknowledged “public trust values of navigation, commerce, and fishing” if there is no obligation to preserve the waters themselves. These public trust uses obviously, and entirely, depend on water. Without water, the Great Salt Lake is not navigable and the public cannot fish in it or recreate on it. Indeed, the public’s “absolute right to all their navigable waters” would be destroyed if the State, through a statute or otherwise, could simply surrender them. *See Martin*, 41 U.S. at 410.

Accordingly, the court agrees with Plaintiffs that while states may expand their public trusts – and many states have done so – a state cannot exclude the navigable waters from it, whether in a constitution, statute, case, or otherwise.

5. Public Trust Not Inconsistent with Prior Appropriation System.

Finally, notwithstanding some Defendants’ protestations to the contrary, the inclusion of navigable waters in Utah’s public trust is not fundamentally incompatible with Utah’s prior appropriation system. And confirming that Utah’s public trust includes the waters of the Great Salt Lake is not “insert[ing] the public trust doctrine into Utah’s appropriative water rights system” or “recognizing” a “riparian” or “super priority” water right that has never existed before.⁷⁵ While it may make Plaintiffs’ preferred relief infeasible and the State’s task more challenging, there are multiples ways for the State to fulfill its trustee duties without threatening Utah’s water rights system.

(a) Utah’s Prior Appropriation System.

In Utah, all water – regardless of navigability and the public trust doctrine – belong to the public. *See Utah Code Ann. § 73-1-1*. This “[p]ublic ownership is founded on the principle that

protecting and preserving navigable waters for navigation, but also for fishing, recreation, and scenic beauty); *State ex rel. Brown v. Newport Concrete Co.*, 44 Ohio App. 2d 121, 127 (Ohio Ct. App. 1975) (finding public uses for recreational purposes are legitimate use under which the state holds navigable waters in trust); *Env’t L. Found. v. State Water Res. Control Bd.*, 26 Cal. App. 5th 844, 857, 237 Cal. Rptr. 3d 393, 400 (2018) (observing that the range of public trust uses is broad, including right to hunt, bathe, or swim, and is flexible to changing public needs, including preservation of trust lands in their natural state for ecological purposes).

⁷⁴ FFSL Reply Mem. at 5.

⁷⁵ DWR’s Mot. to Dismiss at 3; DWR’s Reply Mem. at 11.

water, a scarce and essential resource in this area of the country, is indispensable to the welfare of all the people.” *J.J.N.P. Co. v. Division of Wildlife Res.*, 655 P.2d 1133, 1136 (Utah 1982). “[I]t is essential that putting water to the highest and best beneficial use should not only be encouraged, but carefully safeguarded.” *Green River Canal Co. v. Thayne*, 2003 UT 50, ¶ 28, 84 P.3d 1134. “[T]he State must therefore assume the responsibility of allocating the use of water for the benefit and welfare of the people of the State as a whole.” *J.J.N.P. Co.*, 655 P.2d at 1136.

Like many other arid western states, Utah has adopted the prior appropriation system to maximize productive usage of water. *Heal Utah v. Kane Cty Water Conserv. Dist.*, 2016 UT App 153, ¶ 6, 378 P.3d 1246. The prior appropriation system has two basic principles: priority and beneficial use. *Id.*

Priority refers to the general system of first in time, first in right. *Id.* In essence, the senior water right holder – the water user with the earliest priority date who has continuously put water to a beneficial use – may divert water under their right before all junior water users. The right is that of preferential use as against subsequent appropriators. *Adams v. Portage Irr., Reservoir & Power Co.*, 95 Utah 1, 72 P.2d 648, 653 (1937).

Beneficial use is “the basis, the measure and the limit of all rights to the use of water in this state.” Utah Code § 73-1-3. The principle of beneficial use means a water right is acquired by diverting water and putting it to beneficial use. *Heal Utah*, 2016 UT App at ¶ 7. A right to use water may be abandoned or forfeited by nonuse. *Id.*

Because all waters of the State are “declared to be property of the public,” the “right to the use of water, although a property right, is very different from the ownership of specific property which is subject to possession, control and use as the owner sees fit.” *United States v. Dist. Ct. of Fourth Jud. Dist. in & for Utah Cnty*, 121 Utah 1, 4-5, 238 P.2d 1132, 1134 (1951); Utah Code § 73-1-1(1). A water right holder owns a usufruct right, which is an interest that incorporates the needs of others. This right “does not involve the ownership of a specific body of water but is only a right to use a given amount of the transitory waters of a stream or water source for a specified time, place and purpose, and a change in any of these might materially affect the rights of other users of the same stream or source.” *Id.* at 5. In other words, this right is not absolute, it is contingent on exercising the right in accordance with the law. *See Adams*, 72 P.2d at 653. However, a perfected water right is still considered a property interest and may be transferred or sold in the manner of real property.⁷⁶

Under Utah’s water scheme, rights to the use of water may be obtained by two methods. The first is commonly known as a diligence claim. Prior to 1903, a person was allowed to appropriate public water by diverting it from its natural channel and putting it to beneficial use. This method of appropriation has been preserved by statute. *See East Jordan Irrigation Co. v. Morgan*, 860 P.2d 310, 312-13 (Utah 1993); *Eskelsen v. Town of Perry*, 819 P.2d 770, 771 n.1 (Utah

⁷⁶ *See In re Bear River Drainage Area*, 2 Utah 2d 208, 211, 271 P.2d 846, 848 (Utah 1954) (“rights to the use of water . . . have been characterized by this and other courts as an interest in real property.”); DWR, *Frequently Asked Questions*, (“Water rights are classified as ‘real property’ in . . . Utah and are bought and sold much like real estate.”). <https://waterrights.utah.gov/wrinfo/faq.asp#:~:text=Answer%3A%20Water%20rights%20are%20classified,as%20they%20do%20for%20properties>.

1991); Utah Code § 73-5-13. In 1903, the State formalized the procedure for acquiring rights to use water, which requires the filing of a written application with the State Engineer. *Id.*; Utah Code § 73-3-2.

The State Engineer is “responsible for the . . . supervision . . . and the measurement, appropriation, apportionment, and distribution of those waters” to fulfill the public’s interest in “the beneficial use . . . of water in this state.” Utah Code 73-2-1(3)(a). Thus, the State Engineer must ensure “that the waters of the state are used by appropriators in accordance with their priorities and that diverted waters are used for proper beneficial purposes.” *Heal Utah*, 2016 UT App at ¶ 7.

(b) Public Trust Doctrine and Prior Appropriation System.

In arguing that Plaintiffs’ articulation of the public trust doctrine conflicts with Utah’s existing water scheme, Defendants continue to conflate two separate aspects of Plaintiffs’ requested relief, *i.e.*, a declaration that Utah’s public trust includes the navigable waters of the Great Salt Lake and an order directing the State to curtail upstream diversions.

For example, the Intervenor’s argue water rights in Utah have never been held or acquired subject to the public trust doctrine because “plaintiffs cannot point to a single instance in which the public trust doctrine limited a water right in Utah, irrespective of priority and beneficial use.”⁷⁷ While this may speak to whether it is appropriate to impose a “public trust overlay restriction” on water rights, it does not mean that water is excluded from the public trust or that the State’s duties as trustee are “not reconcilable under prior appropriation.”⁷⁸ Indeed, Defendants have not pointed to a single case from a prior appropriation state holding that navigable waters are excluded from the public trust.⁷⁹ To the contrary, most appropriation states have explicitly or implicitly acknowledged that their public trusts includes navigable waters.⁸⁰ And no court has found that a

⁷⁷ Intervenor’s Reply at 2.

⁷⁸ *Id.* at 9.

⁷⁹ In 1996, the Idaho legislature enacted statutory provisions limiting the public trust doctrine to “solely a limitation on the power of the state to alienate or encumber the title to the beds of navigable waters[.]” and expressly stating the doctrine does not apply to “[t]he appropriation or use of water, or the granting, transfer, administration, or adjudication of water or water rights.” Idaho Code §§ 1201 to 1203. Despite this, in 2020 the Supreme Court of Idaho stated that under the public trust doctrine, “the state, acting on behalf of the people, has the right to regulate, control and utilize navigable waters for the protection of certain public uses, particularly navigation, commerce and fisheries.” *Newton v. MJK/BJK, LLC*, 167 Idaho 236, 242, 469 P.3d 23, 29 (2020) (quoting *Kootenai Env’t All., Inc. v. Panhandle Yacht Club, Inc.*, 105 Idaho 622, 625, 671 P.2d 1085, 1088 (1983)). The court also referred to *Kootenai*, which expressed a broad public trust doctrine, as “still good law.” Thus, it is unclear how, if at all, Idaho’s public trust is limited.

Colorado has, to some degree, refused to recognize any public trust doctrine in the state, with courts impliedly finding all streams within the state to be non-navigable. *Stockman v. Leddy*, 129 P. 220, 222 (Colo. 1912) (overruled on other grounds by *United States v. City & County of Denver*, 656 P.2d 1 (Colo. 1982)). Most recently, in *State v. Hill*, 530 P.3d 632, the Colorado Supreme Court concluded that a fisherman did not have standing to bring a public trust claim because the state’s ownership of the riverbed was a “necessary prerequisite” and only the state could bring that claim.

⁸⁰ See *e.g.*, *Williams Alaska Petroleum, Inc. v. State*, 529 P.3d 1160, 1187 (Alaska 2023) (explaining that certain resources (including wildlife, minerals, and water rights) are held in trust for public use, and the coverage of “waters” goes beyond navigable waters and includes “public water”); *In re Water Use Permit Applications*, 94 Haw. 97, 9 P.3d 409, 445 (2000) (stating that, under a constitutional provision, “the public trust doctrine applies to all water resources

prior appropriation system is incompatible with the public trust doctrine.⁸¹ Thus, while Utah's water system may have grown up without reference to public trust principles, that does not mean the trust has no application to navigable waters.

Utah's prior appropriation system recognizes that "a drop of water is a drop of gold." See *Carbon Canal Co. v. Sanpete Water Uses Ass'n*, 425 P.2d 405, 407 (Utah 1967). The requirements of beneficial use – "beneficial purpose and reasonable amount" are ongoing and the "types of use considered to be beneficial have expanded to encompass not only economically beneficial uses, but also uses that promote conservation, recreation, and other values deemed to be socially desirable." *Delta Canal Co. v. Frank Vincent Family Ranch, LC*, 2013 UT 69, ¶ 22 420 P.3d 1052 (internal citations omitted). Indeed, "the concept of beneficial use is not static" and "is susceptible to change over time in response to changes in science and values associated with water use." *In re Gen. Determination of Rights of Water*, 2004 UT 67, ¶ 46, 98 P.3d 1, 11-12. Thus, a "particular use must not only be of benefit to the appropriator, but it must also be a reasonable and economic use of the water in view of other present and future demands upon the source of the water supply." *Delta Canal*, 2013 UT at ¶ 24 (citing *State Dep't of Ecology v. Grimes*, 852 P.2d 1044, 1051 (Wash. 1993)). Importantly, "[w]hat may be a reasonable beneficial use, where water is present in excess of all need, would not be a reasonable beneficial use in an area of great scarcity and great time." *In re Gen. Determination of Rights of Water*, 2004 UT at ¶ 46.

Similarly, the public trust doctrine reflects a fundamental societal mandate to preserve navigable waters for future generations. See *Illinois*, 146 U.S. at 452. Like the doctrine of beneficial use, the public trust doctrine recognizes that navigable waters, an essential but often scarce resource, are "intrinsically important to every citizen." See Sax, *The Public Trust Doctrine*, at 484. And that "certain uses [of water] have a peculiarly public nature that makes their adaption to private use inappropriate." *Id.* at 485. Like a usufruct right in a prior appropriation system, the public trust doctrine "incorporates the needs of others" and imposes upon the government an obligation "to regulate water uses for the general benefit of the community and to take into account

without exception or distinction."); *Mont. Trout Unlimited v. Beaverhead Water Co.*, 255 P.3d 179, 185 (Mont. 2011) (under the public trust doctrine and the Montana Constitution the public has use rights in the waters of the state, and the state is trustee of the public trust over the navigable streambeds and the waters of the state); *Pub. Lands Access Ass'n v. Bd. of Cnty. Comm'rs of Madison Cnty.*, 321 P.3d 38, 52 (the state's public trust covers both navigable and non-navigable waters, including "any surface waters that are capable of recreational use"); *Min. Cnty. v. Lyon Cnty.*, 437 P.3d 418, 425-26 (Nev. 2020) (stating the public trust doctrine applies to all waters within the state, whether navigable or non-navigable, explaining "[t]o limit the public trust doctrine to only navigable waterways and the lands below would ignore the fact that flowing water that feeds into the navigable waters is allocated along the way."); *Parks v. Cooper*, 676 N.W.2d 823, 837-39 (S.D. 2004) (acknowledging the court had previously found the public trust doctrine covered navigable waters and their beds, and concluding that *all* waters in the state are held in trust for the public); *Lake Union Drydock Co., Inc. v. State Dept. of Nat. Res.*, 179 P.3d 844, 851 (Wash. Ct. App. 2008) (observing that under the public trust doctrine, the state holds shorelines and waters in trust for the people); *Adobe Whitewater Club of New Mexico v. New Mexico State Game Comm'n*, 519 P.3d 46, 52 ("[T]he beds to both navigable waters and nonnavigable waters—whether title is vested in the state or the United States—are still subject to state law under the public trust doctrine."); *Chernaik v. Brown*, 475 P.3d 68, 77 ("In addition to the land underlying bodies of water that meet the federal test for navigability, the navigable waters themselves are a public trust resource.").

⁸¹ See e.g., *Nat'l Audubon Soc'y v. Superior Ct.*, 658 P.2d 709, 732 (1983) (holding plaintiffs could rely on the public trust doctrine in seeking reconsideration of water allocations); but see *Min. Cnty.*, 437 P.3d at 425, 429 (holding that the public trust doctrine applies to all water rights, including those previously settled under prior appropriation, but reallocation of adjudicated water rights is not permitted).

... the public nature and the interdependency which the physical quality of [water] implies.” *Id.* This requires the State, much like the State Engineer, to manage the navigable waters for the “public good.”⁸² See *Arnold*, 6 N.J.L. at 53; *Martin*, 41 U.S. at 410. Finally, the public trust doctrine, like beneficial use, is capable of evolving over time to address changes in needs and values.

Given these aligning principles, the dynamism of beneficial use, and the multiple pathways to restore the Great Salt Lake, the court is not persuaded that Utah’s public trust doctrine is hostile to Utah’s prior appropriation system. Nor does it create an unresolvable conflict between the State’s duties as trustee and the State Engineer’s responsibility to fulfill the public’s interest in “the beneficial use . . . of water in this state,” which may properly include consideration of the public trust in the planning and administration of Utah’s water resources. Importantly, both the public trust doctrine and the prior appropriation system require the State to “assume the responsibility of allocating the use of water for the benefit and welfare of the people of the State as a whole.” See *J.J.N.P. Co.*, 655 P.2d at 1136.

E. The State’s Duties As Trustee of the Public Trust.

At this stage of the proceedings, the court does not need to determine the precise contours of the State’s duties as trustee of the public trust. This will be the subject of future litigation. However, the court needs to address two arguments raised by the parties in their briefing.

First, citing the *Mono Lake* case, Plaintiffs argue that the State’s trustee duties include the duty to curtail upstream diversions because these water rights are always subject to the public trust.

Second, the State Defendants argue that the legislature’s delegation of different authorities to different agencies somehow limits the State’s trustee duties under the public trust doctrine.

The court rejects both of these arguments.

1. General Duties of the State as Trustee of Public Trust.

In general, the existence of a legal duty and its contours is a determination made by courts as a matter of law.⁸³

The court is unaware of any case that explicitly enumerates the duties of a state under the public doctrine, except perhaps as they relate to the disposition of submerged lands. However, the court may glean the general contours of the State’s duties as trustee from cases around the country, general trust principles, and secondary sources discussing the public trust doctrine. At its core, the public trust doctrine protects the public’s right to use navigable waters for navigation, commerce,

⁸² See Br. of State Resp. at 7, *Colman v. Utah State Land Board* (Jan. 14, 1987).

⁸³ Cf., e.g., *Weber, By & Through Weber v. Springville City*, 725 P.2d 1360, 1363 (Utah 1986); *Cope v. Utah Valley State Coll.*, 2012 UT App 319, ¶¶ 10-11, 290 P.3d 314, 318, *aff’d on other grounds*, 2014 UT 53, 342 P.3d 243; *Smith v. Frandsen*, 2004 UT 55, ¶ 14, 94 P.3d 919, 923-24; *Sabour v. Koller*, 2024 UT App 26, ¶ 26, 546 P.3d 28, 33 (citing *Smith v. Robinson*, 2018 UT 30, ¶ 8, 422 P.2d 863).

and fishing. Cases have articulated the state's duties as trustee as including the obligation to protect the trust property against damage or destruction and requiring consideration of the public trust in making certain decisions to ensure that they either improve the public's common use rights or do not substantially impair them.⁸⁴

Accordingly, at a minimum, the State must (1) avoid taking actions that will substantially impair the public's use rights in the navigable waters; and (2) as necessary, take feasible steps to restore the public trust when it has been impaired, whether that impairment resulted from general neglect, naturally occurring drought cycles, human activity, or otherwise.⁸⁵ This may require, as Plaintiffs argue, the State to consider the public trust in planning and administering water resources⁸⁶ and to use its expertise and authority to identify feasible ways to restore and preserve the Great Salt Lake.⁸⁷

The State, however, retains considerable discretion in determining how to best protect and preserve the trust res in accordance with the purposes of the public trust. See Utah Code § 75-7-813; see generally George G. Bogert et al., *Bogert's The Law of Trusts and Trustees*, §§ 541, 552 (updated 2024) (explaining that the grant of broad discretionary powers to the trustee to administer the trust does not relieve the trustee from the duty of prudence; for mandatory powers, the trustee has an affirmative duty to act, but the manner of performance is within their discretion); see also, e.g., *Pa. Env't Def. Found.*, 640 Pa. at 90. In exercising this discretion, however, the State must always fulfill its duties with loyalty, impartiality, and prudent administration.⁸⁸

⁸⁴ See Restatement (Third) of Trusts §77 ("The duty of care requires the trustee to exercise reasonable effort and diligence in planning the administration of the trust, in making and implementing administrative decisions, and in monitoring the trust situation, with due attention to the trust's objectives and the interests of the beneficiaries.").

⁸⁵ DWR criticizes Plaintiffs for failing to "identify even a single 'feasible mean'" or explaining why "feasible means" do not include the State's ongoing efforts to return more water to the Great Salt Lake. DWR reply at 4. But, as Plaintiffs repeatedly point out, the State views lake protection as an entirely voluntary enterprise based largely on the willingness of others to restore the lake's navigable waters. And as laudable as these efforts may be, the State has not acknowledged any legal obligation to continue them.

⁸⁶ At this juncture, the court is not deciding whether the State must "consider[] the public trust in the planning and administration of water resources." The court simply notes that requiring the State to *consider* the public trust in planning and administering its water resources is not the same as requiring the State to *modify* the amount of water available for upstream diversion based on the public trust.

⁸⁷ See Bogert's Trust §541 ("If a trustee has greater skill, the trustee must use that greater skill.").

⁸⁸ See e.g., *Arizona Ctr. For L. In Pub. Int. v. Hassell*, 172 Ariz. 356, 837 P.2d 158 (Ct. App. 1991) ("Just as private trustees are judicially accountable to their beneficiaries for dispositions of the res, ... so the legislative and executive branches are judicially accountable for their dispositions of the public trust."); *Ching v. Case*, 145 Haw. 148, 170, 175-76, 449 P.3d 1146, 1168, 1173-74 (2019) (relying on common law trust law in expressing the state's duty reasonably monitor trust property as part of its obligation "to protect and maintain the trust property and regulate its use[;]" and holding that while not all common law provisions apply, some may); *Chernaik v. Brown*, 367 Or. 143, 475 P.3d 68, 83 (2020) ("[W]e have previously relied on common-law private trust cases in explaining the state's role as trustee.... But this court's case law cannot be read to conclude that all common-law principles of private trust law govern the public trust doctrine."); *Pennsylvania Env't Def. Found. v. Commonwealth*, 640 Pa. 55, 87, 90, 161 A.3d 911, 930, 932 (2017) (looking to underlying principles of state trust law—including the duties of prudence, loyalty, and impartiality—in finding the state's public trust duties, and recognizing that the trustee's discretion is limited by their duties and the trust's purpose).

2. Mono Lake Case.

Plaintiffs argue the State has a “duty of continuing supervision over the taking and use of the appropriated water,” which is an inherent part of its sovereign public trust responsibilities.⁸⁹

Although the court agrees with Defendants that this precise relief is not available to Plaintiffs, the court will briefly address *National Audubon Society v. Superior Court*, 33 Cal. 3d 419, 658 P.2d 709 (1983), which is sometimes referred to as the *Mono Lake* case, because Plaintiffs rely so heavily on it.

Mono Lake is the second largest lake in California. It is a saline lake that contains no fish but supports a large population of brine shrimp. Although Mono Lake receives some water from rain and snow on the lake surface, historically most of its supply comes from snowmelt in the Sierra Nevada. Five freshwater streams carry the annual runoff to the west shore of the lake. However, in 1940, the California Division of Water Resources granted the Department of Water and Power of the City of Los Angeles (DWP) a permit to appropriate virtually the entire flow of four of the five non-navigable streams flowing into Mono Lake. As a result of these diversions, the lake level dropped significantly and the surface area of the lake diminished by one-third. *Id.* at 711. Plaintiffs filed an action in superior court to enjoin the diversions “on the theory that the shores, bed, and waters of Mono Lake are protected by a public trust.” *Id.* at 712.

The superior court explained that:

[T]he core of the public trust doctrine is the state's authority as sovereign to exercise a continuous supervision and control over the navigable waters of the state and the lands underlying those waters . . . The prosperity and habitability of much of this state requires the diversion of great quantities of water from its streams for purposes unconnected to any navigation, commerce, fishing, recreation, or ecological use relating to the source stream. The state must have the power to grant nonvested usufructuary rights to appropriate water even if diversions harm public trust uses. Approval of such diversions without considering public trust values, however, may result in needless destruction of those values. Accordingly, we believe that before state courts and agencies approve water diversions, they should consider the effect of such diversions upon interests protected by the public trust, and attempt, so far as feasible, to avoid or minimize any harm to those interests.

Id. at 712 (emphasis added).

Therefore, because the “water rights enjoyed by DWP were granted, the diversion was commenced, and has continued to the present without any consideration of the impact upon the public trust[,] [a]n objective study and reconsideration of the water rights in the Mono Basin is

⁸⁹ Pls’ Opp. 20 (citing *Nat’l Audubon Soc’y*, 658 P.2d at 728).

long overdue.” Importantly, the superior court noted that the “water law of California – which we conceive to be an integration including both the public trust doctrine and the board-administered appropriative rights system – permits such a reconsideration; the values underlying that integration require it.” *Id.*

The superior court then turned to the question of whether “the public trust limits conduct affecting nonnavigable tributaries to navigable waterways.” *Id.* at 720. In concluding that it does, the court held that “parties acquiring rights in trust property generally hold those rights subject to the trust and can assert no vested right to use those rights in a manner harmful to the trust.” *Id.* at 721. Thus, “plaintiffs can rely on the public trust doctrine in seeking reconsideration of the allocation of the waters of the Mono Basin.” *Id.* at 732.

Importantly, the superior court did not “dictate any particular allocation of water.” Rather, it resolved “a legal conundrum in which two competing systems of thought – the public trust doctrine and the appropriative water rights system – existed independently of each other, espousing principles which seemingly suggested opposite results.” *Id.* “[B]y integrating these two doctrines to clear away the legal barriers which have so far prevented either the Water Board or the courts from taking a new and objective look at the water resources of the Mono Basin,” the superior court hoped to prevent the “uses protected by the public trust doctrine” from being “destroyed because the state mistakenly thought itself powerless to protect them.” *Id.*

As explained above, the court agrees with Defendants that an order requiring the State Engineer to “tak[e] a new and objective look” at the thousands of water rights in the Great Salt Lake basin implicates the political question doctrine. In addition, there are at least two critical differences between the Great Salt Lake and Mono Lake that may render this requested relief infeasible. First, the DWP held the right to virtually the entire flow of four of the five streams pursuant to single permit to appropriate that was granted in 1940. Thus, the court’s order requiring California’s Water Board to take a “new and objective look” was limited to one water right held by another governmental entity. In contrast, requiring the State Engineer to take a “new and objective look” would involve thousands of water rights owned by private individuals and entities, most of which were perfected prior to statehood.

Second, California expanded its public trust doctrine in *Marks v. Whitney*, 6 Cal.3d 251, 491 P.2d 374 (1971), which held that the traditional triad of uses – navigation, commerce and fishing – did not limit the public interest in the trust res and “[t]he public uses . . . are sufficiently flexible to encompass changing public needs.” And “one of the most important public uses . . . is the preservation of [the trust res] in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area.” *Id.*⁹⁰ Thus, California had already recognized that the “objective of the public trust has evolved in tandem with the changing public perception of the values and uses of waterways.” *Mono Lake*, at 719. In contrast, Utah’s public trust doctrine does not appear to have been expanded much beyond the minimum protections dictated by federal law.

⁹⁰ Although the *Marks* case dealt with tidelands, this language was cited by the superior court in its discussion of the purpose of the public trust.

Finally, *Mono Lake* appears to be something of an outlier. No other prior appropriation state requires the reallocation or modification of perfected water rights if deemed necessary for the preservation and protection of the public trust.⁹¹

Although the court concludes that Plaintiffs are not entitled to similar relief in this case, the court nevertheless believes that *Mono Lake* is instructive because it dispels any notion that the public trust doctrine is fundamentally incompatible with a prior appropriation water system. It is not. In a prior appropriation state such as Utah, perfected usufructuary rights to appropriate water may sometimes “harm public trust uses.” But that does not mean the State is powerless to consider public trust values in exercising its statutory authority or that it has no obligation to implement other feasible measures to protect and preserve the Great Salt Lake to avoid the needless destruction of it.

3. Statutory Authority of FFSL and State Engineer.

In general terms, the legislature has delegated authority over sovereign lands to FFSL and water to the State Engineer. The State Defendants suggest that this administrative construct precludes a determination that the public trust includes navigable waters because each agency is “bound by their statutory directives and are strictly prohibited from going beyond them.”⁹²

But the public trust doctrine is not found in Titles 65A or 73. Nor do these statutes remove navigable waters from the public trust. And the State, not its individual departments or divisions, is the trustee of the public trust. But even if these administrative divisions are somehow relevant to the public trust doctrine, the State Defendants concede that these two “sister” agencies “work in tandem” under the supervision of DNR.⁹³ This is reflected, for example, in FFSL’s statutory mandate to consult with the State Engineer on various matters and in its “duty to serve the public interest in managing the Great Salt Lake,” which is a “critical resource owned and managed by the state.” See, e.g., Utah Code §65A-17-102.⁹⁴ So the fact the State has delegated authority over different assets to different agencies does not preclude the court from finding that the public trust

⁹¹ In *Kootenai*, 105 Idaho 622, 671 P.2d 1085 (1983), the Idaho Supreme Court, citing *Mono Lake*, stated that “[t]he public trust doctrine takes precedence even over vested water rights.” However, this aspect of the Court’s holding appears to have been superseded by statute.

Alaska and Hawaii have hinted that their public trust may take precedence over water rights. See, e.g., *Williams Alaska Petroleum, Inc. v. State*, 529 P.3d 1160, 1187 (Alaska 2023) (providing that water rights are held in trust for public use under the public trust doctrine); *In re Water Use Permit Applications*, 94 Haw. 97, 9 P.3d 409, 452 (2000) (“The continuing authority of the state over its water resources precludes any grant or assertion of vested rights to use water to the detriment of public trust purposes. This authority empowers the state to revisit prior diversions and allocations, even those made with due consideration of their effect on the public trust.”). But their public trust doctrines are broader. For example, Hawaii’s Constitution provides for a broad public trust covering all water resources in the state, “without exception or distinction.” *Id.* at 445.

⁹² *Id.* at 3.

⁹³ DWR’s Mot. to Dismiss 13.

⁹⁴ These duties include the management of the Great Salt Lake Watershed Enhancement Program, Utah Code §§65A-16-101 et. seq., and the management of the Great Salt Lake pursuant to the Great Salt Lake Preservation Act, Utah Code §§65A-17-101 et. seq.

includes the waters of the Great Salt Lake or impose artificial limits on the State's public trust duties.

Finally, consistent with Utah's appropriation system and their current statutory authority, FFSL and the State Engineer can undertake meaningful action in furtherance of the State's trustee duties, including affirmatively investigating and eliminating wasteful uses of water and expanding and implementing the feasible measures identified by the Great Salt Lake Strike Team. *See, e.g.*, Utah Code §§ 73-2-1(6) (lawsuits to enjoin improper appropriation, diversion, or use of water or to prevent waste, theft, or loss of water); 73-2-25 (enforcement powers); 73-3-8(1)(b) (applications to divert unappropriated water); and 73-3c-103 (water reuse projects).⁹⁵

XII. REMAINING ARGUMENTS

Finally, the court will briefly address a few additional arguments made by Defendants in their motions to dismiss. None of these arguments warrants dismissal of the Complaint.

A. Plaintiffs Are Not Seeking a General Water Rights Adjudication.

Certain Defendants argue that "Plaintiffs are seeking a judicial order compelling and supervising the State Engineer to undertake a comprehensive determination and modification of water rights over a given geographic area," which "is in the nature of a general adjudication."⁹⁶

A general adjudication is a "judicial proceeding used to determine the validity of water claims" in a given source, which is "employed to resolve all competing claims to water use in [a particular] area." *In re Utah Lake and Jordan River*, 2018 UT App 109, ¶ 18 (citing *Green River Canal Co. v. Olds*, 2004 UT 106, ¶ 4, 110 P.3d 666); Utah Code §§ 73-4-1 to -24. "The purpose of the general adjudication process is to prevent piecemeal litigation regarding water rights and to provide a permanent record of all such rights by decree." *Olds*, 2004 UT at ¶ 5 (quotation simplified); *see also Green River Adjudication v. United States*, 17 Utah 2d 50, 404 P.2d 251, 252 (Utah 1965) ("The objective of an adjudication . . . is to determine and settle water rights which have not been adjudicated or which may be uncertain or in dispute."). In this regard, "the basic goal of general adjudication is to record all water claims from a particular source which subsequent appropriators can rely upon before making their investments." *Provo River*, 857 P.2d at 935 (quotation simplified); *see also Olds*, 2004 UT at ¶ 41 ("One of the key goals of the general adjudication process is to remove doubts about the validity of water rights.").

The process for adjudicating water rights through a general adjudication is established by Title 73, Chapter 4 of the Utah Code. *See* Utah Code Ann. §§ 73-4-1 to 24. All those claiming a right in the water source are joined in a single action that has been likened to quiet title action. A water right holder who fails to file a timely statement of claim "shall be forever barred and

⁹⁵ Additionally, the legislature, at the request of the State Engineer and in recognition of the State's legal obligation to the Great Salt Lake, could expand her statutory authority, make certain voluntary measures mandatory, and/or provide additional funding so she can more effectively supervise the use of Utah's precious water resources. *See, e.g.*, Utah Code §§ 73-1-4 (forfeiture); 73-4-9.5 (unclaimed rights of record); 73-10-32 (water conservation measures); 73-10-37 (incentives).

⁹⁶ Water Conservancy Districts Reply Mem. in Support of Mot. to Dismiss 8.

estopped from subsequently asserting any rights, and shall be held to have forfeited all rights to the use of the water therefore claimed by him.” Utah Code § 73-4-9; *see also EnerVest, Ltd. v. Utah State Eng’r*, 2019 UT 2, ¶ 5, 435 P.3d 209.

After evaluating the submitted claims, the State Engineer prepares and files a proposed determination of the water rights with the district court, which is also mailed to each claimant. If no objection is filed, the district court must enter “judgment in accordance with such proposed determination,” which renders “the proposed determination the final adjudication of water rights for the given area.” *Olds*, 2004 UT at ¶ 7; *see also United States Fuel Co. v. Huntington-Cleveland Irrigation Co.*, 2003 UT 49, ¶ 15, 79 P.3d 945; *Jensen v. Morgan*, 844 P.2d 287, 290 (Utah 1992).

To the extent Plaintiffs are seeking an order directing the State Engineer (or another state agency) to review all water rights in the Great Salt Lake basin, the court agrees that such relief may implicate the general adjudication process. And to the extent a prior judicial decree has already defined and quantified such water rights, the court agrees that Plaintiffs’ request for what Defendants describe as “super-priority public trust water right” could be construed as an improper collateral attack on the prior judicial decree.

However, given the narrowing of the relief available to Plaintiffs, the court is not persuaded that their declaratory judgment claim implicates Utah’s general adjudication process or is otherwise barred by it.

B. Plaintiffs’ Claim is Not Barred by Res Judicata or Laches.

In a similar vein, certain Defendants assert that Plaintiffs’ declaratory judgment claim is barred by the doctrine of res judicata because all water rights in the Great Salt Lake basin either have been judicially decreed or are currently under review in a general adjudication proceeding. These Defendants further argue that Plaintiffs’ claim is barred by the doctrine of laches.

The court’s narrowing of Plaintiffs’ declaratory judgment claim renders these arguments moot. But regardless, the court is not persuaded that the doctrines of res judicata or laches would otherwise bar Plaintiffs’ declaratory judgment claim.

The doctrine of res judicata requires a prior action involving the same party or parties asserting the same, or essentially the same, claim or issue. *See, e.g., Mack*, 2009 UT 47, 221 P.3d 194; *Kodiak Am. LLC v. Summit County*, 2021 UT App 47, ¶ 14, 491 P.3d 962. Res judicata encompasses both claim preclusion, which relates to causes of action, and issue preclusion, which relates to facts and issues underlying causes of action.

For claim preclusion to apply, (1) “both cases must involve the same parties or their privies;” (2) the claim must have been raised in the first action; and (3) the first action must have resolved through a “final judgment on the merits.” *Id.* (citing *Snyder v. Murray City Corp.*, 2003 UT 13, ¶ 34, 73 P.3d 325).

For issue preclusion to apply:

- (i) the party against whom issue preclusion is asserted must have been a party to or in privity with a party to the prior adjudication;
- (ii) the issue decided in the prior adjudication must be identical to the one presented in the instant action; (iii) the issue in the first action must have been completely, fully, and fairly litigated; and (iv) the first suit must have resulted in a final judgment on the merits.

Haskell v. Wakefield & Assocs. Inc., 2021 UT App 123, ¶ 22, 500 P.3d 950 (quoting *Smith v. Hrubby-Mills*, 2016 UT App 159, ¶ 12, 380 P.3d 349).

Defendants do not specify whether they are relying on claim preclusion or issue preclusion. Nor do they specifically identify any prior action involving the same parties (or their privies) or the same issues that resulted in a final judgment on the merits. Thus, Defendants have not shown that res judicata bars Plaintiffs' declaratory judgment claim.

For similar reasons, Plaintiffs' declaratory judgment claim is not barred by the equitable doctrine of laches. The doctrine of laches "is 'based upon [the] maxim that equity aids the vigilant and not those who slumber on their rights.'" *CIG Exploration, Inc. v. State*, 2001 UT 37, ¶ 14, 24 P.3d 966 (alteration in original) (quoting BLACKS LAW DICTIONARY 787 (6th ed. 1990)). In Utah, laches traditionally has two elements: "(1) [t]he lack of diligence on the part of plaintiff" and "(2) [a]n injury to defendant owing to such lack of diligence." *Papanikolas Brothers Enterprises v. Sugarhouse Shopping Center Associates*, 535 P.2d 1256, 1260 ("Laches is not mere delay, but delay that works a disadvantage to another."). Here, Plaintiffs are not seeking to establish a water right for themselves. Nor are they challenging a specific water right or a proposed determination or a decree in a general adjudication. Rather, Plaintiffs are challenging the State's failure to fulfill its trustee duties, which they allege is resulting in the destruction of the Great Salt Lake.

Given that the doctrine of laches is disfavored in public trust suits and the continuing nature of the State's alleged breach of its trustee duties,⁹⁷ the court is not persuaded that laches bars Plaintiffs' declaratory judgment claim.^{98, 99}

CONCLUSION

The Motions to Dismiss are DENIED in substantial part. The court has subject matter jurisdiction to issue a limited declaratory judgment regarding (a) the scope of the public trust doctrine in Utah, which includes the navigable waters of the Great Salt Lake; (b) the scope of the State's duties as trustee of the public trust, which includes the duty to protect the Great Salt Lake

⁹⁷ See, e.g., *Lake Mich. Fed'n v. Army Corp. of Eng'rs*, 742 F.Supp. 441, 446-47 (N.D. Ill. 1990) (doctrine of laches disfavored in public trust suits because plaintiffs are attempting to protect a substantial public interest); *Capruso v. Vill. of Kings Point*, 16 N.E.3d 527, 531-33 (N.Y.Ct.App. 2014) (where government's breach of the public trust doctrine amounts to a continuing wrong, the doctrine of laches has no application).

⁹⁸ The State Defendants rely on *United States Fuel Co.*, 2003 UT at ¶ 20 to support their argument. In that case, the plaintiff failed to timely object to the State Engineer's proposed determination in a general adjudication. *Id.* As a result, another claimant's water right was determined to be the senior right in the general adjudication. The Court held that plaintiff could not "collaterally attack" the determination due to their delay.

⁹⁹ A finding of laches depends "on the circumstances of each case" and "may turn on questions of fact." Thus, a laches determination may be inappropriate on a motion to dismiss. See *Fundamentalist Church of Jesus Christ of Latter-day Saints v. Horne*, 2012 UT 66, ¶ 40, 289 P.3d 502.

from substantial impairment and preserve the waters of the Great Salt Lake so they can be used for the trust purposes of navigation, commerce, fishing, and recreation; and (c) the State's alleged breach of its trustee duties.

However, the court agrees with Defendants that it does not have subject matter jurisdiction to issue declaratory relief in the form of an order directing the State to "review, and where necessary, modify [upstream] diversions to protect and preserve the public trust." Consequently, the court grants the Motions to Dismiss with respect to this aspect of Plaintiffs' declaratory judgment claim.

SO ORDERED.

Dated this 27th day of March, 2025.



Judge Laura S. Scott
Third Judicial District Court



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 230906637 by the method and on the date specified.

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03/27/2025
Date: _____

/s/ STEPHANIE QUIJANO

Signature

Tab R – Western Water Cooperative Committee

Western Water Cooperative Committee April 2025			Appointed By
State	Member Name	Position	G = Governor AG = Attorney General
Alaska	Jessie Zimmerman	Natural Resources Manager	G
Alaska	Jennifer Currie	Chief Assistant Attorney General	AG
Arizona	Tom Buschatzke	Director of the Department of Water Resources	G
Arizona	Vanessa Hickman	Division Chief	AG
California	Eric Katz	Supervising Deputy Attorney General	AG
California	Erik Ekdahl	Deputy Director, State Water Board Division of Water Rights	G
Colorado	Scott Steinbrecher	Deputy Attorney General	AG
Colorado	Lauren Ris	Director of the Colorado Water Conservation Board	G
Idaho	Mathew Weaver	Director, Idaho Department of Water Resources	G
Idaho	Scott Campbell	Chief of the Energy and Natural Resources Division	AG
Kansas	Earl Lewis	Chief Engineer	G
Kansas	Jay Rodriguez	Assistant Attorney General	AG
Montana	Michael Russell	Assistant Attorney General	AG
Montana	Anna Pakenham-Stevenson	Administrator, Water Resources Division	G
Nebraska	Jesse Bradley	Deputy Director of the Department of Natural Resources	G
Nebraska	Justin Lavene	Bureau Chief, Agriculture, Environment and Natural Resources	AG
Nevada	Gregory Ott	Chief Deputy Attorney General for Government and Natural Resources	AG
Nevada	Adam Sullivan	State Engineer	G
New Mexico	Jonas Armstrong	Director, Water Protection Division, Environmental Department	G
New Mexico	Bill Grantham	Assistant Attorney General	AG
North Dakota	Reice Haas?		G
North Dakota	Matthew Sagsveen	Natural Resources and Native American Affairs Division Director	AG
Oklahoma	Julie Cunningham	Executive Director of the Oklahoma Water Resources Board	G
Oklahoma	Jennifer Lewis	Deputy Attorney General	AG
Oregon	Alyssa Mucken	Senior Water Advisor - Oregon Water Resources Department	G
Oregon	Jesse Ratcliffe	Assistant Attorney General - Natural Resources Section	AG
South Dakota	Mark Mayer?		G
South Dakota	Jennifer Verleger	Assistant Attorney General	AG
Texas	Catarina Gonzales	Commissioner, Texas Commission on Environmental Quality	G
Texas			AG
Utah	Teresa Wilhelmsen	State Engineer and Director of the Division of Water Rights	G
Utah	Wendy Crowther	Assistant Attorney General	AG
Washington	Stephen North	Assistant Attorney General	AG
Washington	Ria Berns	Water Resources Deputy Program Manager	G
Wyoming	Chris Brown	Senior Assistant Attorney General	AG
Wyoming	Brandon Gebhart	State Engineer	G

Tab H – Draft FY25-26 Committee WorkPlan
Water Resources / Executive / Water
Quality / Legal

**LEGAL COMMITTEE
WORK PLAN
July 1, 2024 to June 30, 2025**

1. STATE AND FEDERAL COLLABORATION REGARDING THE ADJUDICATION OF FEDERAL NON-TRIBAL WATER RIGHTS

Background: On July 15-16, 2014, the WSWC and WestFAST held a workshop in Helena, Montana to discuss ways to improve the resolution of federal non-tribal water rights claims and to begin the process of developing a clearinghouse of information that states and tribes can use to resolve these claims. The WSWC and WestFAST subsequently created a joint state-federal workgroup to help develop the clearinghouse and implement the other recommendations that emerged from the workshop.

Work-to-Date: The Committee created a Federal Non-Tribal Water Claims Subcommittee to evaluate ways the WSWC and WestFAST can improve the effective resolution of federal non-tribal water rights claims. The Subcommittee consists of WSWC members and WestFAST members, who serve in an *ex officio* capacity. Past webinars and workshops include:

November 10, 2015	McCarran Amendment – state and federal perspectives	
July 13, 2016	Groundwater and Meeting Federal Water Needs (ND)	
October 18, 2017	Continuing State-Federal Relationships through the Implementation Phase of Decreed and Adjudicated Water Rights (NM)	
October 24, 2018	State and Federal Agencies’ Approach to Grazing Water Rights (ID)	
October 15, 2019	Grazing Water Rights (CO)	https://westernstateswater.org/publications/2021/stock-water-rights-for-grazing-livestock-on-federal-lands/
September, 2021	Wild and Scenic Rivers (SD)	https://westernstateswater.org/publications/seminars-workshops/2021/wild-scenic-rivers-workshop/

2024-2025: The Committee will work to carry out the recommendations and next steps that emerged from the workshops and webinar. Under the direction of the Committee, the workgroup will hold calls on a quarterly basis to discuss the development of the clearinghouse and to serve as a forum for information sharing and relationship building. The Workgroup will also advise the Committee about potential future actions the WSWC and WestFAST may take to address federal water needs and may hold webinars on specific topics of interest. The workgroup will continue to hold workshops.

Additional topics to pursue include identifying useful principles for state-federal memoranda of understanding (MOUs) to develop a useful framework and recommended approaches.

Time Frame: Ongoing

Federal Non-Tribal Water Claims Subcommittee: Jay Weiner (MT), Jennifer Verleger (ND), Buck Smith (WA), and Chris Brown (WY). WestFAST members and agency staff participating in the Subcommittee in an *ex officio* capacity include: Michael Higgins (U.S. Fish and Wildlife Service), Donald Anderson (Bureau of Reclamation), Stephen Bartell (Department of Justice), Lauren Dempsey (Air Force) and Chris Carlson (U.S. Forest Service).

2. CLEAN WATER ACT ISSUES

a. CWA Jurisdiction*

Background: In 2011, the EPA and the U.S. Army Corps of Engineers released draft guidance intended to provide clearer, more predictable guidelines for determining which water bodies are subject to Clean Water Act (CWA) jurisdiction, consistent with the U.S. Supreme Court's decisions in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001), and *Rapanos v. United States*, 547 U.S. 715 (2006). This was followed by the Clean Water Rule (2015 WOTUS Rule), finalized on June 29, 2015 (80 FR 37054). Many of our member states filed lawsuits challenging the 2015 WOTUS Rule in federal court. The 2015 WOTUS Rule was rescinded, and was replaced by the Navigable Waters Protection Rule (2020 WOTUS Rule), finalized on April 21, 2020 (85 FR 22250). Several of our member states filed lawsuits challenging the 2020 WOTUS Rule in federal court. The 2020 WOTUS Rule was vacated, and was replaced by the Revised Definition of the "Waters of the United States" Rule (2023 WOTUS Rule), finalized on January 18, 2023 (88 FR 3004). On May 25, 2023, the U.S. Supreme Court issued its decision in *Sackett v. EPA* (#21-454). Citing the Justice Scalia plurality opinion in *Rapanos*, the five-Justice majority Court concluded that the definition of WOTUS in Clean Water Act (CWA) §1362(7) "encompasses only those relatively permanent, standing or continuously flowing bodies of water forming geographical features that are described in ordinary parlance as streams, oceans, rivers, and lakes." The Court held that WOTUS does not apply to all wetlands, but extends only to those wetlands with a continuous surface connection to bodies of water that are WOTUS in their own right, so that they are indistinguishable from those waters. The Court acknowledged that "temporary interruptions in surface connection may sometimes occur because of phenomena like low tides or dry spells." In footnote 16, the Court said: "Although a barrier separating a wetland from a water of the United States would ordinarily remove a wetland from federal jurisdiction, a landowner cannot carve out wetlands from federal jurisdiction by illegally constructing a barrier on wetlands otherwise covered by the CWA. Whenever the EPA can exercise its statutory authority to order a barrier's removal because it violates the Act...that unlawful barrier poses no bar to its jurisdiction." On August 29, 2023, the EPA and Corps issued an Amended 2023 Rule (88 FR 61964) to conform key aspects of the regulatory text to the *Sackett* decision. Two state lawsuits have challenged the Amended 2023 Rule: *Texas v. EPA* (TX, ID), and *West Virginia v. EPA* (AK, AL, AR, FL, GA, IA, IN, KS, LA, MI, MO, MT, ND, NE, NH, OH, OK, SC, SD, TN, UT, VA, WV, and WY). Both cases issued preliminary injunctions on the 2023 WOTUS Rule. A third case, *Kentucky v. EPA*, did not issue an injunction, but the rule is stayed while the decision is on appeal. The agencies are interpreting "waters of the United States" consistent with the pre-2015 regulatory regime and the Supreme Court's decision in

Sackett for these 27 states until further notice. For the remaining 23 states, the District of Columbia, and the Territories, the agencies are implementing the Amended 2023 Rule.

Work-to-Date: WSWC adopted positions #369 and #373 regarding CWA rulemaking efforts and state-federal collaboration. Position #369 was revised and readopted as Position #410, while Position #373 was allowed to sunset and acknowledged as a letter with continued historical value. At the October 2018 meeting in Coeur d’Alene, Idaho, Position #410 was revised and readopted as #427, with the State of Washington abstaining from the vote. At the September 2021 meeting in Deadwood, South Dakota, Position #472 was again revised and adopted, with the understanding that further efforts would be made to improve the position the following Spring. WSWC sent various letters and comments to EPA and the Corps. At the April 2022 meeting in Arlington, Virginia, Position #481 was revised and adopted, replacing #472.

In the Summer of 2022, WSWC hosted a series of workshops to consider the technical and policy implications of a regional approach to WOTUS implementation, and prepared a draft white paper to document this effort for future use.

2024-2025: The Committee will continue to work with the Water Resources and Water Quality Committees through the Workgroup to follow and comment on federal actions regarding CWA jurisdiction in accordance with the WSWC’s and WGA’s positions, as well as consider the impacts of the new rule(s) on state policies, programs and regulations.

Time Frame: Ongoing

CWA Rulemaking Workgroup: Jennifer Zygmunt (WY), Tom Stiles (KS), and Julie Cunningham (OK).

*See Item 2(a) of the Water Quality Committee Workplan

b. Maui and Groundwater

Background: The U.S. Supreme Court issued a ruling in *County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462 (2020), holding that the provisions of the Clean Water Act require a National Pollution Discharge Elimination System (NPDES) permit when there is a “functional equivalent of a direct discharge,” which may include some discharges through groundwater. The Court noted that many factors may be relevant in determining whether a pollutant discharged through groundwater is a functional equivalent of a direct discharge to navigable waters. Time and distance will be the most important factors in most cases. The Court offered the examples of: (1) a 100-year migration of pollutants through 250 miles of groundwater to a river, which would not ordinarily require a permit; (2) where a pipe ends 50 miles from navigable waters and the pollutants mix with groundwater and other materials in the aquifer, ending up in navigable waters many years later, in which case permitting requirements likely would not apply; and (3) where a pipe emits pollutants only a few feet through groundwater before discharging into a navigable water. Other relevant factors might include the nature of the aquifer material, the extent to which the pollutant is diluted or chemically changed as it travels, the amount of pollutant entering the navigable waters relative to the amount discharged at the point source, how or where the pollutant enters the navigable waters, and the degree to which the pollution has maintained its specific identity.

In January 2021, EPA issued a notice of implementation guidance (86 FR 6321) which was rescinded in September 2021 (86 FR 53653). EPA issued a new draft guidance in November 2023 (88 FR 82891). Several WSWC member states submitted comments on the proposed guidance (WSW Special Report #2591).

Two federal cases have analyzed the application of the “functional equivalent” standard: *Cottonwood Environmental Law Center v. Edwards*, 86 F.4th 1255 (9th Cir. 2023) (over-irrigation of golf course leaching nutrients into groundwater) and *Stone v. High Mountain Mining Company*, #22-1340 (10th Cir. 2024) (discharge from unlined settling ponds seeping into groundwater).

2024-2025: The Committee will work with the Water Quality Committee through the Workgroup to follow and comment on federal actions regarding *Maui* guidance in accordance with the WSWC’s and WGA’s positions, as well as consider the impacts of any guidance or rules on state policies, programs and regulations.

Time Frame: Ongoing

Maui Workgroup: Jennifer Zygmunt (WY), John Mackey (UT), Julie Pack (AK)

*See Item 2(j) of the Water Quality Committee Workplan

3. AD HOC GROUP ON RESERVED INDIAN WATER RIGHTS

Work-to-Date: The Western Governors’ Association (WGA) and WSWC have long supported the negotiated resolution of Indian water rights claims (WSWC Position #504). As a result, the WGA and WSWC have worked with the Native American Rights Fund (NARF) for over forty years as part of an Ad Hoc Group on Reserved Indian Water Rights to promote negotiated settlements.

Over the years, the Ad Hoc Group has carried out a number of activities to support the negotiated settlement of Indian reserved water rights claims, including frequent trips to Washington, D.C. to support policies and legislation that facilitate settlements. A biennial symposium on settlements is held by the WSWC and NARF every odd year. The Group has also worked to highlight the need to secure a permanent funding mechanism for authorized settlements and to identify alternative funding sources to help ensure that settlements authorized by Congress and approved by the President will be implemented.

In recent years, the WSWC and NARF have established regular meetings with the Deputy Secretary of the Interior’s Office, the Secretary of the Interior’s Indian Water Rights Office, and other Interior and Department of Justice officials engaged in Indian water rights settlement efforts. The WSWC and NARF have also held regular meetings with the White House Office of Management and Budget and other White House officials to support the WSWC’s settlement policies.

On August 8-9, 2023, the WSWC and NARF co-hosted the 18th Biennial Symposium on the Settlement of Reserved Water Rights, highlighting the Hualapai Tribe’s settlement authorized by the 117th Congress. The Symposium also provided a forum to discuss the Biden Administration’s settlement and negotiation policies, Congressional outlooks for pending settlement bills and permanent funding mechanisms, and water leasing of reserved water rights. Recordings and

presentation materials are available at: <https://westernstateswater.org/events/wswc-narf-18th-biennial-indian-reserved-water-rights-symposium/>

2024-2025: The Committee will oversee WSWC’s Ad Hoc Group efforts in the following areas: (1) activities to gather support for an appropriate remedy to settlement funding issues, including the development of a permanent settlement funding mechanism, the identification of other possible funding sources, and funding for federal assessment, negotiation, and implementation teams; (2) continue meeting with the Administration via quarterly conference calls and other face-to-face opportunities to discuss key issues associated with Indian water rights settlements, including possible modifications to the Criteria & Procedures; (3) discuss potential adjustments to the long-time support of the Reclamation Water Settlement Fund in light of new Congressionally-authorized funds and the mix of both project-based and fund-based settlements; and (4) prepare to hold the 2025 Symposium on the Settlement of Indian Reserved Water Rights Claims in partnership with the Native American Rights Fund.

Time Frame: Ongoing

Reserved Rights Subcommittee: Jay Weiner (MT), Teresa Wilhelmson (UT). NARF members participating in the Subcommittee in an *ex officio* capacity include: John Echohawk, Dan Lewerenz, and David Gover. Other *ex officio* members include:

4. WRDA/CORPS POLICIES

Work to date: The Council has in the past supported regular passage of a Water Resources Development Act (WRDA), and has addressed a number of specific policy issues, while not taking any position on specific project authorizations. The Council has raised concerns with the U.S. Army Corps of Engineers’ approach to identifying and regulating the use of “surplus waters,” and Corps drought authorities related to Corps projects. The Council also worked successfully to exclude irrigation water supply canals from federal levee safety program, and to encourage the Corps to withdraw the Surplus Water Supply rulemaking.

On May 10, 2022, the Council sent a letter in support of Senator Cramer’s proposed legislation to create a committee with the Corps of Engineers and the States focused on cooperative federalism concerns surrounding the management of water resources, which passed as §8158 of WRDA 2022. The purpose of the Western Water Cooperative Committee (WWCC) is to ensure that U.S. Army Corps of Engineers (Corps) “flood control projects in Western States are operated consistent with congressional directives by identifying opportunities to avoid or minimize conflicts between the operation of the [Corps] projects and water rights and water laws in such States.” The membership of the Cooperative Committee includes the Assistant Secretary of the Army for Civil Works, the Chief of Engineers, two representatives from each Western State appointed by the governor and the attorney general, and one employee from each of the impacted regional offices of the Bureau of Indian Affairs. On March 17, 2023, the WSWC co-hosted a briefing for our western states on the WWCC with the Conference of Western Attorneys General (CWAG) and WGA, and encouraged our Governors and Attorneys General to prepare appointment letters to the Committee. The briefing materials are available at: <https://westernstateswater.org/events/wswc-cwag-briefing-wwcc/>

On May 18, 2023, the WSWC and CWAG sent a group of 25 appointment letters to Assistant Secretary Mike Connor, with some Governors and Attorneys General sending letters directly to the Army Corps of Engineers. On August 29, 2023, the Corps reached out to verify contact information for each of the current appointees, and WSWC assisted with outreach and filling in the gaps. The Corps indicated that they were nearing a point where they would be able to stand up the WWCC, but were still waiting for approval on funding to facilitate efficient operation of the committee and to determine whether FACA rules apply. In December 2023, the Army determined that FACA rules apply.

2023-2024: The Council will continue to work with the Congress and Corps on WRDA and Corps-related issues, to ensure that state water rights and prerogatives are protected, specifically as it relates to natural flows, Corps storage and other issues.

Subcommittee:

5. GROUNDWATER

There are a number of ongoing groundwater issues that pertain to WSWC policies or are otherwise of interest that the Committee will monitor and address on an as-needed basis.

a. Reserved Water Rights

Background: On March 7, 2017, the 9th Circuit (849 F.3d 1262) upheld the California District Court’s summary judgment from Phase I of the trifurcated case, *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District* (No. 15-55896). The 9th Circuit decision holds that the United States implicitly reserved a right to water when it created the Agua Caliente Reservation, and that the Tribe’s reserved water right extends to the groundwater underlying the Reservation. The court acknowledged that it was unable to find any controlling federal appellate authority explicitly holding that the federal reserved water rights doctrine in *Winters v. United States*, 207 U.S. 564 (1908), extends to groundwater. Instead, it pointed to *United States v. Cappaert*, 426 U.S. 128 (1976) and *In re General Adjudication of All Rights to Use Water in Gila River System and Source*, 989 P.2d 739 (Ariz. 1999) as persuasive and implied authority for its decision, emphasizing that *Winters* does not distinguish between surface and groundwater or prohibit the inclusion of groundwater.

Given that the federal agencies have relied on tribal water rights cases in the past to press for reserved water rights to groundwater, the implications of the 9th Circuit decision could be far reaching, not only for states and tribes outside the 9th Circuit’s jurisdiction, but also for federal agencies seeking to control groundwater appurtenant to federal lands.

As one example, the Forest Service issued a proposed groundwater directive May 6, 2014. Although the Forest Service asserted that the directive would not infringe on state-issued water rights or change how state groundwater and surface water quality regulations affect federal lands, the proposed directive would have: (1) required application of “...the Reservation or Winters Doctrine to groundwater, as well as surface water, consistent with the purposes of the Organic Administration Act, the Wild and Scenic Rivers Act, and the Wilderness Act;” (2) required the Forest Service to evaluate all applications to states for water rights on lands adjacent to NFS lands; and (3) would have presumed that groundwater and surface water are connected unless proven otherwise. Western

Governors strongly objected to the directive, as did the WSWC, which worked with the Forest Service to modify it. The Forest Service later withdrew this proposed directive.

WSWC position #466 notes that no federal statute has addressed any federal property or other rights to groundwater, and opposes “...efforts that would establish a federal ownership interest in groundwater or diminish the primary and exclusive authority of States over groundwater.”

Subsequent court decisions that have cited to *Agua Caliente*’s groundwater holding include: (1) *Silver v. Pueblo Del Sol Water Co.*, 423 P.3d 348, 353 (Ariz. 2018); (2) *State ex rel. State Eng’r v. United States*, 425 P.3d 723, 733-734 (N.M. Ct. App. 2018) (oblique reference, as the settlement at issue included reserved groundwater); (3) *United States v. State (In re CSRBA Case No. 49576 Subcase No. 91-7755)*, 448 P.3d 322, 350-351 (Idaho 2019); (4) *Baley v. United States*, 942 F.3d 1312, 1338, (Fed Cir. 2019) (although for the discussion on groundwater this case cites to *Cappaert v. United States*, 426 U.S. 128, 142-43 (1976)); (5) *United States v. Walker River Irrigation Dist.*, 473 F. Supp. 3d 1150, 1156-1157 (D. Nev. 2020).

Additionally, the Department of Defense is considering reserved water rights claims to the use of groundwater for Naval Air Weapons Station China Lake in the groundwater basin adjudication *Indian Wells Valley Water District v. All Persons Who Claim a Right to Extract Groundwater in the Indian Wells Valley Groundwater Basin, etc., et al.* (Orange County Superior Court, California, 30-2021-01187275-CU-OR-CJC).

On January 31, 2024, the U.S. Fish and Wildlife Service submitted a letter asserting federal reserved water rights to groundwater that could be negatively impacted by a proposed permit from the Georgia Environmental Protection Division (GEPD) for a mining company that seeks to withdraw 1.4 million gallons a day to mine titanium dioxide three miles from the Okefenokee National Wildlife Refuge. The letter noted the risk to the refuge, despite GEPD’s conclusion that there would be a minimal impact.

2024-2025: The Committee will continue to work to ensure that state water rights and prerogatives are protected, specifically as they relate to tribal and non-tribal federal water rights and state authority over groundwater.

b. Groundwater Storage Projects

Background: In 1983, Congress passed the High Plains States Ground Water Demonstration Project Act, authorizing the Bureau of Reclamation to undertake a westwide groundwater recharge program. In 1989, WSWC and Reclamation entered a cooperative agreement to prepare a number of case studies to evaluate project effectiveness, identify economic and institutional problems such as the allocation of project costs and requisite legal authorities, and recommend alternative solutions to improve public policymaking with respect to future groundwater programs and projects. As a result of this agreement, WSWC prepared two reports in 1991 and 1998, titled Ground Water Recharge Projects in the Western United States. Among other recommendations to encourage recharge opportunities, the 1998 report suggested that each state examine its own legal and institutional systems to assure that they adequately address groundwater recharge, amending statutes as necessary to recognize it as a beneficial use, and reasonably protect the right to recover recharged waters.

2024-2025: In coordination with the Water Resources Committee, the Legal Committee will work on updating the information in the old reports, and prepare a new summary report. The Committee will query the states to review and update their relevant laws on groundwater storage, particularly as they relate to groundwater banking or Aquifer Storage and Recovery (ASR) projects.

c. State Groundwater Regulation

Background: In 2023, various news organizations began publishing articles on the use of groundwater in the nation, with a particular focus on groundwater overuse in the West. While the articles highlighted genuine challenges (depletion, pollutants, subsidence, lack of monitoring), they lacked information about the nuances of western water laws, and did not include the efforts and progress states have made over the past several decades to address those challenges. Several of the articles called for federal regulation of groundwater, asserting that the states would not or could not do enough to address the groundwater management challenges.

In 2024, the White House solicited input from the public to address questions regarding groundwater use, recharge, and storage across the United States. The President's Council of Advisors on Science and Technology (PCAST) issued specific questions regarding methods for timely collection of data, effective modeling and prediction of groundwater changes, efficient scaling of groundwater recharge, ensuring clean and safe groundwater availability, community engagement, and strategies to limit groundwater overuse. The PCAST briefing read: "In the western states especially, groundwater resources are being depleted at an alarming rate, mostly from agricultural withdrawal. The problem of groundwater depletion is exacerbated by climate change and precipitation variability and in many aquifers, groundwater withdrawal has outpaced natural and artificial recharge. There is a need to explore the consequences of artificial recharge and to identify successful recharge approaches that might be scaled across the country.... Groundwater is managed locally, with best practices that vary from state to state, but there is an opportunity to develop and scale approaches to restore clean water in every community."

Work to Date: On July 1, 2024, the WSWC submitted a comment letter along with two policy positions on groundwater allocation and groundwater quality. On July 22, 2024, Council staff participated in the PCAST workshop.

2024-2025: The Council will explore the potential of hosting a groundwater workshop in the coming year, with opportunities for states to share with each other challenges and developments in technologies, resources, and regulations.

Subcommittee: Raquel Rancier (OR), Anna Pakenham Stephenson (MT), Mathew Weaver (ID), Melissa Flatly (NV), Chris Brown (WY), Joaquin Esquivel (CA), Sara Schecter (UT), Theresa Wilhelmson (UT), Jesse Bradley (NE). Ex-Officio members: Dan Yates (GWPC).

6. WATER RIGHTS

Some of our states have expressed interest in understanding how other states approach different aspects of the management and administration of water rights, including what qualifies as beneficial uses, extensions of time to prove beneficial use to perfect a water right application, and statutes or rules or court procedures governing curtailments in times of scarce water resources, and regulation

of water wells. In December 2020, Council staff began distributing a series of survey questions to member states to facilitate this understanding. In 2021, WSWC members responded to the survey questions, and WSWC staff began compiling the responses into four separate reports.

a. State Water Well Construction Rules and Regulations

Background: The State Engineer, or other state official, is required to make rules regarding well construction and related regulated activities and the licensing of water well drillers and pump installers. Various states have varying requirements, which may change from time to time. The purpose of these rules is to: (1) assist in the orderly development of underground water; (2) insure that minimum construction standards are followed in the drilling, construction, deepening, repairing, renovating, cleaning, development, testing, disinfection, pump installation/repair, and abandonment of water wells and other regulated wells; (3) prevent pollution of aquifers within the state; (4) prevent wasting of water from flowing wells; (5) obtain accurate records of well construction operations; and (6) insure compliance with the state's authority for appropriating water. The rules establish administrative procedures for applications, approvals, hearings, notices, revocations, orders and their judicial review, as well as requirements related to well construction standards, such as casing, and procedures for monitoring, reporting and criteria for the waivers of certain requirements.

2024-2025: Council staff will prepare a report of the 2021 responses to the survey questions. The Committee and Council will also provide a forum for the discussion of best management practices.

Subcommittee:

Timeframe:

b. Proof of Beneficial Use of Water and Extension Criteria

Background: Beneficial use is the measure of any right to the use of water in the West. The State Engineer, or other state official, on behalf of the State, may grant a permit to put water to beneficial use but evidence or proof of completion of the work necessary to then actually put the water to use is also required. Only after development is done and the water is being fully put to beneficial use, will a water right be granted, which will be limited to the extent and nature of use in the accepted proof. This also applies to requests to change the use of a water rights, whether changing the point of diversion, use or purpose of use, or location water is returned to a natural source. Generally, some specific period of time will be allowed to complete the work, and if needed applicants may request an extension of time. The specific criteria for proof of beneficial use and extending timelines may vary by state.

2024-2025: Council staff will compile responses to the 2021 survey questions and report on the results. The Committee and Council will also provide a forum for the discussion of best management practices.

Subcommittee:

Timeframe:

c. Calls and Curtailments

Background. Droughts in many areas of the West have highlighted state procedures and methods of enforcing curtailment of water uses and administration of water rights in a priority system, particularly where junior groundwater pumping, insufficient carriage water, instream flow for fish and wildlife, junior municipal supply, and federal reserved rights are at issue.

2024-2025: Council staff will prepare a report on the 2021 survey responses. The Committee and Council will also provide a forum for a discussion of water rights enforcement.

Subcommittee:

Timeframe:

Tab S – Legislation and Litigation Update

**Legislation Update
206th WSWC Meeting
Lincoln, Nebraska**

Compiled By:
Elysse Ostland Campbell, WSWC Policy Analyst

This summary describes developments regarding notable legislation that pertains to WGA/WSWC policies or are otherwise of interest. It focuses primarily on developments that have taken place since the beginning of the 119th Congress, and is organized in reverse chronological order according to bill number. For some bills, this document uses modified versions of summaries prepared by the Congressional Research Service.

NOTABLE LEGISLATION

Bill Number S.1324 Bill Title A bill to amend the Safe Drinking Water Act to modify eligibility for the State response to contaminants program, and for other purposes. Passed (S/H) Bill Sponsor Sen. Shaheen, Jeanne [D-NH]	Date Introduced 04/08/2025 Assigned Committee(s) Senate - Environment and Public Works Hearing(s) Support Bipartisan, AZ, NM	WSWC Keywords Water Quality, SRFs Congress.gov Link Activity Status Active	Summary of Bill No text received.
Bill Number H.R.2656 Bill Title Removing Nitrate and Arsenic in Drinking Water Act Passed (S/H) Bill Sponsor Rep. Torres, Norma J. [D-CA-35]	Date Introduced 04/03/2025 Assigned Committee(s) House - Energy and Commerce Hearing(s) Support Bipartisan, CA	WSWC Keywords Water Quality, HABS, Water Infrastructure Congress.gov Link Activity Status Active	Summary of Bill The bill would establish a grant program for nitrate and arsenic reduction projects. Eligible entities would have to take steps to identify the source of nitrate or arsenic and how the proposed project would meaningfully reduce its concentration in the public water system. The bill includes a priority provision for grant applications from eligible entities the Administrator determines to be a disadvantaged community based on state affordability criteria and either have a history of non-compliance with nitrate or arsenic maximum contaminant levels or propose to address these levels in facilities primarily serving children or other vulnerable subpopulations. It would authorize appropriations of \$15M for FY2026 and \$15M for each fiscal year thereafter.
Bill Number S.1200/H.R.2537 Bill Title Deschutes River Conservancy Reauthorization Act of 2025 Passed (S/H) Bill Sponsor Sen. Merkley, Jeff [D-OR]; Rep. Bynum, Janelle [D-OR-5]	Date Introduced 03/31/2025 Assigned Committee(s) Senate - Energy and Natural Resources, House - Natural Resources Hearing(s) Support Democrat, OR	WSWC Keywords Water Resources, Conservation Congress.gov Link Activity Status Active	Summary of Bill This bill would reauthorize the Deschutes River Conservancy Working Group through 2032 and increase the allowable administrative costs from 5% to 10%. It would also revise the composition of the Group, specifying that it will be composed of a board of directors with not fewer than 10 and not more than 15 members nominated by the groups they represent including two representatives of the environmental community, two representatives of the Confederated Tribes of the Warm Springs Reservation of Oregon, one representative of the hydroelectric production community, one representative of a Federal agency, one representative of an Oregon State agency, and one representative of a unit of local government.
Bill Number H.R.2401	Date Introduced 03/27/2025	WSWC Keywords Water Quality, Water Resources, Public-Private Partnerships, Water Infrastructure	Summary of Bill The bill would mandate the maintenance of the Urban Waters Federal Partnership Program, which reconnects urban communities with their associated waterways by enhancing coordination among federal agencies. Member agencies are authorized to encourage, cooperate with, and provide technical and financial assistance to support Urban Water ambassadors in their activities, such as convening partners, developing and carrying out Urban Waters partnership location workplans, leveraging resources, and sharing information. They can also support eligible entities (including

Bill Title Urban Waters Federal Partnership Act of 2025 Passed (S/H)	Assigned Committee(s) House - Transportation and Infrastructure, House - Natural Resources, House - Appropriations Hearing(s)	Congress.gov Link	states, territories, tribal governments, local governments, educational institutions, non-profits, and others) in carrying out projects at partnership locations that improve habitat or water quality, increase recreation, enhance resilience, install infrastructure, strengthen community engagement with water resources, and support project planning and execution outlined in the workplans. Additionally, member agencies can support planning, research, demonstrations, monitoring, training, and outreach in both partnership and nonpartnership locations to advance the program's purpose. They are also authorized to transfer funds or enter into interagency agreements to implement the program.
Bill Sponsor Rep. Stanton, Greg [D-AZ-4]	Support Bipartisan	Activity Status Active	
Bill Number S.1114 Bill Title Watershed Protection and Forest Recovery Act of 2025 Passed (S/H)	Date Introduced 03/25/2025 Assigned Committee(s) "Senate - Agriculture, Nutrition, and Forestry" Hearing(s)	WSWC Keywords Water Quality, Disaster Preparedness, Wildfire Congress.gov Link	Summary of Bill The bill would amend the Agricultural Credit Act of 1978 to authorize the Secretary of Agriculture to carry out emergency watershed protection measures on National Forest System land. Specifically it would establish and Emergency Forest Watershed Program, authorize the Secretary to undertake emergency watershed protection measures on National Forest System land, permit the Secretary to enter into agreements with sponsors and make payments to them to carry out measures, waive matching requirements for payments made under such agreements, and deem emergency watershed protection measures to be emergency response actions for NEPA purposes.
Bill Sponsor Sen. Bennet, Michael F. [D-CO]	Support Bipartisan, UT, CO	Activity Status Active	
Bill Number H.R.2316 Bill Title Wetlands Conservation and Access Improvement Act of 2025 Passed (S/H)	Date Introduced 03/25/2025 Assigned Committee(s) House - Natural Resources Hearing(s) House Natural Resources Subcommittee on Water, Wildlife and Fisheries - 04/08/2025	WSWC Keywords Water Quality Congress.gov Link	Summary of Bill The bill would amend the Pittman-Robertson Wildlife Restoration Act to change the date when the interest on obligations held in the Federal aid to wildlife restoration fund shall become available for apportionment, moving it from FY2026 to the beginning of FY2033.
Bill Sponsor Rep. Hurd, Jeff [R-CO-3]	Support Bipartisan, CA	Activity Status Active	
Bill Number H.R.2160 Bill Title Maintaining and Enhancing Hydroelectricity and River Restoration Act Passed (S/H)	Date Introduced 03/14/2025 Assigned Committee(s) House - Ways and Means Hearing(s)	WSWC Keywords Water Quality, Water Resources, Dam Removal, Water Infrastructure Congress.gov Link	Summary of Bill The bill would establish a new tax credit "for maintaining and enhancing hydroelectric facilities". This credit would provide a credit equal to 30 percent of the basis of any hydropower improvement property placed in service during the taxable year. "Hydropower improvement property" is defined in the bill and includes property that: •Adds or improves fish passage at a qualified dam. •Maintains or improves the quality of the water retained or released by a qualified dam. •Promotes downstream sediment transport processes and habitat maintenance with respect to a qualified dam. •Upgrades, repairs, or reconstructs a qualified dam to meet Federal dam safety and security standards. •Improves the public uses of, and access to, public waterways impacted by a qualified dam in a manner consistent with its license or a related settlement agreement. •Removes an obsolete river obstruction. •Places into service an approved remote dam.
Bill Sponsor Rep. Smith, Adrian [R-NE-3]	Support Bipartisan, WA	Activity Status Active	
Bill Number H.R.2093 Bill Title	Date Introduced 03/14/2025 Assigned Committee(s)	WSWC Keywords Water Quality, CWA §402 (NPDES) Congress.gov Link	Summary of Bill The bill would set National Pollutant Discharge Elimination System (NPDES) permit terms to "Not exceeding 10 years for a permit issued to a State or municipality" and "Not exceeding 5 years for a permit issued to any person not described in clause (i) (i.e., entities other than states or municipalities)."/>

To amend the Federal Water Pollution Control Act with respect to permitting terms, and for other purposes. Passed (S/H)	House - Transportation and Infrastructure Hearing(s)		
Bill Sponsor Rep. Calvert, Ken [R-CA-41]	Support Bipartisan, CA	Activity Status Active	
Bill Number S.1019	Date Introduced 03/13/2025	WSWC Keywords Water Quality, Water Resources, Disaster Preparedness	Summary of Bill The bill would amend the Consolidated Farm and Rural Development Act to establish an emergency preparedness and response technical assistance program. This program is designed to assist entities that operate rural water or wastewater systems in preparing for and responding to natural or manmade disasters. Specifically, the bill would: • Authorize the Secretary to provide grants to nonprofit organizations with demonstrated experience in providing emergency technical assistance for disaster preparation, recovery, and response to water and wastewater utilities nationwide, and the capacity to deploy personnel with relevant expertise (like licensed water or wastewater system operators or those with necessary knowledge) • Outline eligible activities for the use of grant funds • Authorize an appropriation of \$20M for each of fiscal years 2025 through 2029 to carry out this program.
Bill Title Rural Water System Disaster Preparedness and Assistance Act Passed (S/H)	Assigned Committee(s) "Senate - Agriculture, Nutrition, and Forestry" Hearing(s)	Congress.gov Link	
Bill Sponsor Sen. Cortez Masto, Catherine [D-NV]	Support Bipartisan	Activity Status Active	
Bill Number S.1005/ H.R.2134	Date Introduced 03/12/2025	WSWC Keywords Legal, Indian Reserved Water Rights	Summary of Bill The bill would authorize the transfer of approximately 3,156 acres of BLM land to be held in trust for the Las Vegas Paiute Tribe to become part of the reservation. The bill would adjust the boundary of the Rock Canyon National Conservation Area and allow for recreational purposes. It would revoke the Ivanpah Area of Critical Environmental Concern and establish special management areas, requiring the development of comprehensive management plans in consultation with Clark County and addressing transportation and utility corridors within these areas. It would also would adjust the boundary of the Sloan Canyon National Conservation Area, increasing it from 48,438 acres to 57,728 acres (see H.R. 972) and would authorize a right-of-way for the Horizon Lateral Pipeline within the Conservation Area, notwithstanding certain sections of the Federal Land Policy and Management Act of 1976. It would also authorize several land conveyances including 250 acres of Federal land to the City of Mesquite for the protection of the Virgin River watershed, and 121 acres to the Moapa Valley Water District to support access to rural water supply.
Bill Title Southern Nevada Economic Development and Conservation Act Passed (S/H)	Assigned Committee(s) House - Natural Resources, Senate - Energy and Natural Resources Hearing(s)	Congress.gov Link	
Bill Sponsor Sen. Cortez Masto, Catherine [D-NV]; Rep. Lee, Susie [D-NV-3]	Support Bipartisan, NV	Activity Status Active	
Bill Number S.953	Date Introduced 03/11/2025	WSWC Keywords Legal, Indian Reserved Water Rights	Summary of Bill The bill would approve, ratify, and confirm water rights claims of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe. It would establish a trust fund for the Hopi and the San Juan Southern Paiute Tribes. It mandates a feasibility study for the iiná bá – paa tuwaqat'si pipeline. The bill establishes the iiná bá – paa tuwaqat'si Pipeline Implementation Fund Account. Navajo Nation Cibola Water, Navajo Nation Fourth Priority Water, and Hopi Tribe Cibola Water delivered and used would be credited as water reaching Lee Ferry and charged against the Lower Basin's consumptive use apportionment. The bill also addresses the creation of a reservation for the San Juan Southern Paiute Tribe.
Bill Title Northeastern Arizona Indian Water Rights Settlement Act of 2025 Passed (S/H)	Assigned Committee(s) Senate - Indian Affairs Hearing(s)	Congress.gov Link	
Bill Sponsor Sen. Kelly, Mark [D-AZ]	Support Democrat, AZ	Activity Status Active	
Bill Number H.R.2074	Date Introduced 03/11/2025	WSWC Keywords Water Resources, Dam Removal	Summary of Bill The bill would prohibit the breaching of federally operated dams under specific circumstances including: (1) potential increases in carbon emissions or product shipping costs; (2) reduced navigability; (3) or if the replacement energy source would require significantly more land. It would also require consultation with various secretaries before any breaching. The bill would restrict the retirement of federal energy generation sources, particularly hydropower dams, if it would significantly raise electricity rates or decrease energy reliability, mandating the replacement of any retired baseload generation.
Bill Title POWER Act Passed (S/H)	Assigned Committee(s) House - Transportation and Infrastructure, House - Natural Resources Hearing(s)	Congress.gov Link	

Bill Sponsor Rep. Newhouse, Dan [R-WA-4]	Support Republican, ID, WA, OR	Activity Status Active	
Bill Number H.R.2073	Date Introduced 03/11/2025	WSWC Keywords Water Resources, Dam Removal	Summary of Bill The bill would prohibit the use of Federal funds to allow or study the breach or alteration of the Lower Snake River dams. The Secretary of the Army, acting through the Chief of Engineers, would be prohibited from carrying out any spillage operations on any of the Lower Snake River dams unless such operations are approved by both the Secretary and the Administrator of the Bonneville Power Administration. In determining whether to approve spillage operations, the Secretary and the Administrator are required to consider all Columbia River System operations.
Bill Title Defending our Dams Act	Assigned Committee(s) House - Natural Resources, House - Transportation and Infrastructure	Congress.gov Link	
Passed (S/H)	Hearing(s)		
Bill Sponsor Rep. Newhouse, Dan [R-WA-4]	Support Republican, WA, ID, OR	Activity Status Active	
Bill Number H.R.2030/ S.1014	Date Introduced 03/11/2025	WSWC Keywords Water Quality, Clean Water Act (CWA), CWA §404	Summary of Bill The bill would ensure the legal standing of specific state permit programs for the discharge of dredged or fill material approved under section 404 of the Federal Water Pollution Control Act. This bill ratifies, approves, and declares these identified state programs, such as those of Michigan and Florida, to be in full force and effect. Specifically, it would prohibit the EPA Administrator from withdrawing approval of these state programs without explicit authorization from Congress. For Florida's program, it outlines a temporary period where both the Secretary of the Army and the state could issue permits and details the process for the EPA Administrator to determine inadequate state administration, potentially leading to a suspension of the Secretary's permit issuance.
Bill Title Maintaining Cooperative Permitting Act of 2025	Assigned Committee(s) Senate - Environment and Public Works, House - Transportation and Infrastructure	Congress.gov Link	
Passed (S/H)	Hearing(s)		
Bill Sponsor Sen. Moody, Ashley [R-FL]; Rep. Bean, Aaron [R-FL-4]	Support Republican	Activity Status Active	
Bill Number H.R.2025	Date Introduced 03/11/2025	WSWC Keywords Water Resources, Legal, Indian Reserved Water Rights	Summary of Bill Text not received
Bill Title To provide for the settlement of the water rights claims of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe, and for other purposes.	Assigned Committee(s) House - Natural Resources	Congress.gov Link	
Passed (S/H)	Hearing(s)		
Bill Sponsor Rep. Ciscomani, Juan [R-AZ-6]	Support Bipartisan, AZ	Activity Status Active	
Bill Number H.R.1985	Date Introduced 03/10/2025	WSWC Keywords Water Resources, Agriculture	Summary of Bill The bill mandates that the Secretary develop standards for precision agriculture. In doing so, the Secretary is required to: (1) Consult with the Federal Communications Commission and the National Telecommunications and Information Administration regarding the use of spectrum in precision agriculture, including licensed and unlicensed frequency bands; (2) Coordinate with relevant public and trusted private sector stakeholders and industry organizations, including voluntary consensus standards development organizations; (3) Consult with sector-specific agencies, other appropriate agencies, and State and local governments; and (4) Consider factors such as the need for diverse data, interoperability, data ownership and privacy, cybersecurity, broadband internet access, the impact of artificial intelligence, and the facilitation of the adoption of precision agriculture. The bill requires the Comptroller General of the United States to conduct a study assessing the standards developed by the Secretary.
Bill Title Promoting Precision Agriculture Act	Assigned Committee(s) House - Agriculture	Congress.gov Link	
Passed (S/H)	Hearing(s)		
Bill Sponsor	Support	Activity Status	

Rep. Davis, Donald G. [D-NC-1]	Republican, KS	Active	General of the United States to conduct a study assessing the standards developed by the Secretary.
Bill Number H.R.1948 Bill Title To authorize the International Boundary and Water Commission to accept funds for activities relating to wastewater treatment and flood control works, and for other purposes. Passed (S/H) Bill Sponsor Rep. Peters, Scott H. [D-CA-50]	Date Introduced 03/06/2025 Assigned Committee(s) House - Transportation and Infrastructure Hearing(s) House - 04/02/2025 Ordered to be Reported by Voice Vote. Support Bipartisan, TX, CA, MT	WSWC Keywords Water Resources, Legal, International Water Law Congress.gov Link Activity Status Active	Summary of Bill The bill would authorize the International Boundary and Water Commission to accept funds from Federal or non-Federal entities. These funds could be accepted through grants or funding agreements. The purpose of accepting these funds would be to support activities relating to wastewater treatment and flood control works, as well as other activities consistent with the Commission's authority.
Bill Number H.R.1923 Bill Title Modernizing Wildfire Safety and Prevention Act of 2025 Passed (S/H) Bill Sponsor Rep. Harder, Josh [D-CA-9]	Date Introduced 03/06/2025 Assigned Committee(s) House - Natural Resources, House - Agriculture, House - Oversight and Government Reform, House - Education and Workforce, House - Armed Services, House - Energy and Commerce, "House - Science, Space, and Technology", House - Transportation and Infrastructure, House - Small Business Hearing(s) Support Bipartisan, AZ, CO	WSWC Keywords Water Quality, Wildfire Congress.gov Link Activity Status Active	Summary of Bill The bill would implement certain recommendations from the Report of the Wildland Fire Mitigation and Management Commission dated September 2023. It would establish a Middle Fire Leaders Academy for wildland fire training and a Wildfire Workforce Grant Program so support skills training in wildland firefighting. It would retain enhanced retirement benefits during non-federal service for wildland firefighters and mandate the development of a Wildland Fire Management Casualty Assistance Program. It would establish a National Smoke Monitoring and Alert System, expand Forest Service personnel and equipment for smoke monitoring, direct the EPA to expand emergency response for hazardous materials in wildfires, and mandate a health risk assessment for wildfire smoke exposure. It would include losses from federally managed wildfires in the Livestock Forage Program. It would also require a report on wildfire management costs, cover subsequent related events under disaster declarations, require recommendations for improving wildfire mitigation projects under the Stafford Act, establish a Wildland Dynamic Risk Mapping Program, expand the National Emergency Response Information System and require expedited payments for certain programs addressing wildfire damages.
Bill Number H.R.1897 Bill Title ESA Amendments Act of 2025 Passed (S/H) Bill Sponsor Rep. Westerman, Bruce [R-AR-4]	Date Introduced 03/06/2025 Assigned Committee(s) House - Natural Resources Hearing(s) House - 03/25/2025 Subcommittee Hearings Held Support Republican, AZ, CA, CO, AK, ID, MT, NV, OR, TX, UT, WA, WY	WSWC Keywords Water Resources, Water Quality, Legal, ESA Congress.gov Link Activity Status Active	Summary of Bill The bill would reform the Endangered Species Act. Title I, Optimizing Conservation Through Resource Prioritization, would mandate the Secretary to develop a national listing work plan, including a determination schedule, and stipulates that certain findings are subject to judicial review. Title II would require federal agencies to consider the net conservation benefit of Candidate Conservation Agreements with Assurance (CCAA's) or any programmatic CCAA's for a species when making a listing decision under the ESA. The Secretary would be allowed to enter CCAA's with private landowners, providing assurances that no additional conservation measures will be required if the species is listed. Information submitted under these agreements is exempt from disclosure. It would allow states to develop and submit recovery strategies for threatened or candidate species to use as the basis for protective regulations. It would require the inclusion of objective, incremental recovery goals for endangered species in recovery plans for potential use if the species' status changes to threatened. It would also prohibited the Secretary from designating privately owned or controlled land as critical habitat if it is subject to a similar land
Bill Number H.R.1871 / S.857 Bill Title Water Conservation Rebate Tax Parity Act Passed (S/H)	Date Introduced 03/05/2025 Assigned Committee(s) House - Ways and Means Hearing(s)	WSWC Keywords Water Resources Congress.gov Link	Summary of Bill The bill would amend tax code to expand the exclusion from gross income for certain conservation subsidies. Currently, Section 136 of the Internal Revenue Code excludes subsidies provided by public utilities for the purchase or installation of energy conservation measures. This bill would broaden this exclusion to include subsidies (provided directly or indirectly) by a public utility to a customer, or by a State or local government to a resident, for the purchase or installation of any water conservation or efficiency measure, storm water management measure, or wastewater management measure. It would also amend the definition of "public utility" in the Internal Revenue Code to include a person engaged in the sale of water, in addition to electricity and natural gas, to residential, commercial, or industrial customers.

Bill Sponsor Sen. Curtis, John R. [R-UT]; Huffman, Jared [D-CA-2]	Support Bipartisan, CO, UT, CA	Activity Status Active	Industrial customers.
Bill Number S.783	Date Introduced 02/27/2025	WSWC Keywords Water Resources, Agriculture	Summary of Bill The bill would amend the Consolidated Farm and Rural Development Act to provide additional assistance to rural water, wastewater, and waste disposal systems. Specifically, the bill would allow the Secretary of Interior to provide grants, zero interest loans, or one percent loans to eligible entities (rural water, wastewater, or waste disposal facility that can receive assistance under existing programs within the Consolidated Farm and Rural Development Act). It would also allow the Secretary to forgive principal or interest, modify the terms, or refinance existing loans made to eligible entities.
Bill Title Assistance for Rural Water Systems Act of 2025	Assigned Committee(s) "Senate - Agriculture, Nutrition, and Forestry"	Congress.gov Link	
Passed (S/H)	Hearing(s)		
Bill Sponsor Sen. Shaheen, Jeanne [D-NH]	Support Bipartisan	Activity Status Active	
Bill Number S.689	Date Introduced 02/24/2025	WSWC Keywords Water Resources, Legal, Indian Reserved Water Rights	Summary of Bill The bill would approve the settlement of water rights claims of the Tule River Tribe in California. The bill ratifies a 2007 agreement between the Tribe and other parties. The bill establishes trust accounts for the Tribe and authorizes funding for the settlement's implementation and mandates the transfer of approximately 1826 acres of land into trust for the Tribe. Additionally, the Act outlines the waiver and release of various water rights claims by the Tribe and the United States as trustee
Bill Title Tule River Tribe Reserved Water Rights Settlement Act of 2025	Assigned Committee(s) Senate - Indian Affairs	Congress.gov Link	
Passed (S/H)	Hearing(s) Senate - 03/05/2025 Committee on Indian Affairs. Ordered to be reported without amendment favorably.		
Bill Sponsor Sen. Padilla, Alex [D-CA]	Support Democrat, CA	Activity Status Active	
Bill Number S.640	Date Introduced 02/19/2025	WSWC Keywords Water Resources, Legal, Indian Reserved Water Rights	Summary of Bill The bill would amend the Omnibus Public Land Management Act of 2009 to appropriate \$6.4M and other amounts for adjusted interest payments. It would also amend the Claims Resolution Act of 2010 to appropriate \$7.8M for the Taos Pueblo Water Development Fund for adjusted interest payments, and \$4.3M to the Aamodt Settlement Pueblos' Fund for the Pueblos' share of O&M and replacing the Pueblo Water Facilities and the Regional Water System.
Bill Title Technical Corrections to the Northwestern New Mexico Rural Water Projects Act, Taos Pueblo Indian Water Rights Settlement Act, and Aamodt Litigation Settlement Act	Assigned Committee(s) Senate - Indian Affairs	Congress.gov Link	
Passed (S/H)	Hearing(s) Senate - 03/05/2025 Committee on Indian Affairs. Ordered to be reported without amendment favorably.		
Bill Sponsor Sen. Lujan, Ben Ray [D-NM]	Support Democrat, NM	Activity Status Active	
Bill Number H.R.1482/ S.637	Date Introduced 02/19/2025	WSWC Keywords Water Resources, Legal, Indian Reserved Water Rights	Summary of Bill The bill would increase the total authorization of appropriations for the Navajo-Gallup Water Supply Project to \$2.2B for fiscal years 2009 through 2029, and it would increase the authorization for the Navajo Nation Operations, Maintenance, and Replacement Trust Fund to \$37.5M for fiscal years 2009 through 2032. Additionally, the bill would allow the Navajo Nation to provide not more than 2,000 acre-feet per year of non-Project water to communities in Utah under specific conditions tied to the Navajo/Utah Settlement Agreement. The bill also includes provisions
Bill Title	Assigned Committee(s)	Congress.gov Link	

Navajo-Gallup Water Supply Project Amendments Act of 2025 Passed (S/H) Bill Sponsor Sen. Lujan, Ben Ray [D-NM]; Rep. Leger Fernandez, Teresa [D-NM-3]	House - Natural Resources, Senate - Indian Affairs Hearing(s) Senate - 03/05/2025 Committee on Indian Affairs. Ordered to be reported without amendment favorably. Support Bipartisan, NM, UT Activity Status Active	Utah under specific conditions tied to the Navajo/Utah Settlement Agreement. The bill also includes provisions regarding land to be taken into trust and modifies certain contract terms and deadlines.
Bill Number S.590/S.613 Bill Title Improving Flood and Agricultural Forecasts Act of 2025 Passed (S/H) Bill Sponsor Sen. Schatz, Brian [D-HI]	Date Introduced 02/18/2025 Assigned Committee(s) "Senate - Commerce, Science, and Transportation" Hearing(s) S.613: Senate - 03/12/2025 Committee on Commerce, Science, and Transportation. Ordered to be reported without amendment favorably. Support Bipartisan, KS Activity Status Active	WSWC Keywords Water Resources, Water Data Congress.gov Link Summary of Bill The bill would reauthorize and expand the National Mesonet Program through FY2029. The bill prioritizes leveraging available commercial, academic, and other non-Federal Government environmental data to enhance coordination across different sectors involved in weather forecasting. The National Mesonet Program would also be responsible for establishing means to integrate a greater density and more types of environmental observations annually, including encouraging local and regional networks of environmental monitoring stations and in situ sensor networks (like soil moisture and ground-based profilers) to participate. In carrying out the Program, the Under Secretary would be required to: • Increase data density by improving the quantity and density of environmental observations used by the National Oceanic and Atmospheric Administration (NOAA) and the National Weather Service for various forecasts and warnings. This includes increasing boundary-layer data, identifying terrestrial or marine environmental data gaps, and supporting the National Weather Service in reaching its severe weather warning time target. • Monitor local meteorological conditions by acquiring soil and moisture data for drought monitoring and supporting the National Coordinated Soil Moisture Monitoring Network. It also involves expanding and enhancing environmental observational networks in the roadway environment.
Bill Number H.R.1393 Bill Title Wildfire Response Improvement Act Passed (S/H) Bill Sponsor Rep. Stanton, Greg [D-AZ-4]	Date Introduced 02/14/2025 Assigned Committee(s) House - Transportation and Infrastructure Hearing(s) Support Bipartisan, CA Activity Status Active	WSWC Keywords Water Quality, Wildfire Congress.gov Link Summary of Bill This bill would direct the Administrator of the Federal Emergency Management Agency (FEMA) to recommend regulations or guidance to make eligible assessments and emergency stabilization to protect public safety under the fire management assistance program, irrespective of the incident period for a declared fire. This would apply to the program under section 420 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5187). The Administrator would be required to amend FEMA's Public Assistance Program and Policy Guide to include guidance on wildfire-specific recovery challenges. These challenges specifically include debris removal, emergency protective measures, and the resulting toxicity of drinking water resources. The Administrator would need to conduct a review of the criteria for evaluating the cost-effectiveness of projects intended to mitigate the impacts of wildfire under sections 203 and 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133; 5170c). This review must include consideration of several factors: (1)
Bill Number H.R.1382 Bill Title To amend the Federal Water Pollution Control Act with respect to San Francisco Bay restoration, and for other purposes. Passed (S/H) Bill Sponsor Rep. Huffman, Jared [D-CA-2]	Date Introduced 02/14/2025 Assigned Committee(s) House - Transportation and Infrastructure Hearing(s) House - 02/26/2025 Ordered to be Reported (Amended) by the Yeas and Nays: 40 - 13. Support Democrat, CA Activity Status Active	WSWC Keywords Water Quality Congress.gov Link Summary of Bill This bill would amend the San Francisco Bay restoration grant program to clarify that the Director can provide funding through various mechanisms, including cooperative agreements, grants, interagency agreements, contracts, or other funding mechanisms. Eligible recipients for this funding would include Federal, State, and local agencies, special districts, public or nonprofit agencies, and other public or private entities, institutions, and organizations, including the Estuary Partnership. For non-Federal entities receiving funding through grants, cooperative agreements, or other mechanisms, the bill sets a maximum Federal share of 75 percent of the total cost of the projects, activities, and studies. At least 25 percent of the cost must be provided from non-Federal sources. The bill also specifies that Federal agencies receiving funds through interagency agreements can use these amounts to carry out activities described in subsection (c) of the Act
Bill Number S.564/ H.R.1444	Date Introduced 02/13/2025	WSWC Keywords Legal, Water Resources, Indian Reserved Water Rights Summary of Bill The bill would authorize, ratify and confirm the Zuni Indian Tribe Water Rights Settlement between the Tribe, New Mexico, and other parties. It would appropriate \$655M for the Zuni Tribe Water Rights Settlement Trust Account and \$29.5M for the Zuni Tribe Operation, Maintenance, & Replacement Trust Account. It also includes provisions for the

Bill Title Zuni Indian Tribe Water Rights Settlement Act of 2025 Passed (S/H)	Assigned Committee(s) Senate - Indian Affairs, House - Natural Resources Hearing(s) Senate - 03/05/2025 Committee on Indian Affairs. Ordered to be reported without amendment favorably. Support Democrat, NM	Congress.gov Link 	protection of the Zuni Salt Lake and Sanctuary by withdrawing approximately 92,364 acres of Federal land from various forms of disposal and development. Additionally, certain Federal land described as "Tribal Acquisition Area" on a specified map would be taken into trust for the benefit of the Tribe
Bill Sponsor Sen. Heinrich, Martin [D-NM];Rep. Vasquez, Gabe [D-NM-2]	Activity Status Active		
Bill Number H.R.1326	Date Introduced 02/13/2025	WSWC Keywords Water Data, Water Resources	Summary of Bill This bill requires the Department of Energy and Department of Agriculture to carry out cross-cutting and collaborative research and development activities through the establishment of an interagency agreement.
Bill Title DOE and USDA Interagency Research Act Passed (S/H) House - 03/24/2025 On motion to suspend the rules and pass the bill Agreed to by the Yeas and Nays: (2/3 required): 372 - 35 Bill Sponsor Rep. Lucas, Frank D. [R-OK-3]	Assigned Committee(s) "House - Science, Space, and Technology", House - Agriculture, Senate - Energy and Natural Resources Hearing(s) Support Bipartisan, CA	Congress.gov Link Activity Status Active	The agencies are authorized to (1) carry out reimbursable agreements in order to maximize research and development effectiveness, and (2) collaborate with other federal agencies. Further, the interagency agreement must require the use of a competitive, merit-reviewed process, which considers applications from federal agencies, national laboratories, institutions of higher education, and nonprofit institutions. Research and development activities may include - collaborative research in a variety of focus areas such as machine learning and artificial intelligence, biofuels and biobased products, grid modernization and security, rural technology development, and wildfire risks and prevention; - developing methods to accommodate large voluntary standardized and integrated data sets on agricultural, environmental, supply chain, and economic information; - supporting research infrastructure and workforce development; and - collaborative research and development on ways to improve agriculture operations and processing efficiencies, and
Bill Number H.R.1324/S.565	Date Introduced 02/13/2025	WSWC Keywords Legal, Water Resources, Indian Reserved Water Rights	Summary of Bill The bill would authorize, ratify, and confirm a settlement agreement between the Navajo Nation, the State of New Mexico, and other involved parties.It establishes the Navajo Nation Rio San José Settlement Trust Fund, into which the Secretary of the Treasury is mandated to transfer \$200M for the Water Rights Settlement Account and \$23M for the Operations and Maintenance Account. The State of New Mexico is also expected to make cost-share contributions. The bill also outlines specific waivers and releases of claims by the Navajo Nation and the United States as trustee.
Bill Title Navajo Nation Rio San José Stream System Water Rights Settlement Act of 2025 Passed (S/H)	Assigned Committee(s) House - Natural Resources, Senate - Indian Affairs Hearing(s) Senate - 03/05/2025 Committee on Indian Affairs. Ordered to be reported without amendment favorably. Support Democrat, NM	Congress.gov Link Activity Status Active	
Bill Sponsor Rep. Leger Fernandez, Teresa [D-NM-3]; Sen. Heinrich, Martin [D-NM]			
Bill Number H.R.1323/S.563	Date Introduced 02/13/2025	WSWC Keywords Legal, Water Resources, Indian Reserved Water Rights	Summary of Bill The bill would approve the settlement of water rights claims for Ohkey Owingeg Pueblo. The bill would authorize, ratify, and confirm a settlement agreement between Ohkay Owingeh, the State of New Mexico, and other relevant parties, provided the agreement aligns with the provisions of the bill. It appropriates \$745M to be deposited into the Ohkay Owingeh Water Rights Settlement Trust Fund. Additionally, the bill specifies that the State of New Mexico will contribute several amounts: \$98.5M for signatory acequias ditch improvements and other projects, \$32M for water system improvements for the City of Española, and \$500,000 to mitigate impacts on non-Pueblo groundwater rights.
Bill Title Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2025 Passed (S/H)	Assigned Committee(s) House - Natural Resources, Senate - Indian Affairs Hearing(s)	Congress.gov Link	

Bill Sponsor Rep. Leger Fernandez, Teresa [D-NM-3]; Sen. Heinrich, Martin [D-NM]	Senate - 03/05/2025 Committee on Indian Affairs. Ordered to be reported without amendment favorably. Support Democrat, NM	Activity Status Active	
Bill Number H.R.1322/S.562	Date Introduced 02/13/2025	WSWC Keywords Legal, Water Resources, Indian Reserved Water Rights Congress.gov Link	Summary of Bill The bill would approve the settlement of water rights claims for the Pueblos of Acoma and Laguna in the Rio San José Stream System, and the Pueblos of Jemez and Zia in the Rio Jemez Stream System. The bill would authorize, ratify, and confirm settlement agreements between these Pueblos, the State of New Mexico, and other parties. It establishes settlement trust funds for each Pueblo and authorizes mandatory appropriations for these funds. The bill mandates appropriations as follows: (1) Pueblo of Acoma, \$296M for the Water Rights Settlement Account, \$14M for the Water Infrastructure Operations and Maintenance Account, and \$1.7M for the Feasibility Studies Settlement Account; (2) Pueblo of Laguna, \$464M for the Water Rights Settlement Account, \$26M for the Water Infrastructure Operations and Maintenance Account, and \$3.3M for the Feasibility Studies Settlement Account; (3) Pueblo of Jemez, \$290M; (4) Pueblo of Zia, \$200M. Additionally, \$45M is allocated to the Acomita Reservoir Works Trust Fund for the benefit of both Acoma and Laguna. The bill also outlines state cost-share contributions. The Pueblo Water Rights, as defined in the agreements and the bill, would be held in trust by the United States.
Bill Title Rio San José and Rio Jemez Water Settlements Act of 2025 Passed (S/H)	Assigned Committee(s) House - Natural Resources, Senate - Indian Affairs Hearing(s) Senate - 03/05/2025 Committee on Indian Affairs. Ordered to be reported without amendment favorably Support Democrat, NM	Activity Status Active	
Bill Sponsor Rep. Leger Fernandez, Teresa [D-NM-3]; Sen. Heinrich, Martin [D-NM]	Support Democrat, NM	Activity Status Active	
Bill Number H.R.1315/S.568	Date Introduced 02/13/2025	WSWC Keywords Legal, Water Quality, Abandoned Mines Congress.gov Link	Summary of Bill The bill would authorize compensation to individuals, organizations, and companies impacted by the Gold King Mine wastewater spill that occurred in 2015. It outlines covered damages and who qualifies as an injured person. It directs the EPA Administrator to investigate, consider, adjust, determine, grant, deny, or settle these covered claims, generally applying the laws of Colorado for damage calculation, and sets a 180-day deadline after enactment for the Administrator to determine the amount to be paid. Accepting a payment under this Act constitutes a final and conclusive release of all related claims against the United States. The bill appropriates necessary funds, not exceeding \$3,300,000 for fiscal year 2025, for the payment of these claims
Bill Title Gold King Mine Spill Compensation Act of 2025 Passed (S/H)	Assigned Committee(s) House - Judiciary, House - Budget, Senate - Judiciary Hearing(s)	Activity Status Active	
Bill Sponsor Rep. Hurd, Jeff [R-CO-3]; Sen. Bennet, Michael F. [D-CO]	Support CO, Bipartisan	Activity Status Active	
Bill Number H.R.1311	Date Introduced 02/13/2025	WSWC Keywords Water Resources, Water Quality Congress.gov Link	Summary of Bill The bill would prohibit the Corps of Engineers from issuing a permit for the Delta Conveyance Project.
Bill Title Stop the Delta Tunnel Act Passed (S/H)	Assigned Committee(s) House - Transportation and Infrastructure Hearing(s)	Activity Status Active	
Bill Sponsor Rep. Harder, Josh [D-CA-9]	Support Democrat, CA	Activity Status Active	
Bill Number H.R.1285/S.570	Date Introduced 02/13/2025	WSWC Keywords Water Resources, WIFIA/SWIFIA Congress.gov Link	Summary of Bill The bill would amend the Water Infrastructure Finance and Innovation Act of 2014 to establish federal requirements for payment and performance security for water infrastructure projects receiving financial assistance under this Act. Specifically, it would mandate that the Secretary or the Administrator ensure that construction of these projects has the necessary security in place. This requirement would be considered met if applicable state or local laws already require payment and performance security amounting to at least 50 percent of the total construction contract. In the absence of such adequate state or local requirements, the Secretary or Administrator would be responsible for ensuring that the federal bond requirements outlined in section 3131(b)(1) and (2) of title 40, United States Code, are
Bill Title Water Infrastructure Subcontractor and Taxpayer Protection Act of 2025	Assigned Committee(s) House - Transportation and Infrastructure, House - Energy and Commerce		

Passed (S/H) Bill Sponsor Rep. Bost, Mike [R-IL-12]; Sen. Kelly, Mark [D-AZ]	Hearing(s) Support Bipartisan, CA, ND	Activity Status Active	ensuring that the Federal Bond Requirements outlined in Section 316 (b) (1) and (2) of the 70, United States Code, are fulfilled.
Bill Number S.546 Bill Title Technical Correction to the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act of 2025 Passed (S/H) Bill Sponsor Sen. Cortez Masto, Catherine [D-NV]	Date Introduced 02/12/2025 Assigned Committee(s) Senate - Indian Affairs Hearing(s) Senate - 03/05/2025 Committee on Indian Affairs. Ordered to be reported without amendment favorably. Support Bipartisan, ID, NV	WSWC Keywords Water Resources, Legal, Indian Reserved Water Rights Congress.gov Link Activity Status Active	Summary of Bill The bill would amend section 10807(b)(3) of that the Omnibus Public Land Management Act of 2009 to appropriate \$5.2M for deposit into the Development Fund. This additional funding is for adjusted interest payments related to the Development Fund of the Shoshone-Paiute Tribes.
Bill Number H.R.1267 Bill Title Water Systems PFAS Liability Protection Act Passed (S/H) Bill Sponsor Rep. Perez, Marie Gluesenkamp [D-WA-3]	Date Introduced 02/12/2025 Assigned Committee(s) House - Energy and Commerce, House - Transportation and Infrastructure Hearing(s) Support Bipartisan, CA, KS, UT	WSWC Keywords Legal, Water Quality, PFAS Congress.gov Link Activity Status Active	Summary of Bill This bill exempts specified water management entities from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) for releases of certain perfluoroalkyl or polyfluoroalkyl substances, commonly referred to as PFAS. Specifically, the entities covered under the bill are public water systems, publicly or privately owned or operated treatment works, municipalities with a stormwater discharge permit, political subdivisions or special districts of a state that act as a wholesale water agency, and contractors performing the management or disposal activities for such entities. Under the bill, the exemption only applies if a specified entity transports, treats, disposes of, or arranges for the transport, treatment or disposal of PFAS consistent with applicable laws and during and following the conveyance or treatment of water under federal or state law, such as through the management or disposal of biosolids consistent with the Federal Water Pollution Control Act. Liability for damages or costs associated with the release of certain PFAS must not be precluded if an entity acted
Bill Number H.R.1261 Bill Title Land and Water Conservation Fund Water Amendments Act of 2025 Passed (S/H) Bill Sponsor Rep. Mast, Brian J. [R-FL-21]	Date Introduced 02/12/2025 Assigned Committee(s) House - Natural Resources Hearing(s) Support	WSWC Keywords Water Quality Congress.gov Link Activity Status Active	Summary of Bill The bill would broaden the permissible uses of the Land and Water Conservation Fund. Currently, this fund provides financial assistance to States for outdoor recreation purposes. The bill would authorize the Secretary of the Interior to also make these funds available for water quality improvement projects. It would require a State's comprehensive statewide outdoor recreation plan to identify any body of water within the State with a water quality control plan developed under section 303(d) of the Federal Water Pollution Control Act (33 U.S.C. 1313(d)) as being impaired. The plan must identify any proposed water quality project intended for these impaired waters that would be conducted using funds from the Land and Water Conservation Fund. The bill would define a "water quality project" as any project identified in a State water quality control plan developed for the purpose of restoring any body of water identified by the State under section 303(d) of the Federal Water Pollution Control Act as being impaired.
Bill Number H.R.1235 Bill Title	Date Introduced 02/12/2025 Assigned Committee(s)	WSWC Keywords Water Resources Congress.gov Link	Summary of Bill This bill establishes the Federal Infrastructure Bank and the Federal Infrastructure Bank Holding Company (FIBHC). The bank shall be a wholly owned subsidiary of the FIBHC.

Federal Infrastructure Bank Act of 2025 Passed (S/H) Bill Sponsor Rep. Webster, Daniel [R-FL-11]	House - Transportation and Infrastructure, House - Financial Services, House - Ways and Means Hearing(s) Support Bipartisan, CA	Activity Status Active	The bank must provide equity investments, direct loans, and loan guarantees for the planning, predevelopment, design, construction, operation, or maintenance of revenue-producing infrastructure projects in the United States with sufficient revenue sources and guarantees to support the interest and principal payments to the bank. At least 10% of the loans, equity investments, and loan guarantees must be for infrastructure projects in rural areas. Entities eligible for loans, equity investments, and loan guarantees include corporations, joint ventures, states, and governmental entities. The bank is prohibited from providing funding for infrastructure projects that are owned, directed, controlled, financed, or influenced by the Chinese government or the Chinese Communist Party.
Bill Number S.507 Bill Title Promoting Precision Agriculture Act of 2025 Passed (S/H) Bill Sponsor Sen. Thune, John [R-SD]	Date Introduced 02/11/2025 Assigned Committee(s) "Senate - Agriculture, Nutrition, and Forestry" Hearing(s) Support Bipartisan, SD	WSWC Keywords Water Resources, Agriculture Congress.gov Link Activity Status Active	Summary of Bill This bill requires the Department of Agriculture (USDA) to develop voluntary standards for precision agriculture (i.e., managing, tracking, or reducing crop or livestock production inputs, including seed, feed, fertilizer, chemicals, water, and time at a heightened level of spatial and temporal granularity to improve efficiencies, reduce waste, and maintain environmental quality). USDA, in consultation with the National Institute of Standards and Technology (NIST) and the Federal Communications Commission (FCC), must develop voluntary, consensus-based, private sector-led interconnectivity standards and best practices for precision agriculture to promote economies of scale and ease the burden of adoption. USDA must (1) coordinate with relevant public and trusted private sector stakeholders and relevant industry organizations, and (2) consult with sector-specific agencies and state and local governments.
Bill Number S.453 Bill Title Wildfire Intelligence Collaboration and Coordination Act of 2025 Passed (S/H) Bill Sponsor Sen. Padilla, Alex [D-CA]	Date Introduced 02/06/2025 Assigned Committee(s) "Senate - Agriculture, Nutrition, and Forestry" Hearing(s) Support Bipartisan, CA, CO, MT	WSWC Keywords Water Quality, Wildfire Congress.gov Link Activity Status Active	Summary of Bill The bill would establish a Wildfire Intelligence Center between the Departments of Agriculture, Commerce, and Department of the Interior to study, plan, coordinate, and implement the federal wildfire response. The Center would serve as a hub for comprehensive assessment and modeling of wildfires moving into the built environment to inform responses, land and fuels management, risk reduction, post-wildfire recovery, and rehabilitation. The Center would also aim to improve emergency planning with enhanced evacuation plans, power shutoff strategies, and fire response tactics and facilitate cross-coordination and information-sharing between departments and state, local, and tribal jurisdictions.
Bill Number S.386 Bill Title Critical Water Resources Prioritization Act of 2025 Passed (S/H) Bill Sponsor Sen. Lummis, Cynthia M. [R-WY]	Date Introduced 02/04/2025 Assigned Committee(s) Senate - Environment and Public Works Hearing(s) Support Republican, MT, WY	WSWC Keywords Water Resources, Water Quality, ESA, Water Infrastructure Congress.gov Link Activity Status Active	Summary of Bill The bill would amend the Endangered Species Act of 1973 to create exemptions from consultation requirements for federal agency actions that are necessary to meet critical human water needs, such as drinking water, firefighting, public health, and food security. These exemptions would be granted by the Secretary of Interior under specific conditions, including the implementation of water conservation measures and exploration of alternative water sources, and would be subject to temporary durations, renewal processes, and reporting requirements to ensure transparency and minimize impacts on protected species. Ultimately, the bill seeks to balance the protection of endangered species with the immediate needs of human populations for essential water resources.
Bill Number H.R.972 Bill Title Sloan Canyon Conservation and Lateral Pipeline Act Passed (S/H) Bill Sponsor	Date Introduced 02/04/2025 Assigned Committee(s) House - Natural Resources Hearing(s) House - 04/09/2025 Ordered to be Reported by Unanimous Consent. Support	WSWC Keywords Legal, Water Resources, Water Infrastructure Congress.gov Link Activity Status	Summary of Bill The bill would adjust the boundary of the Sloan Canyon National Conservation Area, as reflected in a new map that increases acreage from 48,438 acres to 57,728 acres. It would grant a right-of-way for a water pipeline to the Southern Nevada Water Authority. This expansion would be subject to valid existing rights, including land within designated utility transmission corridors or transmission line rights-of-way approved before the bill's enactment. The bill also ensures the preservation of existing utility corridors and the potential for new ones within designated areas.

Rep. Titus, Dina [D-NV-1]	Democrat, NV	Active	
Bill Number H.R.907 Bill Title Northern Montana Water Security Act of 2025 Passed (S/H) Bill Sponsor Rep. Zinke, Ryan K. [R-MT-1]	Date Introduced 01/31/2025 Assigned Committee(s) House - Natural Resources Hearing(s) Support Republican, MT	WSWC Keywords Legal, Water Resources, Indian Reserved Water Rights, Water Infrastructure Congress.gov Link Activity Status Active	Summary of Bill The bill would settle the long-standing water rights claims of the Fort Belknap Indian Community in Montana by ratifying the Fort Belknap-Montana water rights compact and confirming Tribal water rights. The bill would authorize the exchange and transfer of specific Federal and State lands. The bill would allocate 20,000 acre-feet of water per year from Lake Elwell to the Fort Belknap Indian Community and mandate Milk River Project mitigation activities, such as the restoration of the St. Mary Canal and the enlargement of the Dodson South Canal, with a funding limit of \$3M. Subject to appropriations, the Secretary of the Interior would also be directed to rehabilitate, modernize, and expand the Fort Belknap Indian Irrigation Project, with total obligations capped at \$4.2M. To manage the funds associated with these actions, the bill would establish the Aaniiih Nakoda Settlement Trust Fund and the Fort Belknap Indian Community Water Settlement Implementation Fund. Title II would authorize the appropriation of \$2.5M to the Secretary of the Interior for community water distribution and wastewater treatment facilities for the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana.
Bill Number H.R.841 Bill Title To amend title 54, United States Code, to prohibit the acquisition of land, water, or an interest in land or water from a private landowner using amounts made available under the Land and Water Conservation Fund. Passed (S/H) Bill Sponsor Rep. Arrington, Jodey C. [R-TX-19]	Date Introduced 01/31/2025 Assigned Committee(s) House - Natural Resources Hearing(s) Support	WSWC Keywords Legal, Water Resources Congress.gov Link Activity Status Active	Summary of Bill Under this bill a State that receives financial assistance from the Land and Water Conservation fund may not use such financial assistance for the acquisition of land, water, or an interest in land or water from a private landowner.
Bill Number H.R.836 Bill Title Emergency Wildfire Fighting Technology Act of 2025 Passed (S/H) House - 02/05/2025 On motion to suspend the rules and pass the bill Agreed to by voice vote. Bill Sponsor Rep. Valadao, David G. [R-CA-22]	Date Introduced 01/31/2025 Assigned Committee(s) House - Natural Resources, House - Agriculture, "Senate - Agriculture, Nutrition, and Forestry" Hearing(s) Support Bipartisan, CA, NV, WA	WSWC Keywords Water Quality, Wildfire Congress.gov Link Activity Status Active	Summary of Bill This bill requires the Forest Service and the Department of the Interior to (1) jointly evaluate the container aerial firefighting system to assess its use to mitigate and suppress wildfires, and (2) report on the results of the evaluation to Congress. The system allows for the use of airdrop-capable disposable containers of water or fire retardant in order to increase the number of airlift assets available for wildfire emergencies.
Bill Number S.350 Bill Title Wildfire Emergency Act of 2025 Passed (S/H) Bill Sponsor	Date Introduced 01/30/2025 Assigned Committee(s) Senate - Energy and Natural Resources Hearing(s) Support	WSWC Keywords Water Quality, Wildfire Congress.gov Link Activity Status	Summary of Bill The bill proposes actions to address wildfire risks and promote forest health. Title I focuses on landscape-scale forest restoration through conservation finance agreements, aiming to accelerate ecological improvements across large areas by leveraging diverse funding. Title II seeks to increase community resilience to wildfire by establishing programs for critical infrastructure microgrids and supporting fire-resistant retrofits in communities. Finally, Title III addresses research, training, and capacity building through the creation of prescribed fire training centers, an innovative forestry workforce development program, and a national grant program to enhance community involvement in land stewardship.

Sen. Padilla, Alex [D-CA]	Bipartisan, CA, MT	Active	
Bill Number S.324	Date Introduced 01/29/2025	WSWC Keywords Weather / S2S, Water Resources, Agriculture	Summary of Bill Would direct the Under Secretary of Commerce for Oceans and Atmosphere to establish at least two pilot projects focused on enhancing subseasonal to seasonal weather forecasting. These projects specifically target improvements relevant to water management in the western United States and agriculture nationwide. Water management projects must address key science challenges in improving forecasts and developing related products, including: 1) Improving operational model resolution (horizontal and vertical) to resolve issues associated with mountainous terrain, such as precipitation intensity and the rain-snow fraction; (2) improving the fidelity of operational modeling of the atmospheric boundary layer in mountainous regions; (3) resolving challenges in predicting winter atmospheric circulation and storm tracks, including periods of blocked versus unblocked flow over the eastern North Pacific Ocean and the western United States; (4) improving the forecast of atmospheric rivers; (5) improving the quality and temporal and spatial resolution of air-sea interaction observations, operational modeling of air-sea interactions, and operational modeling of the influence of oceans on subseasonal and seasonal forecasting. The legislation allocates \$45M annually for five years to support these forecasting enhancements.
Bill Title Smarter Weather Forecasting for Water Management, Farming, and Ranching Act of 2025	Assigned Committee(s) "Senate - Commerce, Science, and Transportation"	Congress.gov Link	
Passed (S/H)	Hearing(s)		
Bill Sponsor Sen. Rosen, Jacky [D-NV]	Support Democrat, CA, NM	Activity Status Active	
Bill Number S.322	Date Introduced 01/29/2025	WSWC Keywords Weather / S2S, Water Resources	Summary of Bill This legislation would mandate the establishment of a dedicated program to improve forecast lead times, accuracy, and dissemination through research, advanced modeling, and innovative data collection. The program would focus on developing better forecast systems, understanding the role of atmospheric rivers in precipitation, creating effective communication strategies, and transitioning research into operational practices. Key components include enhanced data assimilation, improved modeling for complex terrain, atmospheric river reconnaissance using aircraft, and the development of hazard communication methods. Ultimately, this bill seeks to reduce the risks associated with atmospheric rivers by providing more reliable and understandable forecast information to stakeholders and the public.
Bill Title Improving Atmospheric River Forecasts Act	Assigned Committee(s) "Senate - Commerce, Science, and Transportation"	Congress.gov Link	
Passed (S/H)	Hearing(s)		
Bill Sponsor Sen. Padilla, Alex [D-CA]	Support Bipartisan, AK	Activity Status Active	
Bill Number H.Res.71	Date Introduced 01/28/2025	WSWC Keywords Water Resources, Treaties, International Water Law	Summary of Bill This resolution condemns the Mexican government for not fulfilling annual water deliveries to the United States under a 1944 treaty between the United States and Mexico respecting utilization of waters of the Colorado and Tijuana Rivers and of the Rio Grande.
Bill Title Condemning the Government of Mexico for failing to fulfill its water deliveries on an annual basis to the United States under the treaty between the United States and Mexico regarding the utilization of the Colorado and Tijuana Rivers and of the Rio Grande.	Assigned Committee(s) House - Foreign Affairs	Congress.gov Link	
Passed (S/H)	Hearing(s)		
Bill Sponsor Rep. De La Cruz, Monica [R-TX-15]	Support Republican, TX	Activity Status Active	
Bill Number S.241	Date Introduced 01/24/2025	WSWC Keywords Water Resources, Legal, Indian Reserved Water Rights	Summary of Bill The bill would provide for the settlement of the water rights claims of the Fort Belknap Indian Community in Montana. This would involve ratifying and confirming a water rights compact between the Community and the State, authorizing the Secretary of the Interior to execute it, and authorizing necessary funds for its implementation. The bill would also authorize the exchange and transfer of specific Federal and State lands for the benefit of the Community. It would establish the Aaniiih Nakoda Settlement Trust Fund and the Fort Belknap Indian Community Water
Bill Title	Assigned Committee(s)	Congress.gov Link	

Northern Montana Water Security Act of 2025 Passed (S/H) Bill Sponsor Sen. Daines, Steve [R-MT]	Senate - Indian Affairs Hearing(s) Senate - 03/05/2025 Committee on Indian Affairs. Ordered to be reported without amendment favorably. Support Republican, MT	Activity Status Active	It would establish the Aaniiih Nakoda Settlement Trust Fund and the Fort Belknap Indian Community Water Settlement Implementation Fund to manage funds for water resources development, administration, and infrastructure projects. The bill also includes provisions for a storage allocation of water from Lake Elwell to the Fort Belknap Indian Community, mitigation for the Milk River Project, and the rehabilitation and expansion of the Fort Belknap Indian Irrigation Project. Title I outlines the satisfaction of claims and the waiver and release of certain water rights claims by the Fort Belknap Indian Community and the United States. Title II of the bill would authorize appropriations for planning, design, construction, operation, maintenance, and replacement of community water distribution and wastewater treatment facilities for the Blackfeet Tribe.
Bill Number H.R.726/S.240 Bill Title Crow Tribe Water Rights Settlement Amendments Act of 2025 Passed (S/H) Bill Sponsor Rep. Downing, Troy [R-MT-2]	Date Introduced 01/24/2025 Assigned Committee(s) House - Natural Resources Hearing(s) Support Republican, MT	WSWC Keywords Indian Reserved Water Rights, Legal, Water Infrastructure Congress.gov Link Activity Status Active	Summary of Bill The bill would redefine and rename the Municipal, Rural, and Industrial (MR&I) water infrastructure to "MR&I Projects" and repeal the section concerning the "MR&I System". The bill would also restructure the Crow Settlement Fund, establishing a dedicated "MR&I Projects Account" for water infrastructure development and a "Crow CIP Implementation Account." It would extend the timeframe related to Yellowtail Dam, modify funding procedures, and introduce an indexing adjustment for the MR&I Projects Account to account for cost fluctuations.
Bill Number S.228 Bill Title Acequia Communities Empowered by Qualifying Upgrades for Infrastructure Act Passed (S/H) Bill Sponsor Sen. Lujan, Ben Ray [D-NM]	Date Introduced 01/23/2025 Assigned Committee(s) "Senate - Agriculture, Nutrition, and Forestry" Hearing(s) Support Bipartisan, TX	WSWC Keywords Water Resources, Water Infrastructure Congress.gov Link Activity Status Active	Summary of Bill The bill would amend section 196 of the Federal Agriculture Improvement and Reform Act of 1996 to mandate that the Secretary of Agriculture provide assistance under the noninsured crop disaster assistance program to producers who rely on acequia systems for all losses suffered as a result of a determined cause of loss. It specifies that special use permits are not required for the presence or use of an acequia on Federal land, or for routine maintenance and minor improvements conducted by a community user or governing body of an acequia on Federal land. The bill defines "acequia," "community user," and outlines what constitutes "routine maintenance and minor improvements." It would require the Secretary of Agriculture to submit a report to Congress within two years of enactment detailing the number of producers relying on acequias, the amount of disaster assistance provided to them, an analysis of their ability to access Department of Agriculture programs, and a summary of relevant technical or financial assistance programs.
Bill Number H.R.716 Bill Title Fill the Lake Act Passed (S/H) Bill Sponsor Rep. Zinke, Ryan K. [R-MT-1]	Date Introduced 01/23/2025 Assigned Committee(s) House - Natural Resources Hearing(s) Support Republican, MT	WSWC Keywords Congress.gov Link Activity Status Active	Summary of Bill The bill would require the Department of Interior to maintain a minimum pool level on Flathead Lake of 2892' MSL (mean sea level) and a maximum of 2893' MSL from June 15th to September 15th of each calendar year. If enacted, the Fill the Lake Act would prevent a repeat of the 2023 season when regulators allowed the lake to drop almost two feet below full pool.
Bill Number H.R.635 Bill Title	Date Introduced 01/22/2025 Assigned Committee(s)	WSWC Keywords Water Resources, Indian Reserved Water Rights Congress.gov Link	Summary of Bill The bill would amend the Omnibus Public Land Management Act of 2009 to increase Tribal access to water conservation and efficiency grants. Specifically, it would allow the Secretary to reduce or waive the non-Federal share of the cost for infrastructure improvements or activities that are the subject of a grant or agreement between the Secretary and an Indian Tribe if the Secretary determines that contributing the non-Federal share would result in

WaterSMART Access for Tribes Act Passed (S/H)	House - Natural Resources Hearing(s)		the Secretary and an Indian Tribe if the Secretary determines that contributing the non-Federal share would result in a financial hardship for the Indian Tribe.
Bill Sponsor Rep. Stansbury, Melanie A. [D-NM-1]	Support Democrat, CA, CO, KS, NV, NM	Activity Status Active	
Bill Number H.R.626	Date Introduced 01/22/2025	WSWC Keywords Water Resources	Summary of Bill The bill would require the Secretaries of the Interior, Energy, and the Army to operate the Federal Columbia River Power System (FCRPS) according to the alternative outlined in the September 2020 Columbia River System Operations Environmental Impact Statement Record of Decision (the "Supplemental Opinion"). Amendments to this operation plan would only be allowed if all Secretaries agree they are necessary for public safety or grid reliability, or if the changes remove unwarranted requirements, and this would be the sole way to operate the FCRPS differently. Furthermore, no action restricting FCRPS electrical generation or navigation on the Snake River could proceed without explicit authorization by a federal statute enacted after H.R. 626's passage, though this does not affect routine operation and maintenance.
Bill Title Northwest Energy Security Act	Assigned Committee(s) House - Natural Resources, House - Transportation and Infrastructure	Congress.gov Link	
Passed (S/H)	Hearing(s)		
Bill Sponsor Rep. Newhouse, Dan [R-WA-4]	Support Republican, ID, OR, WA	Activity Status Active	
Bill Number H.R.605	Date Introduced 01/22/2025	WSWC Keywords Water Quality, DOI, Public-Private Partnerships	Summary of Bill The bill would reauthorize and significantly increase the funding for the Water Source Protection Program, allocating \$30,000,000 for each of fiscal years 2025 through 2033, a substantial increase from the previous authorization of \$10,000,000 per year. It also authorizes \$30,000,000 for each of fiscal years 2025 through 2029 to carry out improvements to the Watershed Condition Framework. The bill would reauthorize and significantly increase the funding for the Water Source Protection Program, allocating \$30,000,000 for each of fiscal years 2025 through 2033, a substantial increase from the previous authorization of \$10,000,000 per year. It also authorizes \$30,000,000 for each of fiscal years 2025 through 2029 to carry out improvements to the Watershed Condition Framework. The bill would formally define "adjacent land" as non-Federal land within the same watershed as National Forest System land where a watershed protection and restoration project is being carried out. The required non-Federal partner contribution would be set at not less than 20 percent of the project costs, although the Secretary would have the discretion to waive this requirement. Not less than 10 percent of the funds made available for the Water Source Protection Program each fiscal year would be used for non-Federal partner technical assistance participation and
Bill Title Headwaters Protection Act of 2025	Assigned Committee(s) House - Agriculture, House - Natural Resources	Congress.gov Link	
Passed (S/H)	Hearing(s)		
Bill Sponsor Rep. Costa, Jim [D-CA-21]	Support Bipartisan, CA, WA, CO, NM	Activity Status Active	
Bill Number S.154	Date Introduced 01/21/2025	WSWC Keywords Colorado River Basin, Conservation, Water Resources	Summary of Bill The bill would extend the authorization for the Colorado River System conservation pilot program, allowing for new water conservation agreements to be entered into until 2026, and ensuring that funds remain available for obligation until 2027. This represents a two-year extension beyond the original timelines specified in the Energy and Water Development and Related Agencies Appropriations Act, 2015.
Bill Title Colorado River Basin System Conservation Extension Act	Assigned Committee(s) Senate - Energy and Natural Resources	Congress.gov Link	
Passed (S/H)	Hearing(s)		
Bill Sponsor Sen. Hickenlooper, John W. [D-CO]	Support Bipartisan, WY, UT, CO	Activity Status Active	
Bill Number H.R.582	Date Introduced 01/21/2025	WSWC Keywords Wildfire	Summary of Bill This bill would invest \$1 billion per year to: (1) Establish guidelines for communities to conceptualize new Community Protection and Wildfire Resilience Plans (CPWRP) that are developed in coordination with community members, first responders, and relevant state agencies; (2) Provide grants of up to \$250,000 to develop a CPWRP and grants of up to \$10 million to implement a CPWRP; (3) Complete a report on all federal authorities and programs to protect communities from wildfires; (4) Study how a CPWRP could be used as certification for insurance companies assessing community resilience; (5) Continuously update wildfire hazard maps; (6) Assess impediments to emergency radio communications across departments and agencies; (7) Allow for structure hardening to be covered under existing community wildfire protection programs.
Bill Title Community Protection and Wildfire Resilience Act	Assigned Committee(s) "House - Science, Space, and Technology", House - Natural Resources, House - Agriculture	Congress.gov Link	
Passed (S/H)	Hearing(s)		
Bill Sponsor Rep. Huffman, Jared [D-CA-2]	Support Bipartisan, CA	Activity Status Active	
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill

H.R.573 Bill Title Studying NEPA's Impact on Projects Act Passed (S/H) Bill Sponsor Rep. Yakym, Rudy [R-IN-2]	01/21/2025 Assigned Committee(s) House - Natural Resources Hearing(s) Support Bipartisan, CA, ID, KS	NEPA, Water Quality Congress.gov Link Activity Status Active	The bill would mandate the Council on Environmental Quality (CEQ) to publish an annual report on the impact of the National Environmental Policy Act of 1969 (NEPA) on projects. This report would be required to be published on the CEQ's website and submitted to the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources, starting on July 1, 2025. This report would detail causes of action alleging NEPA non-compliance, including defendant agencies, plaintiffs, courts, alleged bases, and outcomes. It would also include data on the length of environmental impact statements (EISs) and environmental assessments (EAs), such as average and median page counts, disaggregated by agency and trends over time. Furthermore, the report would cover the total cost to prepare these documents, including personnel and contractor costs. Finally, it would analyze the timelines for completing environmental reviews, outlining key dates for major federal actions and providing average and median completion times. All this information must be disaggregated by project type and covered
Bill Number H.R.471 Bill Title Fix Our Forests Act Passed (S/H) House: 01/23/2025--On passage Passed by the Yeas and Nays: 279 - 141 Bill Sponsor Rep. Westerman, Bruce [R-AR-4]	Date Introduced 01/16/2025 Assigned Committee(s) House - Natural Resources, House - Agriculture, "House - Science, Space, and Technology", "Senate - Agriculture, Nutrition, and Forestry" Hearing(s) Senate: 03/06/2025--Committee on Agriculture, Nutrition, and Forestry--Hearings Held. Support Bipartisan, CA, CO, NV, TX, UT, AK, AZ, WY, WA, SD, OR, NM, MT	WSWC Keywords Wildfire, NEPA, Water Quality Congress.gov Link Activity Status Active	Summary of Bill This bill establishes requirements for managing forests on federal land, including requirements concerning reducing wildfire threats, expediting the review of certain forest management projects, and implementing forest management projects and other activities. Specifically, the bill (1) designates certain firesheds at high risk for wildfires as fireshed management areas; (2) directs the U.S. Forest Service and U.S. Geological Survey to jointly establish an interagency Fireshed Center that is responsible for duties related to assessing and predicting fire, including maintaining a fireshed registry on a publicly accessible website that provides interactive geospatial data on individual firesheds; and (3) makes other requirements related to reducing wildfire. Next, the bill expedites the review of certain forest management projects under the National Environmental Policy Act (NEPA) of 1969 and exempts certain activities from NEPA review. It also establishes intra-agency strike teams to accelerate the review and any interagency consultation processes under NEPA, the Endangered Species Act of 1973, and the National Historic Preservation Act. It also limits consultation requirements concerning threatened and endangered species under the Forest and Rangeland Renewable Resources Planning Act of 1974 and the Federal Land Management and Policy Act of 1976. Finally, it limits litigation involving fireshed management projects and
Bill Number H.R.441 Bill Title Drought Assistance Improvement Act Passed (S/H) Bill Sponsor Rep. Letlow, Julia [R-LA-5]	Date Introduced 01/15/2025 Assigned Committee(s) House - Agriculture Hearing(s) Support Republican	WSWC Keywords Drought, Agriculture, Water Resources Congress.gov Link Activity Status Active	Summary of Bill This bill modifies access to two Farm Service Agency (FSA) administered programs: the Livestock Forage Disaster Program (LFP) and the Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish Program (ELAP). The bill modifies the LFP to allow for one monthly payment when a county has four consecutive weeks of a D2 rating (severe drought) and two payments for eight consecutive weeks of D2. Currently, one payment is available for eight consecutive weeks of D2. As background, LFP makes payments to eligible livestock producers who have suffered grazing losses on drought-affected pastureland, including cropland planted specifically for grazing. The bill also expands coverage under ELAP for losses caused by adverse weather or drought. The bill includes under ELAP the loss of a crawfish harvest due to adverse weather or drought. As background, ELAP provides
Bill Number S.93/H.R.644 Bill Title Harmful Algal Bloom and Hypoxia Research and Control Amendments Act of 2025 Passed (S/H) Bill Sponsor Sen. Sullivan, Dan [R-AK];Rep. Bonamici, Suzanne [D-OR-1]	Date Introduced 01/14/2025 Assigned Committee(s) "Senate - Commerce, Science, and Transportation" Hearing(s) Senate - 02/05/2025 Committee on Commerce, Science, and Transportation. Ordered to be reported without amendment favorably Support Bipartisan, AK, CA, OR, TX	WSWC Keywords Water Quality, DOI, Clean Water Act (CWA), HABS Congress.gov Link Activity Status Active	Summary of Bill The bill would update the Harmful Algal Bloom and Hypoxia Research and Control Task Force by adding the Department of Energy as a member. This Task Force would be required to submit an action strategy for harmful algal blooms to Congress every five years, including scientific assessments of these blooms in various water systems and examining their causes, impacts, and potential prevention methods. The National Harmful Algal Bloom and Hypoxia Program would be updated to emphasize monitoring, observing, and forecasting of these events. The bill would also define specific roles for NOAA in responding to marine and Great Lakes events and for the EPA in addressing freshwater blooms, focusing on research, monitoring, and forecasting. Furthermore, a National Harmful Algal Bloom Observing Network would be established to integrate monitoring capabilities, and a National-Level Incubator Program would be created to foster the development of new prevention and mitigation technologies. The bill would also update key definitions, such as "harmful algal bloom" and "subsistence use," and include definitions for "Indian tribe" and "Native Hawaiian organization". Finally, the bill would amend the National Integrated Drought Information System Reauthorization Act of 2018 to improve the process for declaring events of national significance related to harmful algal blooms and hypoxia, including potential waivers of non-federal share requirements and providing financial assistance.
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill

S.91	01/14/2025	Wildfire, Water Quality, Water Resources	The bill would require more detailed reporting on obligated and expended firefighting funds, mandate reimbursement to States when military activities cause fires, and require better planning for wildfire management. The bill would expedite the placement and use of wildfire detection equipment and satellite data, expand tribal access to slip-on tanker units, and require research and development on wildfire response applications of drones and other response technologies. It would provide funding for online guides to provide guidance to disaster victims, create permanent Burned Area Emergency Response Teams (BAER), and establish a Long-Term Burned Area Rehabilitation account.
Bill Title Western Wildfire Support Act of 2025	Assigned Committee(s) Senate - Energy and Natural Resources	Congress.gov Link	
Passed (S/H)	Hearing(s)		
Bill Sponsor Sen. Cortez Masto, Catherine [D-NV]	Support Bipartisan, NV, MT	Activity Status Active	
Bill Number H.R.387	Date Introduced 01/14/2025	WSWC Keywords Water Resources, Colorado River Basin, Treaties, Agriculture	Summary of Bill This bill directs the Department of Agriculture (USDA) to submit a report to Congress on USDA assistance available for agricultural producers in Texas related to Mexico's non-compliance with a 1944 treaty with the United States concerning water utilization.
Bill Title Texas Agricultural Producers Assistance Act	Assigned Committee(s) House - Agriculture	Congress.gov Link	Specifically, the USDA report must list all of the existing USDA authorities and programs that are or could be made available to provide assistance to agricultural producers in Texas that have suffered economic losses due to Mexico not delivering water to the United States in accordance with the Treaty on Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, including the Supplementary Protocol.
Passed (S/H)	Hearing(s)		
Bill Sponsor Rep. De La Cruz, Monica [R-TX-15]	Support Bipartisan, TX	Activity Status Active	
Bill Number H.R.338	Date Introduced 01/13/2025	WSWC Keywords Water Resources, Aquifer Recharge, BOR, Groundwater, Water Infrastructure	Summary of Bill This bill expands the Bureau of Reclamation's Small Storage Program, which is a grant program for small surface water or groundwater storage projects in certain western states.
Bill Title Every Drop Counts Act	Assigned Committee(s) House - Natural Resources	Congress.gov Link	First, the bill expands the types of projects that are eligible for grants under the program. Specifically, the bill makes a project eligible for a grant if the project (1) has water storage capacity of recharges no less than 200 acre-feet and no more than 150,000 acre-feet on an average annual basis over the life of the project for storage or use; and (2) increases groundwater aquifer storage, conveys water to or recovers water from groundwater storage, and stabilizes groundwater levels.
Passed (S/H)	Hearing(s)		Next, it extends Reclamation's authority to carry out the grant program for another five years.
Bill Sponsor Rep. Costa, Jim [D-CA-21]	Support Bipartisan, ID, CA	Activity Status Active	
Bill Number H.R.337	Date Introduced 01/13/2025	WSWC Keywords Water Resources, Aquifer Recharge, Groundwater, BOR, Water Infrastructure	Summary of Bill This bill modifies the Infrastructure Investment and Jobs Act to allow unobligated balances of amounts made available to the Bureau of Reclamation for western water infrastructure to be made available to Reclamation for FY2026-2031 to provide financial or technical assistance for (1) groundwater recharge projects, (2) aquifer storage and recovery projects, or (3) water source substitution for aquifer protection projects.
Bill Title To provide technical and financial assistance for groundwater recharge, aquifer storage, and water source substitution projects	Assigned Committee(s) House - Natural Resources	Congress.gov Link	
Passed (S/H)	Hearing(s)		
Bill Sponsor Rep. Costa, Jim [D-CA-21]	Support Bipartisan, CA	Activity Status Active	
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill

H.R. 331	01/13/2025	Water Resources, Groundwater, Aquifer Recharge, Public-Private Partnerships	This bill modifies the Aquifer Recharge Flexibility Act to expand provisions concerning authorizations (e.g., rights-of-way) to transport water across public land administered by the Bureau of Land Management (BLM) for aquifer recharge purposes.
Bill Title To amend the Aquifer Recharge Flexibility Act to clarify a provision relating to conveyances for aquifer recharge purposes.	Assigned Committee(s) House - Natural Resources	Congress.gov Link	Under the Aquifer Recharge Flexibility Act, the holder of existing rights-of-way, easements, permits, or other authorizations to transport water across BLM land may transport the water for aquifer recharge purposes without additional authorization from the Department of the Interior so long as the use does not expand or modify the operation of such authorizations across public land.
Passed (S/H)	Hearing(s) House - 02/12/2025 Ordered to be Reported (Amended) by Unanimous Consent		The bill allows the holders of such authorizations to act not only on behalf of themselves, but also on behalf of states, Indian Tribes, or public entities, to use the existing authorizations for aquifer recharge without additional authorization from the Department of the Interior. Further, the bill states that this use may not be considered an expansion, modification, major federal action, or substantial deviation.
Bill Sponsor Rep. Fulcher, Russ [R-ID-1]	Support Republican, ID	Activity Status Active	Additionally, the bill exempts holders from paying additional rents to the BLM for any use of such authorizations; however, the exemption does not apply to for-profit uses of aquifer recharge or for-profit entities.
Bill Number H.R.302	Date Introduced 01/09/2025	WSWC Keywords Water Resources, Legal, Water Rights	Summary of Bill To prohibit the conditioning of any permit, lease, or other use agreement on the transfer of any water right to the United States by the Secretary of the Interior and the Secretary of Agriculture, and for other purposes.
Bill Title Water Rights Protection Act of 2025	Assigned Committee(s) House - Natural Resources, House - Agriculture	Congress.gov Link	This bill limits the transfer of water rights from water users to the Department of the Interior or the Department of Agriculture (USDA).
Passed (S/H)	Hearing(s) 02/12/2025 Ordered to be Reported in the Nature of a Substitute by the Yeas and Nays: 22 - 16. 02/14/2025 Referred to the Subcommittee on Conservation, Research, and Biotechnology.		First, the bill prohibits Interior and USDA from conditioning the issuance or renewal of land use or occupancy agreements (e.g., permits and leases) on the transfer of any water right to the United States. Next, it prohibits Interior and USDA from requiring water users, including Indian tribes, to acquire water rights in the name of the United States as a condition of the issuance or renewal of a land use or occupancy agreement. Finally, it prohibits Interior and USDA from conditioning or withholding the issuance or renewal of land use or occupancy agreements on (1) limiting the date, time, quantity, location of diversion or pumping, or place of use of a state water right beyond any applicable limitations under state water law; or (2) modifying the terms and conditions of groundwater withdrawal, guidance and reporting procedures, or conservation and source protection measures established by a state.
Bill Sponsor Rep. Maloy, Celeste [Rep.-R-UT-2]	Support Republican, UT, ID, AZ, KS	Activity Status Active	Interior and USDA must also ensure that federal action imposes no greater restriction or regulatory requirement than under applicable state water law.
Bill Number H.R.231	Date Introduced 01/07/2025	WSWC Keywords Water Resources, Water Infrastructure, Conservation	Summary of Bill To amend the Energy and Water Development and Related Agencies Appropriations Act, 2015, to reauthorize the Colorado River System conservation pilot program.
Bill Title Colorado River Basin System Conservation Extension Act of 2025	Assigned Committee(s) House - Natural Resources	Congress.gov Link	
Passed (S/H)	Hearing(s) 02/12/2025 Ordered to be Reported (Amended) by Unanimous Consent.		
Bill Sponsor Rep. Hageman, Harriet M. [Rep.-R-WY-At Large]	Support Republican, WY	Activity Status Active	
Bill Number H.R.191	Date Introduced 01/03/2025	WSWC Keywords Water Resources, Water Infrastructure, DOI, BOR, DOA	Summary of Bill This bill repeals the Inflation Reduction Act of 2022 and rescinds any unobligated funds made available by the act.
Bill Title	Assigned Committee(s)	Congress.gov Link	

Inflation Reduction Act of 2025	House - Natural Resources, House - Agriculture, House - Ways and Means, "House - Science, Space, and Technology", House - Oversight and Government Reform, House - Transportation and Infrastructure		
Passed (S/H)	Hearing(s)		
Bill Sponsor Rep. Ogles, Andrew [R-TN-5]	Support Republican, AZ, TX, MT, OK, WY	Activity Status Active	
Bill Number H.R.187	Date Introduced 01/03/2025	WSWC Keywords Water Quality, Legal, WOTUS	Summary of Bill This bill directs the Forest Service and the Department of the Interior to standardize and publish data relating to public's access to federal waterways for recreational use.
Bill Title MAPWaters Act of 2025	Assigned Committee(s) House - Natural Resources, House - Agriculture, Senate - Energy and Natural Resources	Congress.gov Link	Specifically, the Forest Service and Interior must jointly develop and adopt interagency standards for data collection and dissemination of geospatial data relating to public outdoor recreational access of federal waterways and federal fishing restrictions. The standards must ensure compatibility and interoperability among applicable federal databases with respect to collection and dissemination of such data.
Passed (S/H) House: 01/21/2025 On motion to suspend the rules and pass the bill, as amended Agreed to by the Yeas and Nays: (2/3 required): 413 - 0 (Roll no. 19). (text: CR H238-239)	Hearing(s)		Within five years, the Forest Service and Interior must also digitize and make publicly available online certain geographic information system data about (1) federal waterway restrictions, (2) federal waterway access and navigation information, and (3) federal fishing restrictions. They must also update the data about waterway restrictions, waterway access, and navigation information at least twice per year. Data about fishing restrictions must be updated in real time as changes go into effect.
Bill Sponsor Rep. Moore, Blake D. [R-UT-1]	Support UT, Bipartisan, CA	Activity Status Active	Finally, the Forest Service and Interior must develop a process to allow members of the public to submit questions or comments regarding the data regarding waterway restrictions, waterway access, and navigation information.
Bill Number H.R.167	Date Introduced 01/03/2025	WSWC Keywords Water Resources, Water Quality, Abandoned Mines, Public-Private Partnerships	Summary of Bill This bill revises the Abandoned Mine Land Reclamation Program, which restores land and water adversely impacted by surface coal mines that were abandoned before August 3, 1977.
Bill Title Community Reclamation Partnerships Act of 2025	Assigned Committee(s) House - Natural Resources	Congress.gov Link	Until September 30, 2032, the bill allows a state with an approved reclamation program to enter into a memorandum of understanding with relevant federal or state agencies for remediating mine drainage on abandoned mine land and water impacted by abandoned mines.
Passed (S/H)	Hearing(s)		In addition, the bill authorizes a partnership between a state and a community reclaimer for remediating abandoned mine land if certain conditions are met. A community reclaimer is a person who (1) voluntarily assists a state in a reclamation project, (2) did not participate in the creation of site conditions at the proposed site or activities that caused any land or waters at the site to become eligible for reclamation or drainage abatement expenditures, and (3) is not subject to outstanding violations of surface coal mining permits.
Bill Sponsor Rep. LaHood, Darin [R-IL-16]	Support Republican	Activity Status Active	
Bill Number H.R.132	Date Introduced 01/03/2025	WSWC Keywords Water Resources, Water Infrastructure	Summary of Bill To amend the Water Infrastructure Improvements for the Nation Act to extend certain contract prepayment authority. This bill permanently authorizes a provision under the Water Infrastructure Improvements for the Nation (WIIN) Act that (1) allows certain water users (e.g., agriculture and municipal water users) in western states to prepay what they owe under contracts with the Bureau of Reclamation for delivering water through a lump sum payment or over a period of three years; and (2) requires a specified portion of the receipts generated from such prepayments be directed to the Reclamation Water Storage Account for the construction of water storage. Such prepayments do not alter certain requirements for the disposition of amounts that are directed by project-specific statutes in effect prior to the passage of the WIIN Act to accounts other than the General Reclamation Fund.
Bill Title Western Water Accelerated Revenue Repayment Act	Assigned Committee(s) House - Natural Resources	Congress.gov Link	
Passed (S/H)	Hearing(s)		
Bill Sponsor Rep. Boebert, Lauren [R-CO-4]	Support Republican, CO	Activity Status Active	
Bill Number	Date Introduced	WSWC Keywords	Summary of Bill

H.R.131 Bill Title Finish the Arkansas Valley Conduit Act Passed (S/H) Bill Sponsor Rep. Boebert, Lauren [R-CO-4]	01/03/2025 Assigned Committee(s) House - Natural Resources Hearing(s) Support Republican, CO	Water Resources, BOR, Water Infrastructure Congress.gov Link Activity Status Active	This bill reduces payments that communities within the Arkansas River Valley must pay to the Bureau of Reclamation for the construction of the Arkansas Valley Conduit, a pipeline in Colorado for delivering water from the Pueblo Reservoir to such communities. Specifically, it removes interest payments and extends the repayment period to 100 years.
Bill Number S.462 Bill Title Truckee Meadows Public Lands Management Act Passed (S/H) Bill Sponsor Sen. Rosen, Jacky [D-NV]	Date Introduced Assigned Committee(s) Hearing(s) Support Democrat, NV	WSWC Keywords Congress.gov Link Activity Status Active	Summary of Bill The bill would convey specific federal parcels to local entities in Washoe County, Nevada including the cities of Reno and Sparks, Washoe County, the school district, and other improvement districts for public purposes. The legislation proposes transferring federal land into trust for several Native American tribes, expanding their reservations. Finally, the bill designates new wilderness areas and National Conservation Areas, establishing guidelines for their management and resource protection, while also addressing the future of existing wilderness study areas and grazing permits.

Litigation Update
206th WSWC Meeting
Lincoln, Nebraska
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This summary describes developments regarding notable litigation that pertains to WGA/WSWC policies or cases that are otherwise of interest. It focuses primarily on developments that have taken place since the beginning of 2025.

Case Name	Issues	Excessive groundwater pumping
<i>Arizona v. Fondomonte</i>	Arizona's AG brought this nuisance action in an effort to enjoin Fondomante (an alfalfa grower that is a subsidiary of a Suadi Arabian company) from excessively pumping groundwater in violation of A.R.S. §13-2917, and to require the defendant to establish an abatement fund. Arizona alleged adverse effects on public health and safety, land subsidence, water quality degradation, a rapidly dropping water table, with anticipated damage to infrastructure and worsening groundwater shortages in the Ranengras Basin if the pumping isn't stopped. Arizona alleged that Fondomante has been pumping excessive groundwater since 2014, with wells capable of pumping 4,000 gpm. Wells near the Fondomante land have been going dry in recent years.	
Case Number		
CV2024-035721		
Court		
Superior Court of Arizona, Maricopa County		
Relevant Dates		
2/11/24: Arizona Complaint filed 1/28/25: Motion for More Definite Statement 4/9/25: Fondomonte's Answer		
Related Cases		
Notes		
https://www.superiorcourt.maricopa.gov/docket/CivilCourtCases/caseInfo.asp?caseNumber=CV2024-035721		
Case Name	Issues	Public Trust Doctrine
<i>Utah Physicians for a Healthy Environment et al. v. Utah Department of Natural Resources, et al</i>	The complaint asserted a claim against the State agencies for a breach of trust for failure to protect the public resources in the Great Salt Lake (GSL). In particular, the plaintiffs sought a declaratory judgment that the "public trust doctrine imposes a duty on [State] Defendants to identify and implement feasible means of maintaining the Great Salt Lake at least at the [4,198 feet] level, including the reduction of unsustainable upstream diversions."	
Case Number		
#230906637	The Utah Division of Water Rights argued in their Motion to Dismiss that "inserting water rights into Utah's public trust doctrine goes against the long-standing water public policy of the state" and "the State Engineer lacks legal authority to curtail water rights to maintain lake levels."	
Court		
Utah Third District Court	The Central Utah, Jordan Valley, and Weber Basin Water Conservancy Districts, intervener defendants, argued that the court lacks jurisdiction because "(1) federally owned water rights and related facilities are subject to sovereign immunity; (2) by seeking to 'modify' the legal extent of every water right in the GSL Basin, Plaintiffs are effectively seeking a general adjudication of water rights, but general adjudications are special statutory civil actions which can only be brought pursuant to Title 73, Chapter 4; and (3) District projects include trans-basin diversions to import hundreds of thousands of acre-feet of water from the Colorado River Basin to the Wasatch Front, and issues related to such 'imported water' can only be determined in a general adjudication proceeding." The Water Conservancy Districts also noted that the complaint failed to join either the tens of thousands of water right holders or the United States as parties to the complaint.	
Relevant Dates		
September 2024: Hearing on Motions to Dismiss 3/27/25: Court decision partially granting the Motions to Dismiss, moving forward with the more limited question of the scope of the public trust doctrine in Utah	Water user organizations that intervened as defendants included water districts, municipalities, and a regional power company. They argued that "modifying water rights is constitutionally prohibited, the Plaintiffs' proposed remedy is an uncompensated taking of private property and creates impossible conflicts among state agencies, that article XX, section 1 of the Utah Constitution is not self-executing, and Plaintiffs have no claim under Utah's Uniform Trust Code."	
Related Cases		
Notes	The Court disagreed with the arguments to the extent that it has subject matter jurisdiction to "issue a limited declaratory judgment regarding (a) the scope of the public trust doctrine, which includes the navigable waters of the [GSL]; (b) the scope of the State's duties as trustee of the public trust, which includes the duty to protect the Great Salt Lake from substantial impairment and preserve the waters of the [GSL] so that can be used for the trust purposes of navigation, commerce, fishing, and recreation; and (c) the State's alleged breach of its trustee duties. However, the court agrees with Defendants that it does not have subject matter jurisdiction to issue declaratory relief in the form of an order directing the State to 'review, and where necessary, modify [upstream] diversions to protect and preserve the public trust. Consequently, the court grants the Motions to Dismiss with respect to this aspect of Plaintiffs' declaratory judgment claim."	
Case Name	Issues	CEQ Rulemaking Authority; 2024 NEPA Rule
<i>Iowa et al. v. CEQ</i>	A coalition of 21 states (including AK, ID, KS, MT, NE, ND, SD, TX, UT, and WY) alleged that the 2024 NEPA Rule violated the NEPA statute and the Administrative Procedures Act (APA), and requested that the 2024 Rule be vacated and the 2020 Rule reinstated. The Plaintiff States argued: "NEPA is a procedural statute intended to ensure that federal agencies take a hard look at the environmental impacts of their proposed actions. The statute does not require or authorize an	
Case Number		

#1:24-cv-00089	agency to take any substantive actions or elevate the protection of environmental resources above other priorities." The Plaintiff States noted that the 2024 Rule failed to sufficiently consider its own relevant impacts under the NEPA statute. They argued that there is no statutory or Congressional authority to create exceptions for beneficial impacts or special environmental assessments.	
Court		
U.S. District Court for North Dakota		
Relevant Dates	A coalition of 13 States intervened as defendants (including CA, CO, NM, and OR). They argued that the 2024 NEPA Rule "reverses many of the remaining problematic provisions of the 2020 Rule and reinstates aspects of the 1978 regulations, while also modernizing and updating the 1978 regulations, in ways that streamline review and increase public participation, without sacrificing quality analysis. The Final Rule correctly recognizes federal agencies' obligation under NEPA to identify, analyze, and consider alternatives and mitigation measures for the reasonably foreseeable direct, indirect, and cumulative effects, including 'climate change related effects' of all major federal actions." The State Intervenor Defendants noted that under a reinstated 2020 Rule, they would lose the opportunity to comment on actions that proceed under the diminished public process of a categorical exclusion, or challenge them before environmental or health injuries occur, and it would interfere with their sovereign interests in their respective state lands, waters, and other natural resources.	
2/3/24: Court ruling that CEQ has no rulemaking authority.		
Related Cases		
Notes	On 2/3/25, the Court ruled on 4 summary judgment motions and held that the Council on Environmental Quality (CEQ) has no rulemaking authority and vacated the 2024 National Environmental Policy Act (NEPA) Implementing Regulations, Revisions Phase 2 (89 FR 35442) on a nationwide basis.	
	"NEPA is not ambiguous. The plain text of the statute does not give CEQ authority to issue binding regulations. NEPA only authorizes CEQ to make recommendations to the President.... For forty years CEQ's authority has been assumed, but these assumptions by the courts and others do not constitute binding precedent."	
	"It is very likely that if the CEQ has no authority to promulgate the 2024 Rule, it had no authority for the 2020 Rule or the 1978 Rule and the last valid guidelines from CEQ were those set out under President Nixon. However, vacating a rule does not mean the Court decides the appropriate replacement. The law states that vacating simply reinstates the previous rule. The validity of the 2020 Rule is not before this Court. Whether or not the 2020 Rule conflicts with the FRA [2023 Fiscal Responsibility Act (P.L. 118-5)] does not affect this Court's ruling and is not relevant to this decision. The Court holds CEQ has no rulemaking authority and therefore, the 2024 Rule is invalid and vacated as a matter of law."	
Case Name	Issues	CEQ Rulemaking Authority; NEPA compliance
<i>Marin Audubon Society v. FAA</i>	In the underlying case, petitioners challenged the Federal Aviation Administration and the National Park Service on compliance with NEPA in their development of an Air Tour Management Plan (ATMP) for four national parks near San Francisco. Petitioners argued that the Agencies had improperly relied on a categorical exclusion under NEPA to approve the ATMP. The court found the Agencies' NEPA analysis had used an improper baseline for flight traffic and vacated the plan.	
Case Number		
#23-1067		
Court	However, both parties argued the case based on CEQ's regulations. The court said those arguments could not be addressed and declared the CEQ's NEPA regulations themselves were outside CEQ's authority. "Over many years, our court has expressed serious concerns about whether CEQ's regulations had any 'binding effect' because it was 'far from clear' that CEQ had any 'regulatory authority under [NEPA]'.... It is time for our court's long-standing misgivings to be put to the test..." The court characterized the question as a separation of powers issue, pointing out that CEQ traces its authority to an Executive Order of the President and not legislation: "No statutory language states or suggests that Congress empowered CEQ to issue rules binding on other agencies—that is, to act as a regulatory agency rather than as an advisory agency. NEPA contains nothing close to the sort of clear language Congress typically uses to confer rulemaking authority." The court disagreed that the CEQ's regulations could be justified under the "Take Care Clause" of the Constitution (Art. III, Sec. 3). The court reasoned that upholding the CEQ regulations as an exercise of Presidential oversight would imply that the President could circumvent the limitations of agencies, which derive their powers solely from congressional statutes. The court also examined specific legal provisions cited by President Carter in Executive Order 11991 (42 FR 26967), which purportedly authorized CEQ to issue regulations. Reviewing Section 309 of the Clean Air Act, the court determined that it only supports CEQ's role as advisory and not regulatory. It also considered the Environmental Quality Improvement Act of 1970, which established an Office of Environmental Quality headed by CEQ's chairman, and found that the authority granted was to assist other federal agencies, not broad rulemaking authority.	
D.C. Circuit		
Relevant Dates		
2/12/24: Court ruling on case		
Related Cases		
Notes		
Case Name	Issues	NPDES Permits with Narrative Limits
<i>San Francisco v. EPA</i>	On March 4, 2025, the Supreme Court held in a 5-4 decision that §1311(b)(1)(C) does not authorize EPA to issue NPDES permits with "end result" provisions, such as conditioning compliance on the quality of receiving waters. Determining the necessary steps to meet WQS is EPA's responsibility (in this context). This does not preclude narrative criteria that EPA and states use to require permittees to follow certain best practices. "Because of the harsh penalties for violating the terms of a permit, the permit shield is invaluable. Because of it, a discharger that complies with all permit conditions can rest assured that it will not be penalized. But the benefit of this provision would be eviscerated if the EPA could impose a permit provision making the permittee responsible for any drop in water quality below the accepted standard. A permittee could do everything required by all the other permit terms. It could devise a careful plan for protecting water quality, and it could diligently implement that plan. But if, in the end, the quality of the water in its receiving waters dropped below the applicable water quality levels, it would face dire potential consequences. It is therefore exceedingly hard to reconcile the Government's interpretation of §1311(b)(1)(C) with the permit shield." The Court also pointed out "the absence of any provision dealing with the problem that arises when more than one permittee discharges into a body of water with substandard water quality."	
Case Number		
#23-753		
#21-70282		
Court	BACKGROUND: San Francisco's wastewater treatment plant discharges treated effluent and combined stormwater-sewer overflows into the near-shore Pacific Ocean, which requires joint NPDES permits from EPA and the local region of the State Water Quality Control Board. In addition to numeric limitations that apply during dry weather, the permit includes a set of comprehensive management requirements for operations during wet weather. Because EPA determined the management requirements would not necessarily achieve WQS, they added provisions that demand the city not violate WQS, but without setting pollutant limits. The city challenged the generic prohibitions in the permit as not compliant with the CWA. The 9th Circuit panel found that the provisions of 33 USC §1311(b)(1)(C) and 40 CFR §122.44(d) empower EPA and states to impose generic prohibitions against violating WQS when necessary, and that EPA possesses the discretion to translate WQS into WQBELs expressed numerically or as generic prohibitions and management practices. The city petitioned for certiorari, arguing that this approach "will encourage EPA and states to continue imposing water quality prohibitions that cause permittees to labor under NPDES permits that fail to define their pollution control obligations with the clarity that the [CWA] demands."	
U.S. Supreme Court		
9th Circuit		
Relevant Dates	Issue: Whether the CWA allows EPA (or an authorized state) to impose generic prohibitions in NPDES permits that subject permit-holders to enforcement for violating water quality standards without identifying specific limits to which their discharges must conform.	
7/31/23: 9th Circuit decision		
1/8/24: Petition for Cert		
5/28/24: Cert granted		
9/3/24: Amicus briefs from California and Washington filed		
10/16/24: Oral Arguments		
3/4/25: S. Ct. issued 5-4 ruling		
Related Cases		

Notes https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/23-753.html	
Case Name	Issues State WQS to protect Tribal Reserved Treaty Rights (89 FR 35717)
<i>Idaho v. EPA</i>	Attorneys general for the States of Alaska, Idaho, Iowa, Louisiana, Montana, Nebraska, North Dakota, South Carolina, South Dakota, Texas, Utah, and Wyoming challenged EPA's Water Quality Standards (WQS) Regulatory Revisions To Protect Tribal Reserved Rights. The States asked the court to vacate the rule as a violation of the Constitution and the Administrative Procedures Act, and because it exceeds EPA's authority under the Clean Water Act (CWA). The States argued that Congress did not "give the EPA the power to commandeer states into protecting and adjudicating alleged tribal reserved rights for the government" and that the CWA focuses on water quality, not on protecting specific rights for tribal or non-tribal members of the public. The rule requires case-by-case inquiries into undefined reserved rights that can only be resolved by courts, often over the course of a decade or more. "[T]reaty rights promised by the federal government to the tribes are socially, politically, and legally complex issues." EPA provides no guidance or mechanism for dispute resolution for "inevitable disagreements—between the tribes themselves, between tribes and States and between the tribes and the federal government—over the extent and nature of any alleged reserved rights." Such disagreements "have been the subject of countless lawsuits." The States alleged that the delegation of this effort to evaluate claimed tribal reserved rights to State water management agencies is an "unworkable task." It would also require a reevaluation of the myriad existing permits and certifications, postponing triennial review processes, likely resulting in WQS "that are orders of magnitude more stringent than those required under existing regulations," "standards that cannot be reasonably met using cost effective technologies," and "the vast majority of waters being deemed impaired." It would impact thousands of regulated entities with existing permitted discharges associated with important economic activities. The States argued that the rule also purports to require state water quality agencies to ensure that tribes have the right to quantities of water needed to secure their claimed rights and uses, such as certain flow rates for fishing rights, "even if the states have determined water quantities inconsistent with the tribal claims." "The EPA now grants itself the ability to disapprove State water quality standards it determines are not sufficiently protective.... This puts EPA in the position of choosing whose claim to water should be protected—undermining and interfering with the States' longstanding role, as well as previously negotiated or litigated claims and decreed water rights." This puts vested water rights at risk. The twelve Tribes that filed a motion to intervene noted that EPA has previously used its oversight authority to disapprove of state WQS that violate CWA requirements because they were insufficiently protective of Tribal reserved rights. They said the States often fail to consider Tribal uses in the WQS process, and the rule "merely clarifies existing requirements and ensures uniform treatment of Tribal reserved rights essential to Tribal rights holders' subsistence, cultural, and spiritual practices." They said: "Tribal reserved rights can include the use of water for various purposes, such as fishing, gathering, ceremonial, domestic, irrigation, and municipal uses. Ensuring sufficient water quality for those uses is essential for the health and wellbeing of Tribal members.... Tribes have a clear interest in the quality of waters where they hold usufructuary or 'use' rights and the aquatic resources that depend on these waters." Some of the Tribes consume higher rights of fish and wild rice than the general population, and they are concerned about contaminants such as mercury, sulfate, and chloride. They argued that this litigation threatens to impair the Tribes' sovereign and conservation interests, and that the federal government cannot adequately protect their interests in this case. "EPA defends the case as the rule maker that must consider the interests of all citizens, which includes weighing competing interests against each other. The Tribes' interests are more particularized, given the unique treaty rights reserved for different Tribes and the specific interests in the waters of the state each Tribe occupies." They noted that while they don't believe the rule goes far enough to protect treaty rights, it is an essential step forward.
Case Number	
1:24-cv-00100	
Court	
U.S. District Court for the District of North Dakota	
Relevant Dates	
5/28/24: Complaint filed 6/14/24: Amended Complaint and Motion for Prelim. Injunction 6/28/24: Tribes' Motion to Intervene 7/24/24: Tribes' Answer to Amended Complaint 9/5/24: EPA's Answer to Amended Complaint 11/4/24: State Plaintiff's MSJ 1/3/25: EPA's Cross-MSJ 2/10/25: Court stayed the case	
Related Cases	
Notes	
Case Name	Issues PFAS CERCLA rule (89 FR 39124)
<i>Chamber of Commerce et al. v. EPA</i>	The U.S. Chamber of Commerce petitioned for direct review of EPA's new rule "Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances" (89 FR 39124), under the Administrative Procedures Act and Section 113 of CERCLA.
Case Number	
#24-1193	
Court	
D.C. Circuit	
Relevant Dates	
6/10/24: Petition filed 2/24/25: Court stayed the case until 4/25/25	
Related Cases	
Notes	
Case Name	Issues PFAS National Primary Drinking Water Regulation (89 FR 32532)
<i>AWWA et al. v. EPA</i>	The American Water Works Association (AWWA) and Association of Metropolitan Water Agencies (AMWA) filed a petition for direct review of EPA's PFAS drinking water rule. published on April 26. "Petitioners strongly support the protection of public health and the use of a sound scientific process in the development of regulations. EPA did not rely on the best available science and the most recent occurrence data, and used novel approaches as the basis for certain portions of the rule. EPA finalized this rule without following the process mandated by Congress, without allowing the public an adequate opportunity to provide comment, and without addressing the concerns raised by those who work to deliver safe and affordable drinking water to their communities. Petitioners are seriously concerned about the impact of this rule on water affordability, particularly for households that struggle to pay for essential needs. EPA has significantly underestimated the costs of this rule and the adverse impact that it will have on individual water users."
Case Number	
#24-1188	
Court	
D.C. Circuit	
Relevant Dates	

6/7/24: Petition filed 10/7/24: Opening brief due 2/7/25: Court stayed the case 4/10/25: Stay extended to 5/12/25		
Related Cases		
Notes		
Case Name	Issues	CWA 404 Veto
Alaska v. EPA	Alaska sought a declaration that EPA violated the CWA and APA in issuing it's 2023 veto action (Final Determination) that blocked the development of the Pebble Mine by prohibiting the issuance of any CWA 404 permits to discharge into WOTUS. AK asked the court to set aside the Final Determination, allowing the permit application process to proceed forward.	
Case Number		
3:24-cv-84		
3:24-cv-59 (consolidated)		
Court		
U. S. District Court of Alaska		
Relevant Dates		
4/11/24: Alaska's Complaint		
6/24/24: EPA Answer		
8/2/24: Administrative record filed		
8/9/24: EPA Motion for Protective Order		
8/20/24: AK Motion to Stay		
9/17/24: Stay granted until ruling on EPA's Motion for Protective Order		
10/2/24: Protective Order granted		
11/12/24: Order consolidating cases to Case No. 3:24-cv-59		
2/14/25: Case stayed until 5/14/25		
Related Cases		
Notes		
Case Name	Issues	CWA 404 Veto
State of Alaska v. United States	Alaska petitioned for \$700B in compensation for EPA's 2023 veto action (Final Determination) that blocked the development of the Pebble Mine. Alaska noted that, in authorizing the Statehood Act and Cook Inlet Land Exchange, Congress explicitly recognized that Alaska would develop its mineral resources. The State alleged that these agreements constitute contracts, under which the State would receive land, associated mining rights (subject to lease by the State), and regulatory authority over its lands. They claimed that EPA's Final Determination decision is a breach of contract by the federal government, as well as a breach of the covenant of good faith and fair dealing. The State further alleged multiple takings counts (permanent categorical taking, permanent non-categorical taking, and temporary taking) stating that EPA's Final Determination denies all economically beneficial or productive use of the land. They asserted that a finding of either type of permanent taking should entitle them to compensation exceeding \$700B, the 100-year value of Pebble Mine estimated by EPA in 2010. The State argued that even if the EPA were to withdraw its Final Determination or it were to be vacated, the Determination has blocked the U.S. Army Corps of Engineers (Corps) from issuing a Clean Water Act (CWA) permit for the Pebble Mine. This would constitute a temporary taking, entitling the State to just compensation in an amount that exceeds \$10,000.	
Case Number		
1:24-cv-00396		
Court		
U.S. Court of Federal Claims		
Relevant Dates		
3/14/24: Petition filed		
9/4/24: Case stayed to 1/6/25 (pending district court case outcome, to preserve judicial resources)		
1/6/25: Stay extended to 7/7/25		
Related Cases		
Alaska v. U.S. Env't Prot. Agency, No. 3:24-cv-84 (D. Alaska)		
Notes		
Case Name	Issues	CWA exemptions for agricultural irrigation, 33 U.S.C. §1342(1)(1)
Pacific Coast Federation of Fishermen's Associations, Inc., et al. v. Ernest Conant, et al.	The Association of California Water Agencies (ACWA) led an agricultural coalition amicus curiae brief, noting that the Grasslands Bypass Project drainage infrastructure is not unique, and "this case may have far-reaching impacts on farmlands that utilize and rely on irrigation drainage facilities essential to maintaining crop production." The CWA exemption for agricultural return flows applies to "millions of acres of farmland" and a ruling rendering that exemption essentially nonexistent "would broadly affect western agriculture, forcing thousands of farmers and operators of	
Case Number		

2:11-cv-02980	rendering that exemption essentially nonexistent would broadly affect western agriculture, forcing thousands of farmers and operators of agricultural drainage systems across the western United States to immediately apply for and operate under onerous NPDES permits or face liability under the CWA." They emphasized the lower court's determination that the exemption "cannot be defeated merely because additional nonpoint sources of pollution may enter into agricultural drains that convey agricultural return flows to waters of the United States."	
#23-15599		
Court	BACKGROUND: The underlying case, filed in 2011, arises from water discharges from the Grasslands Bypass Project in California's Central Valley. The project was created as a result of a previous lawsuit for the purpose of preventing irrigation water from leaching selenium and salt from the agricultural soil into the groundwater. The project collects water used to irrigate agricultural land through an underground perforated tile drainage system, moving "the collected drainage water through a concrete-lined conveyance for many miles before it dispenses into a wetland." The plaintiffs alleged that the Bureau of Reclamation (USBR) and the Grasslands Water District are discharging pollutants, without a National Pollutant Discharge Elimination System (NPDES) permit, which made their way into the San Joaquin River and San Francisco Bay Delta in violation of the Clean Water Act (CWA). The defendants argued	
U.S. District Court for the Eastern District of California	that the agricultural land is exempt from CWA permitting under 33 U.S.C. §1342(1)(1).	
9th Circuit		
Relevant Dates	In 2017, the district court held that, because the majority of the water came from agricultural lands, the exemption applied. In 2019, the 9th Circuit reversed and remanded that decision, noting that the CWA exemption language is "for discharges composed entirely of return flows from irrigated agriculture." On remand, the lower court again held that the exemption applied, because the water was either from the agricultural lands or from other nonpoint sources that are exempt. The plaintiffs appealed.	
2011: Complaint filed		
2017: District Court Decision		
2019: 9th Circuit Decision (remand)		
2/21/23: ED CA ruling that exemption still applied		
4/19/23: Notice of Appeal to 9th Cir.		
3/4/24: Agriculture Coalition Amicus Brief		
10/21/24: Oral Argument		
Related Cases		
Notes		
Case Name	Issues	Delegation of CWA §404 to Florida and Endangered Species Act
<i>Center for Biological Diversity (CBD) et al. v. Michael S. Regan, et al.</i>	The Court issued a partial MSJ ruling (2/15/24) that the Environmental Protection Agency (EPA) and the Fish and Wildlife Service (FWS) violated the Endangered Species Act (ESA) when they approved Florida's application to assume Clean Water Act (CWA) §404 permitting authority. The court held that the agencies had circumvented ESA requirements by approving programmatic Section 7 consultation, providing broad ESA liability protection for all future state permittees. The court vacated the USFWS' programmatic Biological Opinion (BiOp) and Incidental Take Statement (ITS), as well as EPA's approval of Florida's §404 assumption application.	
Case Number		
1:21-cv-00119		
#24-5101, #24-5156, #24-5159		
Court	The intervenor defendants, the State of Florida and the Florida Department of Environmental Protection (FDEP), filed a brief (2/26/24) in support of the partial stay. They noted that they had over 1,000 pending §404 individual and general permit applications for roads and bridges, hospital construction projects, school buildings and facilities, affordable housing, military base projects, power grid reliability projects, and various projects to improve water quality in the Everglades. They emphasized the need for the stay to minimize the disruptive consequences of vacatur. They asked for clarification on several questions the court left unanswered regarding procedures for applications that "may affect" listed species and their continued authority over applications that do not. The Florida intervenor defendants alternatively presented the approach used by New Jersey and Michigan, involving memoranda of agreement (MOAs) that facilitate EPA or USFWS review where the State identifies applications that may affect ESA listed species. They noted that while the court found the Florida Section 7 consultation deficient, the formal process went "above and beyond what was done in the other two states at the assumption stage" where no programmatic BiOp was ever prepared.	
U.S. District Court for the District of Columbia		
D.C. Circuit Court		
Relevant Dates	BACKGROUND: CBD argued that the FWS' programmatic BiOp, programmatic ITS, and technical assistance processes "create an ESA scheme that is not authorized by law" and "give [Florida] a workaround regarding the mechanisms that Congress provided for establishing take limits, extending liability coverage, and determining jeopardy to species." They also allege that the EPA relied on the facially deficient Section 7 statements and failed to consult with the National Marine Fisheries Service (NMFS).	
1/1/21: Complaint filed in DC Dist. Ct.		
2/15/24: Partial MSJ decision (vacatur of 404 delegation)		
2/26/24: Federal agency defendants and Florida intervenor defendants arguments on partial stay of vacatur		
4/23/24: Court denied partial stay of vacatur		
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4/26/24: Florida appealed (#24-5101)		
9/16/24: Florida brief		
9/23/24: State amicus brief		
5/5/24: [Oral argument scheduled]		
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6/10/24: CBD cross-appeal (#24-5156)		
9/16/24: Federal agencies and Florida briefs filed		
9/23/24: State amicus brief		
5/5/24: [Oral argument scheduled]		
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6/11/24: Federal agencies appealed (#24-5159)		
9/16/24: Federal agencies and Florida briefs filed		
9/23/24: State amicus brief		
5/5/24: [Oral argument scheduled]		
Related Cases	The federal agencies argued that even if their Section 7 consultations were insufficient, they had created a technical assistance process between Florida and the agencies to address all of the ESA requirements on a permit-by-permit basis by requiring Florida to consult with FWS regarding each application. They requested that the Court only vacate approval to those projects in the category of "may affect, likely to adversely affect" listed species.	
Notes		

Case Name	Issues	CWA §401 Water Quality Certification Improvement Rule (2023 Rule) (88 FR 66558)
State of Louisiana et al. v. U.S. Environmental Protection Agency et al.	The plaintiff states (including AK, MT, OK, and WY) and regulated entities challenged the 2023 Rule, arguing that it expands the states' authority beyond the scope of the CWA by: (1) allowing states to establish additional requirements for a complete certification request; (2) directing states to evaluate all potential water quality-related effects of a proposed activity (rather than evaluating the point source discharge only) under all types of state water quality requirements; (3) retroactively applying the rule to pending requests; and (4) failing to adequately carry out APA notice-and-comment procedures. The petitioners requested an order declaring that the 2023 Rule violates the CWA and the APA; vacating and setting aside the 2023 Rule; and enjoining EPA from applying or enforcing the 2023 Rule. Since filing the complaint on December 4, the plaintiffs also petitioned for preliminary injunctive relief to stay the 2023 Rule in states bringing the lawsuit. The intervenor defendant states (including CA, NM, OR, and WA) argued that they have a "clear and direct interest in upholding the 2023 Rule to preserve their sovereign authority over water quality within their respective states under section 401 of the CWA." They argued that their interests are not adequately represented by either the plaintiff states or EPA. They noted that the plaintiff's plea to invalidate the 2023 Rule and return to the 2020 Rule may impair intervenor defendant states' ability to protect their interests. They disagreed with the plaintiffs allegations that the 2023 Rule is overly broad or burdensome, stating: "Placing the ultimate authority to ensure proposed projects comply with state water quality requirements in the hands of states is the core reason Congress included the section 401 certification requirement in the first place." They pointed out that the nature of cooperative federalism as mandated by the CWA requires independent state representation, and that EPA's interests in this case diverge from their own.	
Case Number		
2:23-cv-01714		
Court		
U.S. District Court for the Western District of Louisiana		
Relevant Dates		
12/4/23: Complaint filed 1/12/24: 18 states filed a motion to intervene as defendants 2/6/24: EPA Answer 3/7/24: Motion for Preliminary Injunction denied 5/30/24: Plaintiffs States' MSJ 7/30/24: Intervenor Defendant States Cross MSJ 8/8/24: Court set deadlines for MSJ responses by 9/30/24, and replies by 10/30/24 2/11/25: Court stayed the case for 90 days		
Related Cases		
Notes		
Case Name	Issues	Delegation of CWA 404 and Tribal Lands
<i>Miccosukee Tribe v. EPA</i>	The Miccosukee Tribe alleged that EPA's approval of Florida's CWA 404 permitting program (85 FR 83553) impermissibly disregarded and diminished the Miccosukee's Tribal Sovereignty by subjecting more than 200,000 acres of Indian lands to the State's regulatory jurisdiction. Tribal members have been prevented from obtaining permits to build homes on tribal lands in the Everglades. The complaint asserted that Miccosukee lands include more than the reservation lands, noting that the tribe holds interests in lands held by the federal government, Miccosukee reserved areas, perpetually leased lands, reserved rights lands, and fee simple lands. EPA's approval of Florida's proposal transferred CWA § 404 permitting authority over the Miccosukee Leased Lands, Reserved Rights, and Fee Simple Lands to the State of Florida unless such lands were subject to the ebb and flow of the tide. The complaint alleged that the state lacks legal authority to carry out the CWA 404 program on Indian lands, and in the absence of that authority, EPA's regulations (40 CFR 233.2(b)) specify that 404 permitting authority will remain with the Army Corps of Engineers. Rather than describe the waters within the state's jurisdiction and the waters retained by the Corps, Florida's description said that "State-assumed waters...are all waters of the United States that are not retained waters," provided inconsistent definitions of Corps-retained waters, and although Florida noted that "Indian country, as defined in 18 USC 1151, is not included in Florida's 404 program," failed to include other Indian lands. The Tribe sought five counts of relief under the APA, requesting that EPA's transfer of authority over certain waters be vacated. Florida intervened and countered in the MSJ reply (#43) that "the Tribe's boundless view of 'Indian lands' as much broader than 'Indian country'" is erroneous and unprecedented. "Florida's Section 404 Program remains subject to continuous permit-by-permit oversight by the federal government and allows for full involvement by the Tribe at every stage. As such, there is no legal or factual basis to claim 'sovereignty' injuries here. The Tribe's decision to selectively forego participating in the Section 404 program for two proposed permits [the Tribe expressly asked Florida to suspend the processing of the two applications, and Florida consented to that request] is entirely self-inflicted and inconsistent with the Tribe's own past involvement in state permit programs." Florida argued that Congress clearly did not intend the application process to include a canvass of the landscape on a parcel-by-parcel basis and get bogged down in contentious disputes over jurisdictional line-drawing. "As set forth in the FDEP-Corps MOA, any site-specific line-drawing determinations can be made as circumstances warrant, particularly since the precise boundaries of assumable waters are subject to change based on current conditions." Additionally, Florida expressly did not seek authority over Indian country (18 USC 1151). "If EPA correctly interpreted Indian lands synonymously with Indian country, Florida's program obviously does not cover Indian lands within the meaning of 40 CFR 233.11(h)." Florida also argued against the Tribe's assertion that state-tribe interactions injure tribal sovereignty and cannot be government-to-government relations, noting that states are also sovereign, and that the BIA has acknowledged: "While federally recognized tribes generally are not subordinate to states, they can have a government-to-government relationship with these other sovereigns, as well... [T]ribes frequently collaborate and cooperate with states through compacts or other agreements on matters of mutual concern such as environmental protection and law enforcement."	
Case Number		
1:22-cv-22459		
Court		
U.S. District Court for the Southern District of Florida		
Relevant Dates		
8/4/22: Tribe filed complaint against EPA 9/7/22: Florida motion to intervene (granted) 7/27/23: Tribe's MSJ 9/27/23: EPA cross-MSJ 12/20/23: Florida Reply to cross-MSJ 12/27/23: Florida Reply to MSJ 3/18/24: Stay (pending outcome of CBD v. EPA, which vacated EPA's approval of Florida's CWA 404 assumption of authority) 3/18/25: Stay extended to 6/16/25		
Related Cases		
Notes		
Case Name	Issues	2023 WOTUS Rule (88 FR 3004) and Amended Rule (88 FR 61964)
<i>West Virginia et al. v. EPA</i>	A coalition of 24 states, led by WV and including the ten western states of AK, KS, MT, NE, ND, OK, SD, UT, and WY, requested that the rule be	

Case Number	vacated and remanded to the agencies for violations of the Clean Water Act (CWA), the Administrative Procedures Act (APA), and the U.S. Constitution, including the Commerce Clause and the Fifth and Tenth Amendments. The States asserted that the 2023 WOTUS rule mirrors or exceeds the 2015 WOTUS Rule (enjoined by this court for likely violating the CWA grant of authority to EPA and the Corps), and that it "improperly upsets the balance of State and federal powers in an area typically dominated by the States." Each State expressed its sovereign authority to govern, manage, and protect the waters within its borders, as cited in their respective state constitutions and statutes. For a lengthier summary of the complaint, see WSW #2546 Special Report.
3:23-cv-00032	
Court	
U.S. District Court in North Dakota	
Relevant Dates	
2/16/23: Lawsuit filed 4/12/23: Preliminary injunction (24 states) 7/18//23: Case stayed 9/1/23: Status report from Corps & EPA re: amended WOTUS rule issued 10/10/23: Stay lifted 11/13/23: Amended Complaint 12/12/23: Industry Motion to Intervene granted (Ag, Mining, Construction, etc) 12/13/23: Answers filed 2/26/24: States and Industry MSJs filed 4/26/24: EPA, Corps MSJ filed 6/25/24: various responses filed to MSJs 7/26/24: EPA, Corps filed reply 7/30/24: Federal defendants filed supplemental authority: Kentucky v. EPA (6th Circuit remand to allow amended complaints rather than sua sponte dismissal, #23-5343 and #23-5345) 2/18/25: Court stayed the case	On April 12, 2023, the court issued a preliminary injunction staying the implementation of the 2023 Waters of the United States (WOTUS) Rule in 24 states (AK, AL, AR, FL, GA, IA, IN, KS, LA, MI, MO, MT, ND, NE, NH, OH, OK, SC, SD, TN, UT, VA, WV, and WY). The court found that the 2023 rule has unlimited boundaries and "raises a litany of other statutory and constitutional concerns." The court noted that EPA has arguably acted beyond its statutory authority, noting problems with several categories of water, including: (1) interstate waters not connected to navigable waters; (2) impounded waters without any outlet or hydrologic connection to the tributary network; (3) an overly broad definition of tributary that includes dry waterways; (4) non-navigable intrastate waters previously considered isolated and not subject to CWA jurisdiction; and (5) a treatment of wetlands that is "plagued with uncertainty" and extends jurisdiction to remote wetlands that the U.S. Supreme Court has already excluded. For a lengthier summary of the preliminary injunction, see WSW # 2552 Special Report.
Related Cases	2023 WOTUS Rule (88 FR 3004) and Amended Rule (88 FR 61964)
Texas v. EPA, #3:23-cv-17 (see below)	
Lewis v. United States, 88 F.4th 1073 (5th Cir. 2023)	
Glyn Envtl. Coal., Inc. v. Sea Island Acquisition, LLC, #2:19-cv-50, S. D. Georgia (2024) [appeal #24-10710 to 11th Cir.]	
White v. EPA, #2:24-cv-13, E.D. North Carolina (2024) [appeal #24-____ to 5th Circuit]	
EPA v. Ace Black Ranches, #1:24-cv-113, D. Idaho (2024)	The complaint requested that the 2023 WOTUS rule be vacated for violations of the Constitution, the CWA, and the APA. Texas alleged: "The Final Rule harms Plaintiffs by: (1) expanding federal regulation beyond that authorized in the CWA; (2) eroding the states' authorities over their own waters; (3) increasing the states' burdens and diminishing the states' abilities to administer their own programs; and (4) undermining the states' sovereignty to regulate their internal affairs as guaranteed by the Constitution." Texas asserted that the CWA "only authorizes the Federal Agencies to regulate 'navigable waters,' defined as 'waters of the United States'" and the new rule is a violation of the CWA and APA for asserting jurisdiction over lands and waters that fall outside the CWA and effectively removing any requirement of navigability. For a lengthier summary of the complaint, see WSW #2546 Special Report.
Notes	
Case Name	On March 10, 2023, the court issued a preliminary injunction preventing the 2023 WOTUS Rule from taking effect in the States of Texas and Idaho.
<i>Texas et al. v. EPA et al.</i>	
Case Number	
3:23-cv-00017	
Court	
U.S. District Court for the Southern District of Texas	
Relevant Dates	

1/18/23: Lawsuit filed 2/27/23: Idaho joined 3/19/23: Preliminary injunction (TX & ID only) 7/10/23: Case stayed 9/1/23: Status report from Corps & EPA re: amended WOTUS rule issued 2/2/24: Plaintiffs filed MSJ 4/2/24: EPA, Corps MSJ and opposition to Plaintiffs MSJ 6/17/24: TX and ID Reply 7/30/24: Federal defendants filed supplemental authority: Kentucky v. EPA (6th Circuit remand to allow amended complaints rather than sua sponte dismissal, #23-5343 and #23-5345) 2/4/25: Case stayed, status reports due every 60 days 4/7/25: EPA/Corps Status Report, noting the new guidance and the regulatory docket soliciting input to further clarify the WOTUS definitions, which may resolve the litigation or narrow the existing dispute (next status report 6/6/25)	On March 19, 2023, the court issued a preliminary injunction preventing the 2023 WOTUS Rule from taking effect in the States of Texas and Idaho. "[T]wo aspects of the 2023 Rule make the plaintiffs particularly likely to succeed on the merits – first, the Rule's significant-nexus test, and second, the Rule's categorical extension of federal jurisdiction over all interstate waters, regardless of navigability." The court found that Chevron deference does not apply due to the criminal penalties in the rule, and due to the significant constitutional and federalism questions raised by the agencies' interpretation of the CWA. The court held that the states had standing to challenge the rule to protect their quasi-sovereign interests in regulating their land and water. For a lengthier summary of the preliminary injunction, see WSW # 2549. In August 2023, the EPA announced amendments in response to the Supreme Court decision in Sackett v. EPA. In turn, Texas and Idaho amended their complaint to include the changes. On February 2, 2024, the plaintiffs filed an MSJ. They argued that the Amended 2023 Rule (88 FR 61964) is unconstitutionally vague in its definitions of "every jurisdictional category," including its definitions of Traditional Waters, Impoundments, Tributaries, Wetlands, and Other Jurisdictional State Waters. Additionally, the Relatively Permanent Standard is broader and vaguer than the standard described in Sackett and Rapanos. Plaintiffs also argued that the Amended 2023 Rule exceeds the CWA, is contrary to the States' sovereignty, violates due process afforded by the Constitution, and was adopted through unlawful procedure under ADA. They conclude: "It cannot be supported by the plain language of the Clean Water Act, it is inconsistent with Supreme Court precedent, it cannot be justified as a valid exercise of congressional authority under the Commerce Clause, it cannot be excused in the face of the Tenth Amendment, and it infringes on the due process rights afforded under the Fifth Amendment. And even if it were not substantially unlawful, it was adopted through unlawful procedure." See WSW #2596
Related Cases West Virginia v. EPA, #3:23-cv-32 (see above) Notes	
Case Name <i>Indian Wells Valley Water District v. All Persons Who Claim a Right to Extract Groundwater in the Indian Wells Valley Groundwater Basin, etc., et al.</i> Case Number 30-2021-01187275-CU-OR-CJC Court Orange County Superior Court, California Relevant Dates 6/16/21: IWVWD Cross-complaint, opening the adjudication 9/7/21: California Department of Water Resources received notice of the adjudication 10/13/21: form of Notice of Commencement of Groundwater Basin Adjudication approved 12/16/21: Notices mailed to basin property owners 3/17/23: Case Management Conference 9/1/23: Status Conference (awaiting judicial assignment from the Judicial Council, followed by briefing on Court's authority to determine safe yield and impose a physical solution, as well as the issue of including de minimis users and McCarran jurisdiction) 2/23/24: IIWVWD Motion for order to divide the trial into phases, establish the basin boundary, set the phase 1 trial, and partially lift the discovery stay 8/8/24: Order granting the motion to schedule the phase 2 trial (safe yield) at the next status conference (10/2/24); interesting discussion on the intersection of SGMA, GSPs, and adjudications under the Streamlined Act (2015) [4/28/2025: Phase 1 Trial on federal reserved water right claim scheduled] Related Cases	Issues Water rights adjudication (groundwater), SGMA 2014, federal water rights and groundwater On June 11 and 21, 2024, the adjudication was separated into several phases. Phase 1 will address the federal government's reserved water rights claims to groundwater. Phase 2 will adjudicate the safe yield and groundwater in storage. Phase 3 will determine the water rights claims of all other parties. Phase 4 will determine a physical solution. BACKGROUND: The original complaint was filed by Mojave Pistachios, LLC. The cross-complaint by the Indian Wells Valley Water District (IWVWD) seeks "a judgment to comprehensively determine and adjudicate all groundwater rights in the Basin and to provide a physical solution for the perpetual and continuous management of the Basin." IWVWD's website noted that water use in the basin has exceeded groundwater supply for years, resulting in an "overdraft" condition. IWVWD is a member of the Indian Wells Valley Groundwater Authority, formed pursuant to the Sustainable Groundwater Management Act (SGMA). The Authority developed and adopted a groundwater sustainability plan (GSP), and several lawsuits were filed alleging that the GSP actions to regulate water use and impose fees were unlawful and excessive, leading in part to the present adjudication. IWVWD's website said: "The Basin underlies approximately 382,000 acres or approximately 600 square miles of land. Approximately 301,000 acres of land overlying the Basin are federal property managed by Naval Air Weapons Station China Lake, the Bureau of Land Management, and the Forest Service. The non-federal lands overlying the Basin consist of the City of Ridgecrest and unincorporated land in the Counties of Kern, Inyo, and San Bernardino. Water rights of the federal government are beyond the jurisdiction of the State to regulate. Under applicable law, the federal government may only participate in a water rights lawsuit if such a case is considered to be what is called a 'comprehensive adjudication' involving all stakeholders/pumpers. The District is therefore taking the necessary action of filing a comprehensive adjudication. Such steps will involve all stakeholders/pumpers; protect the general welfare of the Basin; protect the District's right to pump groundwater from the Basin; protect groundwater quality; and to manage water costs to the public. The goal of the District's action is to bring long-term and enforceable sustainability to the Basin." During a joint case management conference, one of the jurisdictional issues raised was whether the de minimis water users, and any overlying non-users, needed to be included in the proceeding in order for the Court to have jurisdiction over the United States as part of a comprehensive adjudication, both to ensure the US participation and to protect the due process rights of these others. Also discussed was the potential for a bifurcated trial, with phase 1 focused on the characteristics of the basin, the total groundwater and available freshwater in storage, and the safe yield. Phase 2 would then address water rights claims not already agreed to by stipulation, and the presentation of a "physical solution" (California Const. Art. X sec. 2), one that achieves the practical allocation of water among competing interests consistent with the constitutional mandate to maximize reasonable and beneficial use, and recognize established water rights. The solution seeks to make water available for a greater number of beneficial uses while still protecting senior priorities and implementing targeted management actions. Some of the parties requested that phase 1 of the trial be completed by the end of summer 2023, and phase 2 occur expeditiously thereafter. The Water District filed a motion regarding the scope of the trial phases. They proposed that Phase 1 issues include determining the amount of fresh groundwater in storage and adjudicating the federal reserved water right claim of the United States. Phase 2 would include determining the safe yield, adjudicating all water rights and their relative priorities, and considering and adopting a physical solution consistent with the Phase 1 trial findings.

Mojave Pistachios, LLC v. IWVWD		
Comprehensive adjudication of the Cuyama Valley Groundwater Basin, another basin in an overdraft condition. (9/2/21)		
Notes		
See: https://www.iwvwd.com/basin-adjudication/		
Case Name	Issues	Nationwide Permits, ESA
<i>Center for Biological Diversity et al. v. Spellmon</i>	The complaint for declaratory and injunctive relief stems from the Corps issuance of Nationwide Permit 12, a general permit for oil and gas pipeline projects pursuant to CWA 404(e). The lawsuit alleges ESA and APA violations for failure to assess environmental effects, and to fulfill consultation responsibilities under ESA section 7 with the National Marine Fisheries Service and the FWS. The NWP 12 allows oil and gas pipelines to cross water repeatedly without limits to the number of wetlands a project might impact, ignoring the cumulative effects of large interstate pipelines. On August 18, 2022, the federal court in Montana determined that it was not the appropriate venue for the ESA claims, as the events giving rise to the claims did not occur in Montana, and the sole Montana plaintiff could not show Article III standing on the ESA claims. The case was transferred to the District of Columbia for further proceedings. The federal defendants withdrew their request for court deference to the agency following <i>Loper v. Raimundo</i>, but argued that no deference was needed to uphold the agency action. Additionally, Loper held that courts could consider an agency's long-standing interpretation of a statute. "The Corps' issuance of NWP 12 reflects the best reading of CWA Section 404(e)'s minimal effects threshold because for linear pipeline projects, what 'constitutes separate and distant crossings can vary across the country because of differences in the distribution of waters and wetlands in the landscape, local hydrologic conditions, local geologic conditions, and other factors.' Thus, allowing Corps districts to determine when crossings are sufficiently 'separate and distant' from one another on a case-by-case basis, rather than establishing national thresholds, is the best reading of the statute." The Corps argued that this interpretation has been in place for 33 years.	
Case Number		
4:21-cv-00047		
1:22-cv-02586		
Court		
U.S. District Court for Montana		
U.S. District Court for the District of Columbia		
Relevant Dates		
5/3/21: Lawsuit filed		
6/7/21: Montana intervened		
8/31/21: Petroleum associations intervened		
9/7/21: Answer from the Corps		
6/9/22: Hearing on MSJs ("order will be submitted forthwith")		
8/18/22: Case transferred to District of Columbia		
11/18/22: Supplemental Briefing on schedule submitted by the parties to the DC court		
9/20/23: Supplemental authorities filed		
7/15/24: Supplemental authority: <i>Loper Bright Enterprises v. Raimondo</i>		
8/27/24: Corps response to <i>Loper</i>		
Related Cases		
Northern Plains Resource Council et al. v. U.S. Army Corps of Engineers, No. 4:19-cv-00044 (D. Mont.), appeal vacated lower court decision (8/11/21) in part due to new NWP that renders some claims moot, and remanded to determine whether vacatur was appropriate, (9th Cir, #20-35412). On remand, claim four was dismissed as moot, and the other three claims were dismissed without prejudice (9/29/22)		
Notes		
Case Name	Issues	Indian Reserved Water Rights
<i>Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist.</i>	At issue is whether the water district's assessment of fees (replenishment assessment charges, RAC) on the tribe's production of its federally reserved groundwater is preempted as a matter of federal law. The water district uses Colorado River water to recharge the aquifer. The RACs are imposed on water production in designated areas of benefit—including much of the Agua Caliente Reservation—to cover the costs of artificial recharge programs. The tribe argues that the RACs unlawfully interfere with its inherent and exclusive sovereign authority to regulate its water resource.	
Case Number		
5:20-cv-00174		
Court		
U.S. District Court for the Central District of California		
Relevant Dates		

1/24/2020: case filed 3/13/2020: Answers filed by Desert Water Agency and Coachella Valley Water District 6/22/2020: Defendants motion to bifurcate case 6/29/2020: Plaintiff's opposition to bifurcation 7/20/20: Motion denied; case management order modified to extend deadlines 10/6/20: Case stayed pending private mediation 2/12/25: Stay extended (5/31/25)		
Related Cases		
Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al., 13-883		
Notes		
Case Name	Issues	Indian Reserved Water Rights
<i>Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al.</i>	BACKGROUND: The Agua Caliente Band of Cahuilla Indians filed a lawsuit in May 2013, asking the Court to declare and quantify the existence of the tribe's water rights as the senior rights in the Coachella Valley under federal law. In March 2015, the District Court ruled on summary judgment that the Agua Caliente Band of Cahuilla Indians has a reserved right to water, and groundwater is a water source available to fulfill that right. The Court denied the Tribe's claim for aboriginal title to groundwater. The case was trifurcated, with phase II addressing whether the Tribe beneficially owns the "pore space" of the groundwater basin underlying the Reservation, and whether a tribal right to groundwater includes the right to receive water of a certain quality. Phase III will focus on the quantification of the Tribe's right. (Note: The order of Phase II and Phase III appears to have been reversed. as litigation continued.)	
Case Number		
5:13-cv-883		
Court		
U.S. District Court for the Central District of California		
Relevant Dates		
5/2013: Agua Caliente filed suit 3/27/2015: Summary judgment re: groundwater available as part of reserved water right 10/18/16: Oral arguments on interlocutory appeal, 9th Cir. 3/7/17: 9th Circuit panel decision on Phase I reserved groundwater appeal from CA court 6/5/17: Tribe's Motion to Lift Stay granted; CA Dist. Ct. proceeding with Phase II 7/5/17: Petition for Certiorari from DWA and CVWD 8/7/17: Amicus brief in support of Petition for Cert, filed by NV, AZ, AR, ID, NE, ND, SD, TX, WI, WY 11/27/17: S. Ct. denied Cert 4/19/19: Dist. Ct. granted Defendants' MSJ on Phase II 8/14/19: Dist. Ct. denied motion to reconsider 7/17/20: Agua Caliente filed its amended complaint 7/31/20: Answers to amended complaint 10/6/20: Case stayed pending private mediation 2/12/25: Stay extended (5/31/25)	On March 7, 2017, the 9th Circuit upheld the California District Court's summary judgment, holding that the United States implicitly reserved a right to water when it created the Agua Caliente Reservation, and that the Tribe's reserved water right extends to the groundwater underlying the Reservation. The court expressed "no opinion on how much water falls within the scope of the Tribe's federal groundwater right," since that will be determined at a later phase of the case. However, even with water under state-law entitlements, "there can be no question that water [from the aquifer] in some amount was necessarily reserved to support the reservation created." On July 5, 2017, the Defendant water agencies filed petitions for cert. On August 7, 2017, NV, AZ, AR, ID, NE, ND, SD, TX, WI, and WY filed an amicus curiae brief, arguing that the 9th Circuit's expansion of the federal reserved water rights doctrine unsettles the scope of the states' authority over groundwater resources, and that the decision is inconsistent with caution courts must exercise when altering the federal-state balance by interfering with state sovereign power, particularly when applying implied Congressional intent. It calls the decision an "indiscriminate application of the Winters doctrine to groundwater" that ignores the nuances of past court decisions and expressed Congressional intent. The Supreme Court denied the petition for cert on November 27, 2017. On April 19, 2019, the U.S. District Court for the Central District of California granted the defendants' motions for summary judgment, which argued that the tribe does not have standing to assert its claims. The court agreed, noting that although there may be injury to the groundwater in the form of overdrafts and the practice of recharge with lower-quality Colorado River water, the tribe has not demonstrated injury to its ability to use water of a sufficient quality or quantity to fulfill the purposes of the reservation. Similarly, the court held that the tribe did not demonstrate that the defendants interfered with the tribe's right to use the aquifer's pore spaces to store its reserved water rights. On July 17, 2020, the tribe filed its amended complaint. The case was stayed for mediation.	
Related Cases		
9th Circuit #15-55896		
Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist., 5:20-cv-00174		
Notes		
For more information see: http://www.scotusblog.com/case-files/cases/coachella-valley-water-district-v-agua-caliente-band-cahuilla-indians/ and https://www.narf.org/cases/agua-caliente-v-coachella/		
Case Name	Issues	Hydraulic fracturing
<i>California v. Bureau of Land Mgmt.</i>		
Case Number		
18-521		
20-16157	BACKGROUND: On December 28, 2017, the Bureau of Land Management (BLM) published its Federal Register notice of the final decision to rescind the stayed 2015 Hydraulic Fracturing Rule. BLM's review of the Rule found that all 32 of the states with federal oil and gas leases have regulations to address hydraulic fracturing, and that companies are disclosing the chemical content of their hydraulic fracturing fluids using FracFocus or other state regulatory databases. Rescinding the 2015 Rule was also considered consistent with the Administration's Executive Order 13771 to reduce the costs of regulatory compliance. On January 24, 2018, California and several environmental groups sought to vacate the rescission and reinstate all of the Hydraulic Fracturing Rule's provisions. CA argues that hydraulic fracturing on federal and Indian lands,	

Court	particularly those not subject to state jurisdiction, will impact surface water and groundwater resources, air pollution, and seismicity from the disposal of wastewater. Additionally, states do not have BLM's stewardship standards and trust responsibilities over federal lands.). California said that although new administrations are entitled to change policy positions, the APA requires a reasoned explanation for those changes, particularly addressing any inconsistencies with prior factual findings. California argues that state and tribal regulations fall short of the 2015 Rule requirements. "For example, at least six of the nine states where the majority of fracking on federal land occurs did not require the use of tanks instead of pits for containing injection waste fluids, as the Fracking Rule does. Additionally, most of the nine states' regulations on monitoring and verifying the integrity of cement casing fell short of the Fracking Rule's requirements. The Fracking Rule contemplated concurrent state regulation of wells on federal lands and in no way prevented states from enacting stricter requirements. States or tribes could also apply for a variance from the requirements of the Fracking Rule." State requirements also differ "with regard to mechanical integrity testing, pressure monitoring during hydraulic fracturing operations, and post-fracturing disclosure requirements." The district court rejected CA's arguments. "The Court's task is not to decide whether the changes [BLM] seek[s] to make will result in better or worse environmental policy...[or] to decide whether it would find the rationales advanced by the agency compelling (or even persuasive) if it were reviewing the matter from scratch. Instead, the narrow APA question before the Court is whether the admitted policy change represented by the Repeal was so inadequately explained as to be arbitrary and capricious." The court added that it may not question BLM's choice to weigh socioeconomic concerns more heavily than the value of consistent federal regulations the 2015 rule may have provided. The court also rejected Wyoming's argument that BLM lacked authority to promulgate the rule. Aside from the fact that the 2015 rule wasn't before the court (only the repeal of the rule), the court said BLM never conceded that it lacked legal authority, only eliminated the need for further litigation over BLM's statutory authority by repealing the rule. The case is now on appeal before the 9th Circuit.
U.S. District Court for the Northern District of California	
9th Circuit	
Relevant Dates	
1/24/18: Lawsuits filed	
7/17/18: U.S. Motion to transfer case to Wyoming denied	
10/9/18: BLM lodged administrative record with the court	
1/22/20: Hearing on MSJs	
3/27/20: BLM and WY's Cross MSJ's granted, CA's MSJ denied	
6/12/20: CA filed appeal, 9th Cir. #20-16157	
10/21/20: Opening briefs	
11/20/20: Answering brief	
2/11/21: Reply briefs	
2/19/21: Mediation conference scheduled for March 1	
3/19/21: Case administratively closed for mediation	
3/11/25: Administrative closure extended to 5/9/25	
Related Cases	
Sierra Club et al. v. Zinke, No. 18-524 (consolidated)	
Notes	