

Appendix A1.
Index to Public Trust Cases since 1996

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Venue	Case	Synopsis
<u>U.S.</u>		
AK	<i>Seater v. Estate of Seater</i> , 461 P.3d 421 (2020)	The Supreme Court, Bolger, C.J., held that term “high water line” referred to the average or mean high tide, rather than the extreme high tide.... Term “high water line,” in trial court’s prior orders enforcing an easement granted to the owner of the northern half of a previously-partitioned property over the northwest corner of the southern half by directing owner of the southern half to remove boulders he placed below the high water line, referred to the average or mean high tide, and thus trial court could not enter subsequent enforcement order directing removal of boulders placed below the “extreme high tide line,” which was defined by the Army Corps of Engineers as the maximum height reached by tides other than those associated with storm surges; prior orders used various terms synonymous with “average” in referring to the high water line and did not refer to “extreme” high tides or cite the Army Corps of Engineers’ definition.
AK	<i>John v. U.S.</i> , 720 F.3d 1214 (2013)	Secretaries of the Interior and Agriculture reasonably concluded that adjacent waters were appurtenant to, and could be necessary to fulfill the primary purposes of, the federal reservations identified in the 1999 rule identifying which navigable waters within Alaska constituted “public lands” under Alaska National Interest Lands Conservation Act (ANILCA), and were sources from which the United States could at some point claim a reservation of water, and accordingly, the

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		<p>Secretaries reasonably concluded that the United States had an “interest” in those adjacent waters by virtue of the federal reserved water rights doctrine sufficient to qualify as “public lands” for purposes of ANILCA's rural subsistence priority.... Water rights that the United States impliedly acquires are not forfeited or conveyed to third parties when the government conveys to another party land within a federal reservation; furthermore, federal reserved water rights can reach waters that lie on inholdings as long as those waters, based on their location and proximity to federal lands, are or may become necessary for the primary purposes of the federally reserved land.</p>
<p>AK</p>	<p><i>State, Dept. of Natural Resources v. Alaska Riverways, Inc.</i>, 232 P.3d 1203 (2010)</p>	<p>While state constitution authorizes the legislature to “provide for the leasing of any part of the public domain,” including submerged land, it does not itself grant the Department of Natural Resources (DNR) authority to require riparian owners who construct wharves to enter into leases for their use of state shoreland.</p>
<p>AK</p>	<p><i>Sturgeon v. Frost</i>, 139 S.Ct. 1066 (2019)</p>	<p>Even if United States held title to a reserved water right in the Nation River located within the Yukon-Charley Rivers National Preserve in Alaska, that right would only support a regulation preventing the depletion or diversion of waters in the River, up to the amount required to achieve the Yukon-Charley's purposes, and thus that right could not justify applying on the Nation River the National Park Service (NPS) rule banning the operation or use of hovercraft on navigable waters located within a park's boundaries; a hovercraft, which moved above the water on a thin cushion of air produced by downward-directed fans, did not deplete or divert any water, and hovercraft rule was directed against the sight or sound of</p>

Venue	Case	Synopsis
		motorized equipment in remote locations, concerns not related to safeguarding the water.
AL	<i>Purser v. Sold Ground Development, LLC</i> , 45 So.3d 1249 (2010)	Neighbor could drain lake situated on its property, even though drainage of lake would cause drainage of smaller connecting lake that was situated on landowner's property, inasmuch as neighbor was not required to maintain lake on its property for landowner's use and enjoyment, and all land upon which lakes were situated was within municipal limits.
AL	<i>Wehby v. Turpin</i> , 710 So. 2d 1243 (1998)	Owners of land extending beneath artificial or man-made lakes, not navigable as matter of law, have surface-water rights only in surface waters above their land; right to control over surface waters of private, nonnavigable lake, owned by two or more adjoining landowners is governed by common law rule of exclusive control of portion of lake over landowner's property, not civil law rule of right to reasonable use and enjoyment of entire lake.... Creek and artificial lake created by dam were not “navigable waterways,” even though creek flowed through lands belonging to more than one person and was occasionally used by fishing boats and canoes during some parts of year; proof of occasional use by boats and canoes did not show that creek was capable of any beneficial public use.
AR	<i>Pickle v. State</i> , 2014 Ark. App. 726 (2014)	<u>From Justice Vaught’s opinion</u> : The open fields doctrine, which holds that a person has no reasonable expectation of privacy in open lands or fields, did not apply to eliminate defendant's expectation of privacy, even though defendant was at a campsite while hunting; the open fields

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		<p>doctrine applied to searches outside a property owner's home or curtilage.... Defendant had a reasonable expectation of privacy in his identity; game wardens did not have a reasonable suspicion of criminal activity before they approached defendant and asked for his identification while he was at a campsite while hunting, and as reasonable person in defendant's circumstances would not have believed himself free to refuse the game wardens' requests or terminate the encounter.</p> <p><u>From Chief Justice Gladwin's dissent:</u> "Applying the factors considered in Maikhio to the hunting-compliance inspection in this case, there is clearly a compelling interest beyond mere law enforcement—the State's control, management, restoration, conservation and regulation of birds, fish, game and wildlife resources—an interest entrusted to the AGFC by amendment 35 to the Arkansas Constitution, property laws, and regulations that recognize the paramount importance of these invaluable natural resources. The Arkansas Constitution perpetuates a public-trust doctrine requiring AGFC to control, manage, restore, conserve, and regulate the wildlife resources of the State."</p>
AR	<i>State v. Hatchie Coon Hunting & Fishing Club, Inc.</i> , 372 Ark. 547 (2008)	When islands are formed in the navigable waterways of Arkansas, title to those islands is in the State.... Artificially submerged islands in navigable waterways become the property of the State by adverse possession, if the submersion continues for seven years or more, absent consent.

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AZ	<i>State ex rel. Winkleman v. Arizona Navigable Stream Adjudication Commission</i> 224 Ariz. 230 (2010)	Under the equal footing doctrine, on the day in which individual states enter the Union, title to the lands under territorial navigable watercourses is transferred from the federal government to the newly-established state government; doctrine applies to vest title in the State to the bedlands of only those watercourses that meet the navigability test at statehood.... Public trust doctrine restricts State's ability to dispose of land held in public trust; fundamental reason for this restriction is that the State has a fiduciary duty to its citizens to protect their sovereign resources from the actions of private interests that interfere with public trust purposes... State, as administrator of the trust in navigable waters on behalf of the public, does not have the power to abdicate its role as trustee in favor of private parties.
AZ	<i>Defenders of Wildlife v. Hull</i> , 199 Ariz. 411 (2001)	Statute that disclaimed state's interest in certain watercourse bedlands violated State Constitution's gift clause and public trust doctrine, where legislature relied on recommendations from administrative commission that made its findings under previously enacted statute whose standards for determining navigability of a watercourse were preempted by the federal Daniel Ball standard.
AZ	<i>San Carlos Apache Tribe v. Superior Court ex rel. County of Maricopa</i> , 193 Ariz. 195 (1999)	Water rights of parties in Gila and Little Colorado general stream adjudications were “vested substantive rights,” for purposes of due process prohibition of legislation disturbing vested substantive rights by retroactively changing the law that applies to completed events.... Statute making abandonment the only basis for relinquishment of a water right initiated before June 12, 1919, violated due process by affecting vested substantive rights; statute negated the forfeiture provision of an earlier version of the statute, pursuant to which junior appropriators may have advanced in priority due to forfeited

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		water rights.... Statute ordering courts to make the public trust doctrine inapplicable in water rights adjudications violated separation of powers and violated constitutional limit on legislative power to give away resources held in trust by state.
AZ	<i>Seven Springs Ranch, Inc. v. State ex rel. Arizona Dept. of Water Resources</i> , 156 Ariz. 471 (1987)*	Public trust doctrine was inapplicable in dispute involving drawing of basin and subbasin boundaries under the Groundwater Management Act; under different sections of Act, ranchers who leased grazing land could request and present evidence to Department of Water Resources in support of creation of subsequent active management areas, and if ranchers acquired evidence which would establish existence of subbasins within river basin as defined by statute, they could present that evidence to Department and request further hearings on that issue.
CA	<i>United States v. Walker River Irrigation District</i> , 986 F.3d 1197 (2021)	In light of the Nevada Supreme Court’s decision, the Court of Appeals, Tashima, Senior Circuit Judge, held that: [1] the three-year period for county to challenge river decree that adjudicated and settled water rights in river basin under the doctrine of prior appropriation began to run when the water rights at issue were adjudicated, but [2] remand was warranted to allow county to pursue its public trust claim to the extent it sought remedies that would not have involved a reallocation of water rights already adjudicated and settled under the doctrine of prior appropriation.

* We have included pre-1996 US cases that are foundational to the public trust doctrine.

Venue	Case	Synopsis
CA	<i>Abatti v. Imperial Irrigation District</i> , 52 Cal.App.5th 236 (2020)	An irrigation district is distinguished from ordinary municipal corporations by the fact that only the legal title of the property of the corporation is vested in the district, in trust for the uses and purposes set forth in applicable statutes, and that the beneficiaries of the trust, who are to be regarded as the owners of the property upon equitable principles, are the landowners in the district, in each of whom is vested the right to the several use of a definite proportion of the water of the district, and in all of whom, in common, is vested the equitable ownership of water rights as the means of supplying water.... Farmers’ vested, appurtenant rights with respect to river water distributed by irrigation district consisted of right to service, not appurtenant water right, and, thus, historical use by farmers’ predecessors did not entitle them to continue receiving the amounts of water they had been using to meet their irrigation needs or give them priority over non-agricultural users; farmers’ rights were established after 1914 and did not predate creation of water district’s appropriative rights, farmers merely had equitable and beneficial interest in district’s water rights, and district’s balancing of statutory obligations among farmers and non-agricultural users raised discretionary issues of policy.
CA	<i>Delta Stewardship Council Cases</i> , 48 Cal.App.5th 1014 (2020)	We conclude that the Legislature’s delegation of authority to the Council under the Delta Reform Act includes the authority to regulate water use by those holding water rights in furtherance of the Council’s duty to adopt and implement a legally enforceable Delta Plan that furthers the coequal goals in a manner consistent with the reasonable use and public trust doctrines. The scope of this regulatory authority is limited under the Act to state and local land use actions that qualify as covered actions. That the Council’s authority to regulate water use under the Act overlaps with the

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		Water Board’s regulatory jurisdiction is not a basis to invalidate WR P1.
CA	<i>Stanford Vina Ranch Irrigation Company v. State</i> , 50 Cal.App.5th 976 (2020)	State Water Resources Control Board was authorized to issue certain temporary emergency regulations establishing minimum flow requirements on three tributaries of Sacramento River during height of severe drought; Board had statutory authority to adopt emergency regulations in response to drought conditions, Board adopted regulations when certain protected fish were present to enable those fish to survive yearly migration during severe drought conditions, regulations furthered Board’s constitutional and statutory mandate to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water, and Board was not required to hold evidentiary hearing before making determination as what was unreasonable use of water.
CA	<i>AquAlliance v. U.S. Bureau of Reclamation</i> , 287 F.Supp.3d 969 (2018)	Local water authority did not violate California Environmental Quality Act (CEQA) by failing to include public trust document in final environmental impact statement/report (FEIS/R) detailing 10-year water transfer program to move water from sellers located upstream of Sacramento/San Joaquin Delta to buyers south of the Delta; CEQA did not require internal public trust consistency analysis for project.
CA	<i>Environmental Law Foundation v. State Water Resources Control Board</i> , 26	State Water Resources Control Board’s authority to protect the public trust is independent of and not bounded by the limitations on the Board’s authority to oversee water appropriation permit and license system.... Sustainable Groundwater

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	Cal.App.5th 844 (2018)	Management Act (SGMA) did not supplant common law or abrogate state’s public trust duty to consider impact of groundwater extraction on rivers; SGMA was not as comprehensive as the appropriative water rights system and thus did not occupy the field, and SGMA did not evince any intent to eviscerate the public trust in navigable waterways.... Although the state as sovereign is primarily responsible for administration of the public trust, the county, as a subdivision of the state, shares responsibility for administering the public trust and may not approve of destructive activities without giving due regard to the preservation of those resources.
CA	<i>Santa Barbara Channelkeeper v. City of San Buenaventura</i> , 19 Cal.App.5th 1176 (2018)	Under the public trust doctrine, those parties acquiring rights in trust property, such as water flowing in a stream, 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.... As a matter of practical necessity the state may have to approve water appropriations despite foreseeable harm to public trust uses; in so doing, the state must bear in mind its duty as trustee to preserve, so far as consistent with the public interest, the uses protected by the trust.... City’s cross-complaint against entities who diverted water from river asserted property right subject to underlying complaint against city alleging that city’s diversions of river unreasonably affected endangered steelhead trout by reducing waterflow, and thus city had right to file cross-complaint, where cross-complaint sought to limit cross-defendants’ water use to a level that was reasonable and beneficial after consideration of environmental issues, and trial court had to be able to consider demands on river made by all users.

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CA	<i>Siskiyou County Farm Bureau v. Department of Fish & Wildlife</i> , 237 Cal.App.4th 411 (2015)	Requiring entity to notify Department of Fish and Wildlife when it planned to substantially divert water from river of stream did not delegate to Department authority to adjudicate water rights that was vested in Water Resources Control Board or allow Department to prioritize beneficial uses of water contrary to Board’s powers; Board and Department acted together, not in conflict, regarding issues of overlapping concern, and requiring entity to notify Department when it planned to divert water did not blur lines between Department and Board.
CA	<i>Light v. State Water Resources Control Bd.</i> , 226 Cal.App.4th 1463 (2014)	No party can acquire a vested right to appropriate water in a manner harmful to public trust interests, and the state has an affirmative duty to take the public trust into account in regulating water use by protecting public trust uses whenever feasible.... State Water Resources Control Board’s delegation to local governing bodies of the task of formulating regulatory programs for diversion of stream water for crop frost protection was not an improper delegation on grounds that issue of balancing water use for frost protection against water needs for the protection of wildlife was novel and fundamental; Board previously had declared the use of water for frost protection to be unreasonable, and statutes provided that the “use of water for recreation and the preservation and enhancement of fish and wildlife resources is a beneficial use of water” and that the “preservation and enhancement of fish and wildlife” is a beneficial use.

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CA	<i>South Yuba Water District v. State Water Resources Control Bd</i> , Not Reported, 2014 WL 1681330	As the District emphasizes in its reply brief, “At issue in this case is whether the public trust doctrine can be used to [require certain releases from water storage facilities], <i>without compensation</i> , to provide environmental enhancements that would not exist in the state of nature at time of statehood.” (Italics added.) It is this central feature of <i>compensation</i> —the nitty-gritty of quantifying dollars—that has rendered the District’s public trust doctrine issue moot, for the reasons explained above in the “taking” discussion (and recognized by the trial court). Furthermore, the requirements of cooler water temperatures and a fish hatchery do not alter this conclusion of mootness by purportedly presenting issues distinct from instream flow requirements, because these temperature and hatchery requirements flow directly from the instream flow requirements.
CA	<i>County of Siskiyou v. Superior Court</i> , 217 Cal.App.4th 83 (2013)	The rule of exclusive concurrent jurisdiction did not require objectors’ action against county and State Water Resources Control Board for injunctive, mandamus, and declaratory relief to recognize the authority of the Board to protect groundwater within Scott River sub-basin under the public trust doctrine, and to compel county to put in place a well-drilling permit or management plan to protect public trust resources, to be transferred to the same county superior court that had issued a decree setting forth a plan for the county’s issuance of groundwater permits within the boundary of the adjudication, absent evidence that the public trust doctrine was even considered in the formulation of the prior decree; the issues in the petition were not substantially the same as the issues adjudicated in the prior decree.
CA	<i>Natural Resources Defense Council v. Kempthorne</i> , 621	U.S. Bureau of Reclamation was not subject to ESA requirement that it consult with federal wildlife agencies to determine whether its

Venue	Case	Synopsis
	F.Supp.2d 954 (2009)	implementation of water service contracts for diversion of water from Central Valley Project (CVP) would affect threatened or endangered species or their habitats, notwithstanding potential adverse impact on habitat of Delta smelt caused by diversions; original water service contracts predated enactment of ESA and listing of Delta smelt, and Bureau lacked discretion under contracts to modify diversion volumes.... A state may impose conditions upon the United States' appropriation of water, so long as the condition actually imposed is not inconsistent with other Congressional directives.
CA	<i>In re Bay-Delta etc.</i> , 43 Cal.4th 1143 (2008)	An environmental impact report (EIR) need not study in detail an alternative to the proposed project that is infeasible or that the lead agency has reasonably determined cannot achieve the project's underlying fundamental purpose.... CALFED's finding that an integrated solution to issues of the San Francisco Bay and Sacramento-San Joaquin Delta ecosystem, water quality and quantity, and levee stability was necessary to the success of the CALFED Program, in concluding that it was not necessary to discuss the alternative of requiring reduced exports of water from Bay-Delta region in CALFED's program environmental impact statement/environmental impact report (PEIS/R), was supported by substantial evidence, including past experience showing that those problems were interrelated and that conflicting interest groups and stakeholders could block actions that promoted some interests at the expense of others.

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CA	<i>El Dorado Irrigation Dist. v. State Water Resources Control Bd.</i> , 142 Cal.App.4th 937 (2006)	State Water Resources Control Board’s imposition of condition in permit assigning 1927 water appropriation rights to county irrigation district and water agency, which condition prohibited their diversion of water during release of stored water by federal and state water agencies to meet delta water quality objectives, contravened “rule of priority” without adequate justification, given fact that other water users with junior appropriative rights were not so restricted; condition did not promote reasonable water use or protection of public trust, as it was questionable whether imposition of condition only against county agencies, but not against hundreds of other junior appropriators, would meet goal of helping to meet delta water quality objectives with natural flow rather than stored water.
CA	<i>State Water Resources Control Bd. Cases</i> , 136 Cal.App.4th 674 (2006)	State Water Resources Control Board did not violate the public trust doctrine by failing to do more in water rights proceeding to implement a narrative salmon protection objective; it was for Board in its discretion and judgment to balance all competing interests in adopting water quality objectives and formulating a program of implementation to achieve those objectives, and parties challenging Board’s actions failed to show that Board acted inconsistently with its duty to protect public trust values so far as consistent with the public interest.
CA	<i>Natural Resources Defense Council v. Patterson</i> , 333 F.Supp.2d 906 (2004)	California statute, that required dam owner to “allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam,” was to be read disjunctively so as to designate alternative or separate categories of fish that were to be protected.... Bureau of Reclamation had not released sufficient water from dam to reestablish and maintain historic fisheries, as required by state

Venue	Case	Synopsis
		law, and as adopted by federal law, since many miles of river were entirely dry, except during extremely wet periods, and historic fish populations had been destroyed.
CA	<i>National Audubon Society v. Superior Court</i> , 33 Cal.3d 419 (1983)	The public trust is more than affirmation of state’s power to use public property for public purposes; it is an affirmation of duty of state to protect people’s common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when abandonment of that right is consistent with purposes of trust.... All uses of water, including public trust uses, must conform to standard of reasonable use.
CO	<i>Colorado Oil and Gas Conservation Commission v. Martinez</i> , 433 P.3d 22 (2019)	The Supreme Court, Gabriel, J., held that: [1] Commission was required to foster the development of oil and gas resources, protecting and enforcing the rights of owners and producers, and [2] the Commission did not abuse its discretion in declining to engage in rulemaking to consider rule that would have precluded new oil and gas development unless it could occur “in a manner that does not cumulatively, with other actions, impair Colorado's atmosphere, water, wildlife, and land resources, does not adversely impact human health, and does not contribute to climate change.”
CO	<i>St. Jude's Co. v. Roaring Fork Club, L.L.C.</i> , 351 P.3d 442 (2015)	Private club's diversion of water from river into irrigation ditch as an “aesthetic and recreational amenity to a golf course development, as well as for fish habitat and as a private fly-fishing stream” did not constitute a “beneficial use” of the water within meaning of statute governing appropriation of water rights; club's “use” was entirely passive, and it was impossible to quantify the flow of water necessary to efficiently produce the subjective aesthetic and recreational benefits desired, making

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		the appropriation sought by club tantamount to a forbidden riparian right.
CO	<i>Aspen Wilderness Workshop, Inc. v. Colorado Water Conservation Board</i> , 901 P.2d 1251 (1995)	Under statute vesting Water Conservation Board with authority to appropriate waters of streams and lakes as required to preserve natural environment, Board is not at liberty to freely appropriate any body of water for any purpose or beneficial use it determines; rather, it must confine its appropriations and other actions to express statutory purpose of maintaining minimum stream flows necessary to preserve natural environment to a reasonable degree.
CT	<i>City of Waterbury v. Town of Washington</i> , 260 Conn. 506 (2002)	Doctrine of exhaustion of administrative remedies did not apply to claim of downstream towns and landowners that city’s diversion of water from river through operation of a dam, for a water supply, was an unreasonable impairment of the public trust in the river under Connecticut Environmental Protection Act (CEPA); plain language of CEPA section setting forth powers of the court to protect the public trust in natural resources gave trial court discretion on whether to remand an action to an administrative agency that had within its jurisdiction appropriate administrative, licensing, or other such proceedings, and examination of legislative history surrounding enactment of CEPA also supported conclusion that section was meant to trump the exhaustion doctrine.

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DE	<i>Groves v. Secretary of Dept. of Natural Resources and Environmental Control</i> , Not Reported C.A. No. 92A-10-003 (1994 WL 89804)	Although the private landowner owns the foreshore, the public does have certain limited rights superior to those of the private owners. These rights are what constitute the public trust doctrine. They are the right to navigate and fish over the foreshore and the State's police power, including the protection of life, health, comfort, and property or the promotion of public order, morals, safety, and welfare.... There does not and never has existed, as a part of this doctrine in Delaware, a right of the public superior to the landowner to access to the foreshore for walking and/or recreational activities. The private rights of ownership may not be taken absent just compensation as mandated by the United States and Delaware constitutions.
FL	<i>5F, LLC v. Dresing</i> , 142 So.3d 936 (2014)	A riparian or littoral owner's privilege or qualified right to construct a pier is apparently illusory until such time as the riparian or littoral owner complies with the applicable regulations, including zoning and environmental controls put in place as part of the public trust doctrine.... There is a common law qualified riparian or littoral right or privilege to construct piers or wharves from the riparian or littoral owner's land onto submerged land to the point of navigability but not beyond the low water line, subject to the superior and concurrent rights of the public and to applicable regulations; this is true regardless of whether the submerged lands are held in trust by the State or privately held.
FL	<i>Brannon v. Boldt</i> , 958 So.2d 367 (2007)	Implied easement created by denomination on recorded plat map, granting subdivision lot owners ingress and egress over neighbors' property to bay, granted lot owners the right to build dock at water's edge if otherwise permitted by law and to cross property to launch small boat over existing seawall or reach area below mean high-water mark, but did not grant lot owners the right to

Venue	Case	Synopsis
		<p>remain on neighbors' property, a portion of which had an occupied family dwelling, for extended periods to fish or view water, fireworks, or sunset, even if little or no land existed below mean high-water mark at easement's location; purpose of easement was merely to give lot owners access to water and to public riparian rights possessed by all people below high-water mark.</p>
FL	<p><i>Trepanier v. County of Volusia</i>, 965 So.2d 276 (2007)</p>	<p>The recognition of a right through “custom” means that the owner cannot use his property in a way that is inconsistent with the public's customary use or calculated to interfere with the exercise of the right of the public to enjoy the dry sand area as a recreational adjunct of the wet sand or foreshore area.... Genuine issues of material fact existed as to whether public had a customary right to use private owners' beachfront property for driving and parking, and, if so, whether migration of the public's customary use of the beach had occurred, thus precluding summary judgment in lawsuit owners brought against county alleging that county improperly used their property for traffic and parking, absent any easement or other property interest that would authorize such use.</p>
FL	<p><i>Lee v. Williams</i>, 711 So.2d 57 (1998)</p>	<p>Shore of navigable waters which sovereign holds for public uses is the land that borders on navigable waters and lies between ordinary high and ordinary low water mark; this does not include lands that do not immediately border on navigable waters, and that are covered by water not capable of navigation for useful public purposes, such as mud flats, shallow inlets, and lowlands covered more or less by water permanently or at intervals, where waters thereon are not in their ordinary state useful for public navigation.</p>
FL	<p><i>Krieter v. Chiles</i>, 595 So.2d 111 (1992)</p>	<p>Under Public Trust Doctrine, there must be some impairment of citizen's right to enjoy absolute</p>

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		freedom before allowing citizen use of public submerged land.... State's denial of permission for riparian property owner to construct private dock on submerged land held in trust for people of State did not constitute “taking” for which owner was entitled to compensation absent showing by owner of necessity or that ingress or egress to her property by means of water was only method thereof.
GA	None found	See Appendix D, “The Public Trust Doctrine in 45 States” (2014): Georgia inherited English common law and uses a commercial navigation test to determine the public’s rights to non-tidal waters (see Code Ann. § 44-8-5(a)). Georgia has extensive legal history on oyster rights but has limited case law on other PTD uses.
HI	<i>Kauai Springs, Inc. v. Planning Com’n of County of Kauai</i> , 133 Hawai’i 141 (2014)	County planning commission properly denied, pursuant to the public trust doctrine of the state constitution, water bottling company’s combined application for a user permit, zoning permit, and special permit related to operation of spring water bottling facility, where there was no evidence that bottling company or its commercial water supplier had legal standing to extract or sell the water on a commercial basis, thus, bottling company’s operation of bottling facility would not have been in compliance with Water Commission and Public Utilities Commission (PUC) requirements.
HI	<i>In re ‘Iao Ground Water Management Area High-Level Source Water Use Permit Applications</i> , 128 Hawai’i 228 (2012)	Dismissal was warranted for county’s claim on appeal that municipal water use, though a noninstream use, should be afforded higher status and preferential consideration as a public trust use since it sought resolution of an abstract proposition of law; the county sought clarification of language in the Commission on Water Resource Management’s water use order but did not argue that the Commission’s alleged error affected its rights or interests.... Commission on Water

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		Resource Management erred in its decision not to restore streamflow to two streams by focusing only on amphidromous species and disregarding evidence supporting other instream uses; even if the streams could not support amphidromous species, evidence that they could support other instream uses had to be weighed against noninstream uses.
HI	<i>In re Waiola O Molokai, Inc.</i> , 103 Hawai'i 401 (2004)	Commission on Water Resource Management failed to render requisite findings of fact and conclusions of law with respect to whether ranch and its wholly-owned water purveyor had satisfied their burden in applying for water use permit, and thus Commission violated its public trust duty to protect Department of Hawaiian Home Lands reservation rights by balancing the various competing interests in the state water resources trust; record was void of a single finding of fact regarding whether ranch established that the proposed use would interfere with Department's reservation.
HI	<i>In re Water Use Permit Applications</i> , 105 Hawai'i 1 (2004)	In contested hearing related to ditch system for collecting fresh surface water and dike-impounded ground water, the Water Commission erred by basing its decision that permit applicants had no practical alternative water sources (1) on the effect reduced water flows would have on the economic viability of the Ditch and (2) on the theory that public trust resources may not be prioritized.
IA	<i>Iowa Citizens for Community Improvement v. State</i> , 962 N.W.2d 780 (2021)	Social justice organizations lacked standing to bring action relying on public trust doctrine in seeking declaratory and injunctive relief and compel State of Iowa, state agencies, and state officials to enact legislation to require Iowa farmers to take steps to significantly reduce levels of nitrogen and phosphorus in river, since favorable judicial decision by declaring void state

Venue	Case	Synopsis
		<p>statute, codifying state policy for nitrogen and phosphorus water pollution controls, was not likely to redress organization members’ alleged reduced ability to kayak, swim, or enjoy views of river, or save them money on drinking water, and only court could not order legislature to enact legislation.</p>
ID	<p><i>In re Sanders Beach</i>, 143 Idaho 443 (2006)</p>	<p>The State of Idaho owns, in trust for the public, title to the bed of navigable waters below the ordinary high water mark as it existed when Idaho became a state.... Owners of beachfront property on lake did not have right to exclude public from portion of exposed lake bed lying below the lake’s ordinary high water mark, but above the lake’s ordinary low water mark, as state held that land in trust for the public.</p>
ID	<p><i>Idaho Forest Industries, Inc. v. Hayden Lake Watershed Imp. Dist.</i>, 135 Idaho 316 (2000)</p>	<p>Clear and convincing evidence, rather than a preponderance of the evidence, was the standard of proof that state was required to meet as to its claim of public trust doctrine rights, relating to lands under navigable waters, as to 30 acres on landward side of dike which had allegedly been subject to overflow, where the claim was in derogation of rights claimed by the record title owners of the 30 acres.</p>
IL	<p>None found</p>	<p>See Appendix D, “The Public Trust Doctrine in 45 States” (2014): after the landmark <i>Illinois Central Railroad Co. v. Illinois</i>, 146 U.S. 387 (1892), Illinois has expanded PTD resources mainly through statutes. The state holds title for all submerged lands under navigable waters for the public benefit, per the Submerged Lands Act (<i>see</i> 5 Ill. Comp. Stat. § 605/1). The state also holds title to Lake Michigan, and all other lakes navigable-in-fact (<i>see</i> 615 Ill. Comp. Stat. 5/24).</p>

Venue	Case	Synopsis
IN	<i>Gunderson v. State, Indiana Department of Natural Resources</i> , 90 N.E.3d 1171 (2018)	The boundary separating public trust land from privately-owned riparian land along the shores of Lake Michigan is the common-law ordinary high water mark and, absent an authorized legislative conveyance, the State retains exclusive title up to that boundary.
KS	<i>State ex rel. Meek v. Hays</i> , 246 Kan. 99 (1990)	To establish prescriptive easement in a stream, stream in question must have been used by public with actual or implied knowledge of riparian landowner, adversely under claim or color of right and not merely by owner’s permission, and continuously and uninterruptedly, for period required to bar an action for recovery of possession of land or as otherwise prescribed by statute; mere use by traveling public is not enough to establish that use is adverse, there must be some additional action, formal or informal, by public authorities, indicating their intention to treat stream as public one.... When legislature refuses to create public trust for recreational purposes in nonnavigable streams, courts should not alter legislature’s statement of public policy by judicial legislation; if nonnavigable waters of state are to be appropriated for recreational use, legislative process is proper method to achieve goal.
KY	None found	N/A
LA	<i>Lake Bistineau Preservation Society, Inc. v. Wildlife and Fisheries Com'n of the State of Louisiana</i> , 895 So.2d 821 (2005)	The Court of Appeal, Gaskins, J., held that group was not entitled to preliminary injunction to prevent DWF from drawing down lake in the midsummer.... Under the Public Trust Doctrine, DWF has an obligation to protect the Louisiana environment. It is readily apparent that various factors must be considered in pursuit of this goal. However, like the trial court, we do not find that DWF has the same extensive regulations that bound the ECC in the Save Ourselves case.

Venue	Case	Synopsis
LA	<i>Avenal v. State</i> , 886 So.2d 1085 (2004)	Implementation of the Caernarvon coastal diversion project that introduced freshwater from Mississippi River into coastal area fit within the public trust doctrine; the public resource at issue was state's coastline being lost at an alarming rate, the risks involved were not just environmental, but involved health, safety, and welfare since coastal erosion removed an important barrier between large populations and ever-threatening hurricanes and storms, and erosion could result in the loss of inhabited land and businesses that rely on the coastal region as a transportation infrastructure vital to the region's industry and commerce.
LA	<i>Save Ourselves, Inc. v. Louisiana Environmental Control Com'n</i> , 452 So.2d 1152 (1984)	Requirement that administrative agency make basic findings supported by evidence and ultimate findings flowing rationally from basic findings and articulate rational connection between facts found and order issued is particularly significant in cases such as environmental case where agency performs as public trustee and is duty bound to demonstrate that it has properly exercised its discretion, and court will not supply a finding from evidence or reasoned basis for Environmental Control Commission's action that the Commission has not found or given.
MA	<i>Kelso v. Baker</i> , Not Reported in N.E. Rptr. (2019), 2019 WL 5862058	After consideration of the Public Trust Doctrine and the circumstances attendant to the conveyance and use of the easements, the court concludes that the easements over the shore area of Baker Lot 10 include the right to store one boat on the shore and moor two boats in the tidal flats between high and low water.
MA	<i>Beverly Port Marina, Inc. v. Commissioner of Dep't of Environmental Protection</i> , 84	The purpose of the regulation precluding issuance of a license for development of a project in a tidelands site if a competing proposal materializes from a party ready, willing, and able to use the site for water-dependent industrial uses to a greater

Venue	Case	Synopsis
	Mass.App.Ct. 612 (2013)	extent than proposed by the license applicant, is not to ensure that the competing proposal actually goes forward but, instead, to ensure that the applicant's project, which is less satisfactory from the perspective of the regulatory purpose of fostering water-dependent industrial uses, will not preempt availability of the tidelands site for alternative uses more in keeping with that objective.
MA	<i>Marashlian v. Zoning Bd. of Appeals of Newburyport</i> , 421 Mass. 719 (1996)	These findings include the fact that the “public trust doctrine” precludes private use of land below the low-water mark, that development is subject to approval of the Massachusetts Department of Environmental Quality Engineering pursuant to G.L. c. 91 (1994 ed.), that the locus is situated in an historic district, that an existing stipulation forbids certain construction that would obstruct the waterfront view (thus precluding construction of an above-ground garage), that the parcel is surrounded by historic buildings and a boardwalk precluding waterfront access, and certain topographic and soil conditions resulting from the parcel's low elevation make a parking garage with 959 parking spaces nonfeasible.
MD	<i>Diffendal v. Department of Natural Resources</i> , 222 Md.App. 387 (2015)	Common law public trust doctrine did not apply so as to require Maryland Department of Natural Resources to engage in an “extra-statutory analysis” of the impact an aquaculture lease would have on navigation, recreation, or commercial fishing in deciding whether to grant it, rather, the public trust doctrine was incorporated in statutory criteria regulating the use of navigable waters, which reflected the legislature's intent to manage the uses of Maryland's waterways in a way that was in the best interest of the entire public.

Venue	Case	Synopsis
MD	<i>Clickner v. Magothy River Association Inc.</i> , 424 Md. 253 (2012)	We see no meaningful distinction between ocean and inland beaches sufficient to allow public prescriptive rights to accrue on one type of beach and not the other. To the contrary, just as the ownership of all navigable waterways and their foreshores is governed by the public trust doctrine, the dry sand portions of the attached beaches should be subject to the same principles of prescription without distinction as to the character of the water hitting the sand.
ME	<i>McGarvey v. Whittredge</i> , 28 A.3d 620 (2011)	As a matter of Maine common law, the public has the right to walk across intertidal lands to reach the ocean for purposes of scuba diving.... In Maine, for oceanfront property, the upland owner ordinarily has fee ownership of the intertidal land, and that private ownership is subject to the public's right to use the intertidal zone.
ME	<i>Britton v. Department of Conservation</i> , 974 A.2d 303 (2009)	Submerged land lease between Bureau of Parks & Lands and neighbor which maintained wharf on the land did not collaterally estop riparian landowners from bringing a complaint against neighbor for an infringement of their private right to access the navigable waters in front of their property; although Bureau found, when granting the lease pursuant to the Submerged and Intertidal Lands Act (SILA), that wharf did not unreasonably interfere with landowners' rights of ingress and egress, that finding did not resolve the private dispute between the parties, and SILA, as an extension of the state's public trust authority to reasonably interfere with a coastal property owner's riparian rights in order to protect the public's rights to fishing, fowling, and navigation, did not give state authority to infringe upon landowners' rights in order to allow neighbor to operate commercial wharf enterprise.

Venue	Case	Synopsis
ME	<i>Norton v. Town of Long Island</i> , 883 A.2d 889 (2005)	Condemnation by United States of State's <i>jus privatum</i> title, or private right to title, to submerged lands below the low tide mark in small boat pool did not condemn State's <i>jus publicum</i> , or the public right of fishing and navigation, in small boat pool's intertidal zone, and thus landowner whose predecessor in title received deed to small boat pool from the federal government could not exclude members of the public who wished to navigate or fish in the small boat pool; description of the property taken did not mention the public trust easement of the State, and under the Declaration of Public Taking Act the United States could not take a State's interest in a condemned parcel except by stating so expressly in the condemnation proceeding.
ME	<i>Conservation Law Foundation, Inc. v. Department Of Environmental Protection</i> , 823 A.2d 551 (2003)	Rule adopted by Board of Environmental Protection (BEP), allowing Department of Environmental Protection (DEP) to permit by rule rather than by individual permit pile supported piers and wharves in coastal wetlands, was not invalidated by the public trust doctrine; public's right to fishing, fowling and navigation under the doctrine was subject to an owner's right to wharf out to the navigable portion of the body of water.
ME	<i>Opinion of the Justices</i> , 437 A.2d 597 (1981)	In view of the common law principle that the intertidal and submerged lands are impressed with a public trust, a principle that reflects the unique public value of those lands, we believe that any legislation giving up any such public rights must satisfy a particularly demanding standard of reasonableness. Submerged and intertidal lands are not fungible with lands in the interior. Navigation, fishing, and fowling were the historical purposes for which the public trust principle was developed in the common law. Those public uses of intertidal and submerged lands remain important, but others have grown up as well. The press of an increasing population has led to heavy demands upon Maine's

Venue	Case	Synopsis
		<p>great ponds and seacoast for recreational uses. Also, waterside sites are needed for major industrial and commercial enterprises. The intertidal and submerged lands are finite public resources, the demand upon which steadily increases. In dealing with public trust properties, the standard of reasonableness must change as the needs of society change.</p>
MI	<p><i>Michigan Citizens for Water Conservation v. Nestle Waters...</i>, 479 Mich. 280 (2007)</p>	<p>Water conservation organization and members who owned land on lake and stream lacked standing to sue spring water bottling company for pumping groundwater in violation of Environmental Protection Act with respect to lake and wetlands where no members owned property, even though streams, lakes, and wetlands in the area had interconnected hydrological link and members had standing to vindicate injury to riparian rights; organization and members still needed to show a concrete and particularized injury in fact within this interrelated ecosystem, and they did not allege impairment of aesthetic, recreational, or economic interests in lake and wetlands where they owned no land.</p>
MI	<p><i>Glass v. Goeckel</i>, 473 Mich. 667 (2005)</p>	<p>The private title of littoral landowners lying on the shores of a Great Lake is subject to the public trust beneath the “ordinary high water mark,” which is the point on the bank or shore up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation, or other easily recognized characteristic; where the bank or shore at any particular place is of such a character that is impossible or difficult to ascertain where the point of ordinary high-water mark is, recourse may be had to other places on the bank or shore of the same stream or lake to determine whether a given</p>

Venue	Case	Synopsis
		stage of water is above or below ordinary high-water mark.
MN	<i>White Bear Lake Restoration Association ex rel. State v.</i> , 946 N.W.2d 373 (2020)	Supreme Court would decline to extend public trust doctrine to impose duty on Minnesota Department of Natural Resources (DNR) to manage groundwater and surface water levels of lake when issuing groundwater permits, primarily to municipalities; there was no allegation DNR had violated its duty as trustee to protect public use from private interruption and encroachment, field of public water use was heavily regulated by the State, and the Legislature had established structures within which public water use priorities were to be balanced.
MO	None found	<i>See</i> Appendix D, “The Public Trust Doctrine in 45 States” (2014): Missouri recognized the PTD in 1902, adopting the federal navigability test, and has done little with it since, except for a court decision relating to public parks.
MS	<i>Phillips Petroleum Co. v. Mississippi</i> , 484 U.S. 469 (1988)	In view of Mississippi case law consistently holding that public trust in lands under water includes title to all land under tidewater, and describing uses of such lands not related to navigability, determination that land underlying Mississippi waters which were not navigable-in-fact but which were influenced by tide running in Gulf of Mexico passed to State of Mississippi at time of statehood was not inequitable and any property expectations to the contrary would be unreasonable.
MS	<i>Stewart v. Hoover</i> , 815 So.2d 1157 (2002)	State did not lose public trust tidelands by an oversight in the mapping process that failed to include the tidelands in preliminary or final

Venue	Case	Synopsis
		<p>certified maps.... State's fee simple title to property held in trust cannot be disposed of except pursuant to a higher public purpose that is not detrimental to the general public and only upon the authority of legislative enactment consistent with the public purposes of the trust.</p>
<p>MT</p>	<p><i>In re Adjudication of the Existing Rights to the Use of All the Water</i>, 311 Mont. 327 (2002)</p>	<p>Under the Constitution and the public trust doctrine, the public has an instream, non-diversionary right to the recreational use of the State's navigable surface waters.... State law prior to 1973 did not absolutely require a diversion for a valid appropriation of water; beneficial use rather than diversion was the touchstone of the prior appropriation doctrine, state had long recognized as beneficial the use of water for fish, wildlife and recreation, and state had validated non-diversionary appropriations.... Water Court's remark in abstract that there was a question as to the validity of water appropriation claim by Department of Fish, Wildlife, and Parks (DFWP) was not a policy adoption in violation of Claims Examination Rules, but rather merely identified a potential legal issue; remark did not take a position and did not rule on any issue, but simply pointed out the possibility that case law could provide a basis for a challenge to any pre-1973 fish, wildlife and recreation water claim.</p>
<p>NC</p>	<p><i>Duke Energy Carolinas, LLC v. Kiser</i>, 2021-NCCOA-558 (2021)</p>	<p>Under the test of navigability in fact, to determine whether a body of water is navigable for purposes of the public trust doctrine, an artificial lake is not navigable in its natural condition merely because boats can navigate its surface; a party must show that the feeding waterway of the lake is passable by watercraft over an extended distance both upstream of, under the surface of, and downstream from the lake.... Genuine issue of material fact as to navigability of river, and consequently of lake created by power company's damming of river,</p>

Venue	Case	Synopsis
		<p>precluded summary judgment for servient estate owner, which held title to submerged lands, on claims by power company under the public trust doctrine, and by neighbors under riparian rights, to a common law right to use the waters of lake above submerged land for recreational activities and to erect and maintain docks and other such structures that provided access from the neighbors' lots to the lake.</p>
<p>NC</p>	<p><i>Nies v. Town of Emerald Isle</i>, 244 N.C.App. 81 (2015)</p>	<p>Public trust rights are associated with public trust lands but are not inextricably tied to ownership of these lands; for example, the General Assembly may convey ownership of public trust land to a private party, but will be considered to have retained public trust rights in that land unless specifically relinquished in the transferring legislation by the clearest and most express terms.... Beach-driving ordinances, which included ordinance permitting public driving on area of beach from foreshore to ten feet seaward of dune closest to ocean, did not constitute physical invasion of dry sand beach portion of property owners' ocean-front property, and thus was not taking under Takings Clause; public beach driving across dry sand beach was permissible pursuant to public trust rights, property owners had never had right to exclude public traffic from public trust dry sand beach portions of property, town had authority to both ensure public access to ocean beaches and to impose appropriate regulations pursuant to its police power, and contested beach-driving ordinances did not create a right of public relative to property, but rather regulated right public already enjoyed.</p>

Venue	Case	Synopsis
NC	<i>Fish House, Inc. v. Clarke</i> , 204 N.C.App. 130 (2010)	Canal known as Old Sam Spencer Ditch, although manmade, was a “navigable waterway” held by the state in trust for all citizens of North Carolina such that possessor of eastern property could not enjoin other, including western landowner, from using the waters; boats with a length of 30 feet had navigated the canal, and members of the public had used the canal for commercial purposes for over 20 years.... Issue of navigability of entire manmade canal was before the court in trespass action by possessor of eastern property against western landowner such that court could adjudicate rights in eastern half of canal after determining that canal was a navigable water subject to the public trust doctrine; eastern possessor's complaint did not limit trespass action to any particular portion of the canal, and western landowner also raised the issue of navigability as an affirmative defense and as a counterclaim.
NC	<i>Neuse River Foundation, Inc. v. Smithfield Foods, Inc.</i> , 155 N.C.App. 110 (2002)	Environmental river associations', riverkeepers', and recreational fisherman's claim that they were injured by hog farming companies' waste management practices in that they either owned property adjacent to, worked on, protected, or had concern for welfare of rivers allegedly polluted by companies' practices did not constitute a special injury, and thus river associations, riverkeepers, and recreational fisherman did not have standing to maintain an action for public nuisance; there was no state authority supporting contention that injury to aesthetic or recreational interests alone, regardless of degree, conferred standing on an environmental plaintiff.... State's exclusive authority to regulate its public trust waters thus limits the private rights of riparian landowners bordering such waters, subjecting them to such general rules and regulations as the legislature, in the exercise of its powers, may prescribe for the

Venue	Case	Synopsis
		protection of the public rights in rivers and navigable waters
ND	<i>Sorum v. State</i> , 947 N.W.2d 382 (2020)	Act limiting claims of state ownership of minerals underneath lake created by river dam to river's historical ordinary high water mark did not violate the public trust doctrine; as federal government, rather than the state, held title to the lake bed outside the historical river channel, the public trust was not implicated by private mineral ownership under the lake.
ND	<i>Reep v. State</i> , 841 N.W.2d 664 (2013)	Statute governing interests of grantees in shore zones between high and low watermarks on a navigable lake or stream does not convey or allocate the State's equal footing interest in minerals under the shore zone, which the State owned at the moment of statehood in 1889, to upland landowners on navigable waters in North Dakota; however, if the State contractually grants or conveys parts of its equal footing interests to upland owners by deed, subject to the restrictions of the public trust doctrine, and except when the deed provides otherwise, the grantee takes the State's full interest to the low watermark.
ND	<i>State ex rel. Sprynczynatyk v. Mills</i> , 523 N.W.2d 537 (1994)	Statute governing interests of grantees in shore zones between high and low watermarks of lakes and streams was rule of construction for determining boundary for grants of riparian land and was not itself absolute grant of ownership to low watermark.... Absent contrary intent, grant under which riparian land is held includes riparian grantee's full interest in shore zone, and

Venue	Case	Synopsis
		necessarily precludes the state's claim of absolute ownership to high watermark.... Riparian landowners and state have correlative interests in shore zone between high and low watermarks of lakes and streams.
ND	<i>North Dakota State Water Com'n v. Board of Managers</i> , 332 N.W.2d 254 (1983)	State does not lose its right to exercise authority over lake merely because lake bed is subject to private ownership.... The State Water Commission had authority to control the drainage waters from meandered nonnavigable lake or to restore lake to its natural water level.
NE	None found	N/A
NH	<i>Morrissey v. Town of Lyme</i> , 162 N.H. 777 (2011)	Landowners failed to state an inverse condemnation claim for taking of their property by town on the basis that, by changing beaver dam's water release policy, town drained the water from landowners' shallow waterfront, thereby converting submerged wetlands to mud, compromising their access to water, and interfering with their enjoyment of their property; allegations failed to support a claim that lowering the water level substantially interfered with or deprived the landowners of the use of their property, in whole or in part, and merely alleging that the town lowered the water level so as to compromise their access to water and interfere with their enjoyment of their property was not sufficient to demonstrate that a taking of a constitutional dimension had occurred.
NH	<i>In re Town of Nottingham</i> , 153 N.H. 539 (2006)	Groundwater Protection Act provides the sole criteria that Department of Environmental Services (DES) must follow in issuing groundwater withdrawal permits, and common law tort principles and statute setting forth State policy on dams, reservoirs and other water conservation projects impose no additional tests that DES must apply.

Venue	Case	Synopsis
NH	<i>Opinion of the Justices</i> , 139 N.H. 82 (1994)	High water mark was maximum shoreward extension of public trust area boundary, beyond which probable existence of private property rights may, without public easement arising from historical practice, restrict any public access under state and federal constitutions.... Recognition in proposed legislative amendment that public trust land extended to lands subject to ebb and flow of tide did not infringe upon private property rights of adjacent landowners under state and federal constitutions; as private title to tidelands was already burdened by preexisting public rights, regulation designed to protect those rights did not constitute taking of property without just compensation.
NJ	<i>Township of Long Beach v. Tomasi</i> , Not Reported in Atl. Rptr. (2018) 2018 WL 6683927	In short, we discern no abuse of the Township's eminent domain authority when it sought easements for public access to beaches being protected and replenished by a federally-funded project. Such action is also closely related to the Township's authority to act in compliance with the Public Trust Doctrine. Thus, although here the Township was not acting solely for Public Trust Doctrine purposes, its actions in seeking beach protection were not inconsistent with the Public Trust Doctrine.
NJ	<i>Raleigh Avenue Beach Ass'n v. Atlantis Beach Club, Inc.</i> , 185 N.J. 40 (2005)	Upland sands of beach owned by private beach club were required to be made available for use by the general public under the public trust doctrine, where prior to the creation of club there was longstanding public access to the beach, condominium complex situated next to beach club held a Coastal Area Facility Review Act permit that required public access to beach, there was documented public demand for beach access and a lack of publicly owned beaches in the area, and the

Venue	Case	Synopsis
		beach club was using beach as a business enterprise.
NM	<i>Sanders-Reed ex rel. Sanders-Reed v. Martinez</i> , 350 P.3d 1221 (2015)	Common law public trust doctrine did not empower judicial branch to independently establish the best way to implement protections for the atmosphere, apart from its judicial review function involving actions of Environmental Improvement Board (EIB), in action seeking judgment declaring that public trust doctrine imposed duty on state to regulate greenhouse gas emissions; constitutional provision recognizing duty to protect the atmosphere and delegating that duty to the legislature superseded common law public trust doctrine, Air Quality Control Act charged EIB with preventing or abating air pollution and permitted citizens to be involved in regulatory process, and separation of powers principles would be violated by adhering to request for judicial decision that independently ignored and supplanted procedures established under Act.
NM	<i>New Mexico v. General Elec. Co.</i> , 467 F.3d 1223 (2006)	Remedy which state sought to obtain through public nuisance and negligence causes of action, an unrestricted award of money damages for groundwater contamination, conflicted with, and thus was preempted by, Comprehensive Environmental Response, Compensation, and Liability Act's (CERCLA) comprehensive natural resources damages (NRD) scheme; for state to use an NRD recovery, which it would hold in trust, for some purpose other than to restore, replace, or acquire the equivalent of the injured groundwater would undercut Congress's policy objectives.

Venue	Case	Synopsis
NV	<i>United States v. Walker River Irrigation District</i> , 986 F.3d 1197 (2021)	Under Nevada law, the three-year period for county to challenge river decree that adjudicated and settled water rights in river basin under the doctrine of prior appropriation began to run when the water rights at issue were adjudicated.... Remand was warranted to allow county to pursue its public trust claim to the extent it sought remedies that would not have involved a reallocation of water rights already adjudicated and settled under the doctrine of prior appropriation.
NV	<i>Mineral County v. Lyon County</i> , 136 Nev. 503 (2020)	The public trust doctrine applies to rights already adjudicated and settled under the doctrine of prior appropriation, such that the doctrine has always inhered in the water law of Nevada as a qualification or constraint in every appropriated right.... The public trust doctrine applies to all waters within the state, whether navigable or nonnavigable, and to the lands underneath navigable waters.... In considering whether the dispensation of public trust property is valid by satisfying the state’s special obligation to maintain the trust for the use and enjoyment of present and future generations, courts must evaluate the following factors: the degree of effect of the project on public trust uses, navigation, fishing, recreation and commerce; the impact of the individual project on the public trust resource; the impact of the individual project when examined cumulatively with existing impediments to full use of the public trust resource; the impact of the project on the public trust resource when that resource is examined in light of the primary purpose for which the resource is suited, such as commerce, navigation, fishing or recreation; and the degree to which broad public uses are set aside in favor of more limited or private ones.

Venue	Case	Synopsis
NV	<i>Mineral County v. Walker River Irrigation District</i> , 900 F.3d 1027 (2018)	Under the public trust doctrine, states hold navigable waterways within their borders in trust for the good of the public.... Certification of question to Nevada Supreme Court of whether, and to what extent, under Nevada law, public trust doctrine applied to water rights already adjudicated and settled under the doctrine of prior appropriation, was appropriate in county’s action requesting that decree court reopen and modify its final decree adjudicating water rights in river basin; question had significant implication for Nevada’s water laws, and Court of Appeals could not be certain how the Nevada Supreme Court would resolve the matter.
NY	<i>Avella v. City of New York</i> , 29 N.Y.3d 425 (2017)	Plain language of statute in which legislature previously authorized construction of stadium on parkland and granted city the right to rent the stadium to private entities did not authorize further developments on that tract of parkland that were unrelated to the stadium project, and thus proposed new developments on the site violated the public trust doctrine.
NY	<i>New York State Assemblyman v. City of New York</i> , 85 A.D.3d 429 (2011)	Parcel of land did not constitute parkland subject to public trust doctrine either expressly, or by implication, where it had been assigned to municipality under condition that land not be formally “mapped” as parkland, and it had been operated by non-municipal entity and public's access had been restricted 70 percent of time to those who paid substantial membership fees.
OH	<i>State ex rel. Merrill v. Ohio Dept. of Natural Resources</i> , 130 Ohio St.3d 30 (2011)	Permissive intervention of two nonprofit conservation organizations, as defendants and counterclaimants for declaratory judgment, was not an abuse of discretion, in action against state and Ohio Department of Natural Resources (ODNR), in which action owners of property bordering Lake Erie sought declaration regarding

Venue	Case	Synopsis
		<p>interest of state as trustee over public trust and sought mandamus relief to require state to pay compensation to landowners for a taking; the defense and counterclaim asserted by conservation organizations related both legally and factually to claims asserted by landowners, and permissive intervention did not unduly delay or prejudice the adjudication of rights of original parties.</p>
OH	<p><i>Beach Cliff Bd. Of Trustees v. Ferchill</i>, Not Reported in N.E.2d (2003) 2003 WL 21027604</p>	<p>Based on presence of historic fill material on site, strip of Lake Erie beachfront property for which Department of Natural Resources issued submerged land lease to construct recreational dock and erosion control project was “territory” held by state under public trust doctrine, and thus was proper subject of submerged land lease, even though portion of strip had previously been owned by adjoining owner that presently sought declaratory and injunctive relief in connection with construction project.</p>
OH	<p><i>Schnittker v. State</i>, Not Reported in N.E.2d (2001) 2001 WL 410280</p>	<p>While appellants have a right to construct and maintain a pier in order to access navigable water, their right to wharf to navigable water must yield to the paramount right of the state as such trustee to enact regulatory legislation. “The power to prescribe such regulations resides in the Legislature of the state.” <i>Id.</i> at 79. “The authorities show that the right of a riparian or littoral owner is always subject to the paramount authority of the state and federal governments for the ends set forth.” <i>Id.</i> at 83. If we were to hold that appellants' rights to wharf trump the rights of the state to regulate, we would in effect eviscerate the property rights of the state because without the right to regulate the use of its own property, in effect, the state would have no property rights.</p>

Venue	Case	Synopsis
OH	<i>Sandusky Marina Ltd. Partnership v. Ohio Dept. of Natural Resources</i> , 126 Ohio App.3d 256 (1998)	State's use of administrative regulation governing rental rates for submerged lands that was adopted subsequent to its entry of lease of submerged lands to operator of marina to determine rent owed under lease, which resulted in use of rent formula different from that contained in lease, was not authorized by public trust doctrine, and constituted breach of lease.
OK	<i>Franco-American Charolaise, Ltd. v. Oklahoma Water Resources Board</i> , 855 P.2d 568 (1990)	Modified common-law riparian right to reasonable use of stream is controlling norm of law in Oklahoma; further, statutory right to appropriate stream water coexists with, but does not preempt or abrogate, riparian owner's common-law right.... Legislature may generally restrict use of private property by exercise of its police power for preservation of public health, morals, safety and general welfare without compensating property owner.... 1963 water law amendments violated takings clause because they limited riparian owners to domestic use and declared that all other water in stream becomes public water subject to appropriation without any provision for compensating riparian owners.
OR	<i>Chernaik v. Brown</i> , 367 Or. 143 (2020)	Although the state has been described as filling the role of a “trustee” within the public trust doctrine, the doctrine does not impose obligations on the state like the fiduciary duties that trustees of private trusts owe to trust beneficiaries; such a broad importation of generalized private trust principles could result in a fundamental restructuring of the public trust doctrine and impose broad new obligations on the state, beyond the recognized duty that the state has to protect public trust resources for the benefit of the public’s use of navigable waterways for navigation, recreation, commerce, and fisheries.

Venue	Case	Synopsis
PA	<i>Pennsylvania Environmental Defense Foundation v. Commonwealth</i> , 255 A.3d 289 (2021)	Although the Environmental Rights Amendment creates an express trust that is presumptively subject to the Uniform Trust Act, the ultimate power and authority to interpret the constitutional command regarding the purposes and obligations of the public trust created by the Amendment rests with the judiciary, and in particular with the Supreme Court.
PA	<i>In re Borough of Downingtown</i> , 639 Pa. 673 (2017)	The common law public trust doctrine strictly prohibits a governmental body from conveying public lands to an entity or person for private use.
PA	<i>Pennsylvania Environmental Defense Foundation v. Commonwealth</i> , 640 Pa. 55 (2017)	As a fiduciary under the Environmental Rights Amendment, the Commonwealth has a duty to act toward the corpus of the trust, the public natural resources, with prudence, loyalty, and impartiality.... The environmental trust created by the Environmental Rights Amendment imposes two basic duties on the Commonwealth as the trustee: first, the Commonwealth has a duty to prohibit the degradation, diminution, and depletion of the public natural resources, whether these harms might result from direct state action or from the actions of private parties, and second, the Commonwealth must act affirmatively via legislative action to protect the environment.
RI	<i>Champlin's Realty Associates, L.P. v. Tillson</i> , 823 A.2d 1162 (2003)	Legislative act whereby state granted to town all right, title, and interest to pond and land covered thereby conveyed state's ownership interest to town but retained state's responsibilities under public-trust doctrine, and thus town did not enjoy exclusive jurisdiction over pond; act lacked specific authorization for town to regulate activities within pond.
RI	<i>Providence & Worcester R. Co. v. Pine</i> , 729 A.2d 202 (1999)	Once railroad company, an abutting upland property owner, filled in and improved tide-flowed land below mean high-water mark, company

Venue	Case	Synopsis
		established title thereto, free and clear of public trust claim asserted by State.
SC	<i>Jowers v. South Carolina Department of Health and Environmental Control</i> , 423 S.C. 343 (2018)	Claim brought by owners of property along rivers and streams, that registration provisions of Surface Water Withdrawal, Permitting, Use, and Reporting Act regarding use of surface water by registered agricultural users violated the public-trust doctrine, was not justiciable; owners did not allege that any public trust was lost as a result of any withdrawal of surface water that was already made by any agricultural user, and although owners alleged possibility that future surface withdrawals might endanger assets held in trust by the state, the state had the power and duty to act to protect trust assets.
SD	<i>Duerre v. Hepler</i> , 892 N.W.2d 209 (2017)	Public trust doctrine did not operate to allow members of the general public to enter upon non-meandered waters or ice overlaying landowners' private property for recreational purposes, in the absence of a declaration by the Legislature that the public's right to use the waters of the state includes the right to use all waters for recreational purposes.
SD	<i>Parks v. Cooper</i> , 676 N.W.2d 823 (2004)	Burden of proving navigability of water bodies and asserting the public trust doctrine, that water is unique natural resource held in trust by the public for use by the public, lies with the party asserting it.... History and precedent have established the public trust doctrine concerning ownership of water bodies as an inherent attribute of sovereign authority, and the doctrine exists independent of any statute; thus, while public trust doctrine and Water Resources Act have shared principles, the Act does not supplant the scope of the public trust doctrine.... All water in South Dakota belongs to the people in accord with the "public trust

Venue	Case	Synopsis
		<p>doctrine” and as declared by statute and precedent, and thus, although lake beds are mostly privately owned, the water in the lakes is public and may be converted to public use, developed for public benefit, and appropriated, in accord with legislative direction and state regulation.... “Public trust doctrine” imposes an obligation on the State to preserve water for public use; it provides that the people of the State own the waters themselves, and that the State, not as a proprietor, but as a trustee, controls the water for the benefit of the public.</p>
TN	None found	N/A
TX	<p><i>Bush v. Lone Oak Club, LLC</i>, 601 S.W.3d 639 (2020)</p>	<p>Tide line does not establish the dividing line between State and private ownership of land under navigable streams that adjoin the sea; rather, the State holds title to the land under such streams both above and below the tide line in trust for the public.... Unless legislative grant contains plain and unmistakable language expressly conveying the land under river beds and channels, it will not be construed to include them; for such a grant to include land under navigable waters, it must be expressed in plain and positive language, not in general language.</p>
UT	<p><i>Utah Stream Access Coalition v. VR Acquisitions, LLC</i>, 439 P.3d 593 (2019)</p>	<p>Doctrine of constitutional avoidance did not preclude Supreme Court's consideration of appeal in action by organization committed to maintaining public access to rivers and streams in state asserting constitutional right of its members to wade in waters of river flowing through private land and alleging that Public Waters Access Act (PWAA) unconstitutionally restricted easement, even though organization did not make claim based on navigability; organization chose to forfeit claim based on navigability, and directing parties to plead and litigate claims forfeited would be taking active steps beyond bounds of judicial</p>

Venue	Case	Synopsis
		power defined by rules of pleading, procedure, and preclusion.
UT	<i>Friends of Great Salt Lake v. Utah Department of Natural Resources</i> , 393 P.3d 291 (2017)	We affirm the denial of the motion for leave to add a public trust claim on that jurisdictional basis. We do so because Friends filed only a petition for review of an administrative proceeding under Utah Code section 63G-4-402(1)(a) and failed to assert an independent public trust claim in the underlying administrative action, thus failing to preserve a right to litigate a public trust claim in the district court action for judicial review. We accordingly affirm without deciding whether the Public Trust Clause is self-executing.
UT	<i>Utah Stream Access Coalition v. Orange Street Development</i> , 416 P.3d 553 (2017)	Trial court improperly quieted title in the streambed under one-mile stretch of river in action brought by citizens' group in which group prevailed on their claim seeking declaration that the disputed stretch of river was navigable under the Public Waters Access Act, where group did not specifically assert a quiet-title claim.... To be “navigable,” a water course should be susceptible of use for purposes of commerce or possess a capacity for valuable floatage in the transportation to market of the products of the country through which it runs and should be of practical usefulness to the public as a public highway in its natural state and without the aid of artificial means; a theoretical or potential navigability, or one that is temporary, precarious, and unprofitable, is not sufficient....

Venue	Case	Synopsis
VA	<i>Wills v. Virginia Marine Resources Com'n</i> , 59 Va.App. 168 (2011)	Pursuant to the “public trust doctrine,” the State holds the land lying beneath public waters as trustee for the benefit of all citizens; as trustee, the State is responsible for proper management of the resource to ensure the preservation and protection of all appropriate current and potential future uses, including potentially conflicting uses, by the public.... Recreational users of bay lacked standing pursuant to the Virginia Administrative Process Act (VAPA) to challenge decision of Virginia Marine Resources Commission (VMRC) granting pound net permit applications, where users' interests were indistinguishable from those of any boater, kayaker, swimmer, or recreational fisher in the area.
VA	<i>Kraft v. Burr</i> , 252 Va. 273 (1996)	The concepts of <i>jus publicum</i> and <i>jus regium</i> have been construed, some commentators suggest erroneously so, in support of the theory of common law public trust to give the public a proprietary interest in, among other things, fishing rights on navigable waters.... I do not believe, however, that this appeal raises the issue of a public trust or need be resolved by application of that doctrine.
VT	<i>City of Montpelier v. Barnett</i> , 191 Vt. 441 (2012)	Municipality may assume the state's authority to regulate public waters consistent with the public trust, but only where that authority has been conveyed to the municipality by the state, and this is true because the power of the municipality is limited to what has been granted by the state.... City could strive to prevent indirectly the recreational use of pond, which the State held in public trust, by denying access to its lands that surround the pond, but it could not directly regulate use of the pond itself, and thus, city could not enjoin citizens from boating, fishing, and swimming in pond.

Venue	Case	Synopsis
VT	<i>In re Clyde River Hydroelectric Project</i> , 179 Vt. 606 (2006)	This appeal arises from the issuance of a water quality certification by the Vermont Water Resources Board for operation of the Clyde River Hydroelectric Project in northern Vermont. The Vermont Natural Resources Council and the Northeast Kingdom Chapter of Trout Unlimited (appellants) contend the Board’s decision: (1) violates provisions of the Vermont Water Quality Standards; (2) is unsupported by the evidence; and (3) contravenes the Public Trust Doctrine and the Common Benefits Clause of the Vermont Constitution. We affirm.
WA	<i>Center for Environmental Law and Policy v. Department of Ecology</i> , 196 Wash.2d 17 (2020)	Department of Ecology did not act beyond its authority when promulgating minimum instream flow rule for lower reach of river during summer months; the Department was given broad authority and discretion to manage matters concerning water, and the enabling statute directed only that perennial rivers of the state be retained with base flows necessary to provide for preservation of fish and other environmental issues, and the rule at issue achieved such base flows as borne out by the administrative record, which included multiple fish habitat studies and recreational considerations.
WA	<i>Center for Environmental Law & Policy v. Department of Ecology</i> , 9 Wash.App.2d 746 (2019)	Public trust doctrine did not apply to determine whether Department of Ecology’s rule establishing minimum instream flows for lower reach of river during summer months was invalid; Department’s enabling statute did not allow it to assume public trust duties of state and to regulate in order to protect public, and court did not need to resort to public trust doctrine as additional canon of construction in light of specific provisions at issue and policies expressed in state water code.... The inquiry to determine whether a challenged legislation violates the public trust doctrine informs whether the state has relinquished its right of control over the <i>jus publicum</i> of tidelands and

Venue	Case	Synopsis
		<p>shorelands through legislation, not through a state agency’s administrative rulemaking authority.... The duty imposed by the public trust doctrine devolves upon the State, not any particular state agency thereof.</p>
<p>WA</p>	<p><i>Chelan Basin Conservancy v. GBI Holding Co.</i>, 190 Wash.2d 249 (2018)</p>	<p>A private landowner whose lands are burdened by the public trust cannot unilaterally extinguish the public right to use navigable waters in place by artificially elevating his or her property above the high-water mark absent legislative consent.... Saving Clause of Shoreline Management Act, which foreclosed private actions for removal of fill improvements made prior to 1969 based on their impairment of navigable waters alone, did not violate the public trust doctrine; Savings Clause was designed to swiftly and decisively preserve property titles while reinforcing the state’s commitment to protecting public trust interests, resolution of title to historical fills alone was sufficient to remove such property completely from public trust protections, and statewide restoration of entire shore and all tidelands was not a realistic option.</p>
<p>WA</p>	<p><i>Postema v. Pollution Control Hearings Bd.</i>, 142 Wash.2d 68 (2000)</p>	<p>Where a statute is within the agency’s special expertise, the agency’s interpretation is accorded great weight, provided that the statute is ambiguous; however, agency’s view of the statute will not be accorded deference if it conflicts with the statute.... Public trust doctrine does not serve as an independent source of authority for Department of Ecology to use in its decision-making apart from code provisions intended to protect the public interest.... Assuming that Department of Ecology regulations relating to surface waters established only “limited”</p>

Venue	Case	Synopsis
		<p>minimum flow that could be overridden by economic considerations, such regulations would be inconsistent with enabling statutes, and as such, those regulations would be invalid....</p>
WI	<p><i>Clean Wisconsin, Inc. v. Wisconsin Department of Natural Resources</i>, 398 Wis.2d 433 (2021)</p>	<p>Public trust doctrine enshrined in Wisconsin Constitution protects not only Great Lakes’ beds but also lesser inland waters, including areas covered with aquatic vegetation within particular high water mark.... Department of Natural Resources (DNR) has authority and discretion to consider environmental effects of all high capacity groundwater wells, even if a formal environmental review is not required.</p>
WI	<p><i>Movrich v. Lobermeier</i>, 379 Wis.2d 269 (2018)</p>	<p>Public trust doctrine conveyed no private property rights to upland property owners who owned property bordering artificial creek flowage, and thus property owners could not place pier in or over privately owned bordering waterbed, although water was navigable, since public trust doctrine provided right, held in trust equally for all, to use water for recreational purposes, which did not include pier construction.... Property rights of upland property owners, who owned property bordering artificial creek flowage, were sufficient to access and exit the creek from their property for recreational purposes, rather than requiring access and exit via public access, although bordering waterbed was owned by private party, since public trust doctrine provided right to use water for recreational purposes.</p>
WI	<p><i>Rock-Koshkonong Lake Dist. v. State Dept. of Natural Resources</i>, 350 Wis.2d 45 (2013)</p>	<p>Department of Natural Resources (DNR), in considering petition to raise water levels in impounded lake, lacked authority under constitutional public trust doctrine to consider the impact of the proposed higher water levels on</p>

Venue	Case	Synopsis
		adjacent wetlands above the ordinary high water mark, since doctrine applied only to navigable waters; there was no constitutional foundation for public trust jurisdiction over land, including non-navigable wetlands, that was not below the ordinary high water mark of a navigable lake or stream
WI	<i>Lake Beulah Management Dist. v. State Dept. of Natural Resources</i> , 335 Wis.2d 47 (2011)	Because agencies are creatures of statute, they have only those powers as are expressly conferred or necessarily implied from the statutory provisions under which they operate.... The legislature has delegated the state’s public trust duties to the Department of Natural Resources (DNR) in the context of its regulation of high capacity wells and their potential effect on navigable waters.... Department of Natural Resources (DNR) properly exercised its discretion and complied with the law in issuing village permit for high capacity well; documents submitted in the village’s application including expert’s conclusion that well, pumping at its full capacity, would avoid any serious disruption of groundwater discharge to lake, supported issuance of permit, and there was no concrete, scientific evidence in the record on review that would have triggered the DNR’s duty to consider the impact of well on waters of the state.
WV	None found	<i>See</i> Appendix D, “Public Rights in West Virginia Watercourses: A Unique Legacy of Virginia Common Lands and the <i>jus publicum</i> of the English Crown” (1998): State law has changed minimally since statehood in 1863. West Virginia adopted Virginia’s English common law, reserving the commons as public lands.
WY	None found	<i>See</i> Appendix D, “The Public Trust Doctrine in 45 States” (2014): while Wyoming has had few recent court cases relating to the PTD, the courts recognize the public’s right to access the state’s

Venue	Case	Synopsis
		waterways, including non-navigable and privately owned ones. <i>See Day v. Armstrong</i> , 362 P.2d at 145 (1961).
<u>Canada</u>		
AB	None found	N/A
BC	<i>British Columbia v. Canadian Forest Products Ltd.</i> , [2004] 2 SCR 74	[T]here is no reason to neglect the potential of the common law, if developed in a principled and incremental fashion, to assist in the realization of the fundamental value of environmental protection. However, the Court cannot act on generalizations and unsupported assertions. In the absence of statutory intervention, the Court must proceed cautiously. We do not have the basis in this record to proceed further at this time.
BC	<i>Burns Bog Conservation Society v. Canada</i> , 2014 FCA 170	The Judge concludes that no Canadian court has recognized a public trust duty that requires the Federal Government to take positive steps to protect the environment generally or a specific property owned by other parties... Canada does not owe any trust obligations respecting the Bog because Canada does not own the Bog. Moreover, there is no basis in law or equity for the imposition of a “public trust” duty in this case... The appellant acknowledged at the hearing before us that the particular public trust or fiduciary duty it is relying on has not yet been recognized anywhere, including the United States. The appellant’s position requires extending not only Canadian law but the American doctrine upon which the appellant relies on to a completely different situation...
BC	<i>North Vancouver v. Seven Seas S.R.</i> , [2000] F.C.J. No. 1468, 2000 CarswellNat 2076 (FC)	I do not find [that the public trust] doctrine assists the defendants. If, as a matter of law, the doctrine is applicable, and I make no finding to that effect, it would seem to me that it would have the opposite result to that hoped for by the defendants in the present case. The doctrine is inconsistent

Venue	Case	Synopsis
		with a permanent private right over public waters. The state must exercise its control over those waters to promote the interests of the public.
BC	<i>R v. Guerin, 1984 2 SCR 335</i>	After the Crown’s agents had induced the [Indian] Band to surrender its land on the understanding that the land would be leased on certain terms, it would be unconscionable to permit the Crown simply to ignore these terms. Equity will not countenance unconscionable behavior in a fiduciary whose duty is that of utmost loyalty to his principal. In obtaining without consultation a much less valuable lease than that promised, the Crown breached the fiduciary obligations it owed to the Band and it must make good the loss suffered in consequence. The <i>quantum</i> of damages falls to be determined by analogy with principles of trust law.... Although the limited nature of Indian title meant that the Crown was not a trustee of the lands themselves under s. 18(1) [of the Indian Act, R.S.C. 1952, c. 149] it did not preclude its owing a fiduciary duty to the Band with respect to their use. This fiduciary duty, upon surrender, crystallized into an express trust of the land for the purpose specified.
MB	None Found	N/A
NB	None Found	N/A
NL	None Found	N/A
NS	<i>Bancroft v. Nova Scotia (Lands and Forestry), 2021 NSSC 234</i>	<p>If the public trust doctrine is to become part of the law in Nova Scotia, that kind of substantial change must be introduced through legislation, not the common law.</p> <p>The applicants say it is unfair for the Province, having represented the Owls Head Crown lands as a provincial park for decades, and having previously consulted with the public with respect</p>

Venue	Case	Synopsis
		<p>to the designation of provincial parks and other protected lands, to have quietly removed Owls Head from the PAPA and entered into a conditional LOO to sell the lands to Lighthouse Links. The fundamental defect in the applicants' position, however, is that there is no recognized common law duty of procedural fairness owed by the Crown to the public at large, and the adoption by this court of the "public trust doctrine" would not amount to a permissible incremental change to the common law. Neither the Province's previous misrepresentations about Owls Head, nor its history of public consultation in relation to parks and protected areas, entitles the applicants to be consulted before decisions are made about the protection or sale of Owls Head Crown lands.</p>
ON	<p><i>Green v. Ontario</i>, 1972 CarswellOnt 438, [1973] 2 OR 396</p>	<p>An individual who brings an action against the Crown in right of the Province alleging that the Crown is in breach of its trust...in failing to maintain a particular park in keeping with the spirit..., but who alleges no particular damage to himself, lacks status to maintain the action. The indication in the style of cause that the action is on behalf of himself and all other people of the Province and of future generations does not improve his legal position.</p>
ON	<p><i>Nestlé Canada Inc. v. Director, Ministry of the Environment</i>, 2013 CarswellOnt 11509</p>	<p>Groundwater is transient. It runs and pools underneath the surface, belonging to no one until captured. In this sense groundwater is a public resource. If it is subject to a public trust, then the common law public right is a right to access groundwater similar to the public right to fish and to navigate navigable waters. The Director [of the Ministry of the Environment] has not prohibited public access to water taking from the aquifer. Restrictions on access to groundwater arise out of statutory schemes such as the [Ontario Water Resources Act (OWRA)], which may coexist with</p>

Venue	Case	Synopsis
		<p>or supercede common law public rights, depending on their terms.... [In “Canfor” (2004),] The Court specifically declined to decide whether the notion of public trust was sufficiently broad to create Crown liability "for inactivity in the face of threats to the environment [and] the existence or non-existence of enforceable fiduciary duties owed to the public by the Crown in that regard ..."</p> <p>In this case, [non-government organizations] urge the Tribunal to do what the Supreme Court declined to do in Canfor, and find that the public trust doctrine should be broadened to place obligations on the Director to exercise his authority under the OWRA in a particular way. Since the Tribunal has found on other grounds that the proposed settlement and withdrawal are not consistent with the purpose and provisions of the OWRA or in the public interest, the question of the nature and breadth of the public trust doctrine need not be resolved in the context of this motion.</p>
ON	<i>Scarborough v. REF Homes Ltd.</i> , 1979 CarswellOnt 1588	<p>This is an appeal by the Corporation of the Borough of Scarborough from a judgment given in the County Court of the Judicial District of York whereby the appellant, as plaintiff, recovered the sum of \$900.00 as damages for the loss of three trees.... The trial Judge drew the inference that the destruction of the trees was completely inadvertent, and indeed, the statement of claim alleged that the trees were cut down negligently...</p> <p>[T]he criteria in the formula for the compensation of private owners suffering loss of trees cannot be adopted in this case because the loss to a municipality is quite different. The diminution in value of a road allowance, which normally is not marketable land, must necessarily differ from that of privately owned, landscaped property, even if the trees on both properties are intrinsically</p>

Venue	Case	Synopsis
		<p>similar.... In our view, however, the appellant has suffered a greater loss than the mere replacement value which appears to have been assessed at trial. The difficulty presented in the appraisal of such damages should not preclude a Court from attempting it, even though the record is unsatisfactory. On the evidence before us, we assess the damages of the appellant at \$1,500.00 for the loss of each of the two larger trees and \$1,000.00 for the 18 inch tree, for a total assessment of \$4,000.00.</p>
<p>ON</p>	<p><i>Walpole Island First Nation et al. v. Canada (Attorney General)</i>, 2004 CanLII 7793</p>	<p>Canada submits that the ability to exclude, which goes with aboriginal title, would give the plaintiffs the power to prevent the exercise of right of public navigation over the waters above the lake bed in question. Canada says this runs contrary to the ancient and fundamental common law right of public navigation and, therefore, absolute title to the lake bed is not “cognizable” to the common law, or not compatible with it. Ontario joins in this submission. ... Canada’s argument that aboriginal title creates a fundamental inconsistency with the common law is powerful and persuasive. Nevertheless, I am not persuaded that it is plain and obvious that the plaintiffs will fail, nor am I satisfied beyond a reasonable doubt that the plaintiffs will fail. They should have the right to develop their position in a trial.</p>
<p>PE</p>	<p><i>Prince Edward Island v. Canada (Minister of Fisheries & Oceans)</i>, 2005 PESCTD 57 2005 CarswellPEI</p>	<p>I...conclude that the Federal Court would have jurisdiction to entertain the plaintiff’s case in this matter.... The plaintiffs...claim the defendant has a fiduciary duty to manage the common resource that is the fishery, fairly and in good faith, for the equal benefit of all... They are claiming, in effect, that the whole of the decisions and actions taken pursuant to the Fisheries Act over an extended time have had an impact that is greater than the results of a collection of individual decisions... If</p>

Venue	Case	Synopsis
		<p>a government can exert its right, as a guardian of the public interest, to claim against a party causing damage to that public interest, then it would seem that in another case, a beneficiary of the public interest ought to be able to claim against the government for a failure to properly protect the public interest. A right gives rise to a corresponding duty.... While I express no comment on the merits of the claim, its character is primarily one of common law breach of fiduciary relationship as opposed to one of judicial review.</p>
QC	None Found	N/A
SK	None Found	N/A
Canada	<i>La Rose v. Canada</i> , 2020 FC 1008	<p>[T]he public trust doctrine is a concept that Canadian Courts have consistently failed to recognize. It does not exist in Canadian law. ... it is plain and obvious that the claims related to the public trust doctrine fail to disclose a reasonable cause of action.</p>
<p><u>Historic Cases</u></p>		
US	<i>Illinois Cent. R. Co. v. State of Illinois</i> , 146 U.S. 387 (1892)	<p>The title which a state holds to lands under tide waters bordering on the sea or under the navigable waters of the Great Lakes, lying within her limits, is different in character from the title of the state to lands intended for sale, or from that of the United States to the public lands which are open to pre-emption and 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 liberty of fishing therein, free from obstruction or interference by private parties, and it is not within the legislative power of the state to abdicate this trust by a grant whereby it surrenders its property and general control over the lands of</p>

Venue	Case	Synopsis
		<p>an entire harbor, bay, sea, or lake, though it may grant parcels thereof for the foundations of wharves, piers, docks, and other structures in aid of commerce, or parcels which, being occupied, do not substantially impair the public interest in the waters remaining.</p>
<p>US</p>	<p><i>Shively v. Bowlby</i>, 152 U.S. 1 (1894)</p>	<p>The United States, while they hold the country as a territory, having all the powers both of national and municipal government, may grant, for appropriate purposes, titles or rights in the soil below high-water mark of tide waters. But they have never done so by general laws, and, unless in some case of international duty or public exigency, have acted upon the policy, as most in accordance with the interest of the people and with the object for which the territories were acquired, of leaving the administration and disposition of the sovereign rights in navigable waters, and in the soil under them, to the control of the states, respectively, when organized and admitted into the Union.</p>
<p>US</p>	<p><i>The Daniel Ball</i>, 77 U.S. 557 (1870)</p>	<p>Rivers of the United States constitute “navigable waters of the United States” within meaning of 5 St. at Large 304, and 10 St. at Large 61, relating to transportation of merchandise or passengers on navigable waters of United States, in contradistinction of navigable waters of the state, when they form in their ordinary conditions by themselves or by uniting with other waters a continuous highway over which commerce is or may be carried on with other states or foreign countries in the customary modes in which such commerce is conducted by water.... The test of navigability, as applied to “navigable waters,” is the capability of being used for useful purposes of navigation,-of trade and travel in the usual and ordinary modes,-and not the extent and manner of such use.</p>

Venue	Case	Synopsis
US	<i>The Genesee Chief</i> , 53 U.S. 443 (1851)	Act Feb. 26, 1845, 5 Stat. 726, 28 U.S.C.A. § 770, extending the jurisdiction of the district courts to certain cases upon the lakes and navigable waters connecting the same, is not referable to that clause in the constitution giving congress power to regulate commerce between the states, but was enacted under the clause granting maritime and admiralty jurisdiction to the federal courts.... Act Cong. 1845, c. 19, 5 Stat. 726, extending the admiralty and maritime jurisdiction of the district courts of the United States to certain cases upon the lakes and navigable waters connecting them, is not a regulation of commerce.