

# [***ARTICLES: NAVIGATING COMPETING INTERESTS ON THE COLORADO RIVER: THE PUBLIC TRUST DOCTRINE, PRIOR APPROPRIATIONS, AND CLIMATE CHANGE***](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:69X2-N041-F0R8-C1S4-00000-00&context=1516831)

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**[\*79]**

**I. Introduction**

Anthropogenic climate change is no longer an "if" or even a "when." The science is settled: humans are responsible for unprecedented levels of carbon dioxide in the atmosphere.[[1]](#footnote-2)1 We are directly accountable for rising temperatures**[\*80]**and changing climates across the globe.[[2]](#footnote-3)2 A 2022 report from the Intergovernmental Panel on Climate Change states in no uncertain terms that "human-induced climate change, including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to nature and people, beyond natural climate variability."[[3]](#footnote-4)3

The ***Colorado*** ***River*** Basin is already feeling the impacts of anthropogenic climate change. Rising temperatures and changing weather patterns put the region's water resources in peril and in turn, threaten the distribution of water rights and thus the very fabric of existence across the Basin. Addressing the forthcoming crises in water resources within our current legal framework will take creative thinking and intelligent advocacy.

An emerging body of legal scholarship is optimistic in the potential for the public trust doctrine ("PTD") to address natural resource issues in the era of climate change.[[4]](#footnote-5)4 The PTD is a theory of property law that recognizes that certain resources should be held by the state for the public due to their communal benefit.[[5]](#footnote-6)5 It allows state governments to limit the rights of private property owners in the interest of protecting these resources.[[6]](#footnote-7)6 Incremental expansions of public trust resources over time have sparked hope that the PTD can grow to conserve water and support broader ecological goals.

As historic drought dries up the ***Colorado*** ***River*** Basin and the water resources that sustain energy, agriculture, and human life, we are ripe for a reevaluation of water law. Across the region, the dominating force in water law is prior appropriation, which values individual ownership above all else.[[7]](#footnote-8)7 It stands in stark contrast to the PTD's emphasis on public ownership and community values.[[8]](#footnote-9)8 The two doctrines are fundamentally at odds. The clash between the PTD and prior appropriation has played out differently across the West, and the future is unclear.

This article seeks to analyze the different approaches ***Colorado*** ***River*** Basin states have taken to reconciling, or actively rejecting, the PTD within their existing systems for ownership of water resources. In doing so, it will both identify the possible legal opportunities for expanding the public trust to protect water resources and recognize the challenges this effort faces. The first half of the article will set the stage. First, it will analyze the impacts of climate change on water resources in the region. Second, it will explore the emergence of the PTD in the United States. Third, it will examine the evolution of the PTD to expand its use in natural resources litigation. Fourth, it will describe recent failures of the PTD in climate change litigation. Fifth, it will analyze the system of prior appropriation that permeates the Basin. The second half of the paper will study**[\*81]**the various ways in which Basin states have incorporated the PTD into their legal framework or rejected it entirely. Finally, the paper will identify challenges and recommend legal efforts for environmental advocates.

**II. Climate Change and Implications on Water in the West**

The ***Colorado*** ***River*** Basin - Arizona, California, ***Colorado***, Nevada, New Mexico, Utah, and Wyoming - is one of the most "climate-challenged" regions in North America.[[9]](#footnote-10)9 The region covers 240,000 square miles[[10]](#footnote-11)10 and supports varied industries which employ millions of people, including agriculture, hydropower, and recreation.[[11]](#footnote-12)11 It covers a diverse range of ecosystems and climate zones: some regions receive sixty inches of rain per year with average temperatures below freezing, while others receive four inches of rain per year with temperatures rising above 120 degrees Fahrenheit.[[12]](#footnote-13)12

Over the past century, the region has experienced a significant increase in average temperatures.[[13]](#footnote-14)13 Studies indicate that the previous seventy years in the Basin have been warmer than any period in the last 600 years.[[14]](#footnote-15)14 Impacts of anthropogenic climate change are already apparent: warmer summers are resulting in drier conditions droughts are becoming more severe weather patterns are increasingly variable and difficult to predict.[[15]](#footnote-16)15 Water resources are particularly at risk. Changes in climate will result in decreased snowpack, declines in ***river*** flow, and higher runoff.[[16]](#footnote-17)16 A 2013 report found that ***river*** flows in the four major drainage basins of the region - the Sacramento-San Joaquin ***Rivers***, the ***Colorado***, the Rio Grande, and the Great Basin - were between five percent and thirty-seven percent lower between 2001 and 2010 than the average 20[su'th'] century flows.[[17]](#footnote-18)17 Water experts increasingly agree that "drought" is no longer the appropriate term to describe the hydrology of the last several decades because there is little indication that hydrological conditions will ever return to last century's averages.[[18]](#footnote-19)18 This historically low and unpredictable hydrology is believed to be the "new normal," and the Basin is now in a permanent condition best described as "aridification."[[19]](#footnote-20)19

**[\*82]**At the same time, populations, industry, and urban development are on the rise.[[20]](#footnote-21)20 In 2010, the population of the region was 56 million people.[[21]](#footnote-22)21 By 2050, the population is estimated to almost double to 94 million people.[[22]](#footnote-23)22 Consumptive use of water in the Basin often exceeds the natural supply of the ***Colorado*** ***River***.[[23]](#footnote-24)23 Increased demand for agriculture, energy, and municipal uses places stress on an already water-scarce region.[[24]](#footnote-25)24 As these pressures compound on each other, the urgent need to alter water policy in the region becomes more evident. We are at a turning point.

**III. The Public Trust Doctrine**

The modern PTD derives from ancient theories of property law.[[25]](#footnote-26)25 Centuries ago, Roman political entities sought to protect the ***rivers***, seas, and coasts for the benefit of the public.[[26]](#footnote-27)26 Emperor Justinian codified the laws of the Roman Empire in a compilation known as the Pandects.[[27]](#footnote-28)27 Translated into English, Roman law stated that "the use of public streams is common to all, just the same as public roads and the shores of the sea."[[28]](#footnote-29)28 It emphasized that all ***rivers*** and ports were public,[[29]](#footnote-30)29 along with the sea..[[30]](#footnote-31)30

This theory permeated European systems of law and became the basis for public ownership of waterways and the seas in England. The Magna Carta hinted at the PTD in describing principles of common good and communal ownership.[[31]](#footnote-32)31 Over centuries, it became ingrained in English common law. A 19[su'th'] century collection of English common law concepts explained that "the dominion and ownership of the British Seas, and of the creeks, bays, arms, ports, and tide ***rivers*** thereof, are vested, by our law, in the crown."[[32]](#footnote-33)32 Further, English law rested on the notion that "this ownership includes *aquam et solum* both the water, its products and uses, and the land or soil under the water."[[33]](#footnote-34)33

The United States incorporated both the Roman and English legal systems.[[34]](#footnote-35)34 The Supreme Court first recognized the ideals of public ownership of water in 1842 in *Martin v. Waddell's Lessee* when it examined a dispute over title to the soil of a body of navigable water.[[35]](#footnote-36)35 After a lengthy discussion of English common law and the Magna Carta, the Supreme Court held that as a result**[\*83]**of the American Revolution, "the people of each state became themselves sovereign and in that character, held the absolute right to all their navigable waters, and the soil under them for their own common use.…"[[36]](#footnote-37)36 Less than a century after the creation of the United States, the first inklings of the PTD emerged in the American judicial system.

The Supreme Court formally adopted the PTD fifty years later in *Illinois Central Railroad* ***Co****. v. State of Illinois.* This case arose when the state of Illinois attempted to sell the title to the water and submerged lands in the harbor of Chicago and the Court was asked to decide whether the legislature was competent to do so.[[37]](#footnote-38)37 In a landmark holding, the Supreme Court recognized that the state holds the title to the waters and submerged lands "but it is a title different in character from that which the state holds in lands intended for sale" and different even than public lands managed by the federal government.[[38]](#footnote-39)38 The title derived from the public value of the waters and the potential for commerce, and "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, freed from the obstruction or interference of private parties."[[39]](#footnote-40)39 This official adoption of the Roman and English common law concept of the PTD reflects an ideology that state governments have a special duty to protect certain resources for the benefit of the public.[[40]](#footnote-41)40

Historically the doctrine was limited to navigable waters and their beds and banks.[[41]](#footnote-42)41 The federal test for determining navigability for title was articulated in *The Daniel Ball*:

Those ***rivers*** must be regarded as public navigable ***rivers*** in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. And they constitute navigable waters of the United States… when they form in their ordinary condition by themselves, or by uniting with other waters, a continued 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.[[42]](#footnote-43)42

However, the Supreme Court departed from a narrow interpretation of the PTD. In 1894, it first expanded the PTD to include lands under tidewaters because "they are of great value to the public for the purposes of commerce, navigation, and fishery" and "their improvement… is incidental or subordinate to the public use and right."[[43]](#footnote-44)43 Despite the non-navigability of the tidelands, states hold them in trust for the public because of the risk of private ownership. Nearly a century later, the Supreme Court reaffirmed the extension of the PTD to**[\*84]**tidelands and tidal waters, even those which are not navigable in fact.[[44]](#footnote-45)44 It also held that the PTD allows states to regulate and prohibit the planting of oysters in tide waters, extending the doctrine to justify management of different resources.[[45]](#footnote-46)45 These incremental changes were developed ad hoc and varied state by state, but demonstrate the capacity of the PTD to adapt to public perceptions of natural resource protection.

**IV. The Public Trust Doctrine and the Environmental Movement**

During the growth of the environmental movement of the 1970s, scholars began to recognize the potential to use the doctrine to advance ecological goals for other natural resources. Joseph Sax's law review article *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention* is the seminal piece outlining these concepts.[[46]](#footnote-47)46 The PTD creates a legal right to protection of natural resources, enforceable against private ownership and the government.[[47]](#footnote-48)47 When a resource is held in trust, it must "not only be used for public purpose, but it must be held available for use by the general public" and may not be sold.[[48]](#footnote-49)48 It recognizes the necessity of protecting certain resources from individuals, and may be used to protect them from sale, harm, or overuse.[[49]](#footnote-50)49

The PTD has been used successfully for environmental protection in numerous instances at the state level. In *Marks v. Whitney*, the plaintiff asserted ownership of tidelands adjacent to the defendant's property so that he could fill and develop them for residential purposes and economic gain.[[50]](#footnote-51)50 The Supreme Court of California decided in favor of the defendant by asserting the PTD to protect the tidelands.[[51]](#footnote-52)51 The court recognized that the PTD is traditionally reserved to protect commerce and navigation, but "one of the most important public uses of the tideland - a use encompassed within the tidelands trust - is the preservation of those lands in their natural state" for public environmental uses.[[52]](#footnote-53)52 Similarly, the Supreme Court of Hawaii extended the PTD to "all water resources, without exception or distinction."[[53]](#footnote-54)53 It cited the very purpose of the PTD which reflects an interest in resource protection, whether it is recreational, ecological, or commercial.[[54]](#footnote-55)54 The Washington Court of Appeals hinted at extending the PTD to wildlife resources to regulate activities such as shellfish production, terrestrial hunting, and trapping, but has not yet opined on that specific question.[[55]](#footnote-56)55 The North Dakota Supreme Court extended the PTD to include**[\*85]**management of all water resources, emphasizing the need to manage allocation of water based on the present water supply.[[56]](#footnote-57)56

Importantly, the Supreme Court limited the PTD to state law there is no federal public trust.[[57]](#footnote-58)57 Each state, upon admission to the United States, gained title to navigable ***rivers*** and riverbeds because of the equal footing doctrine of the Constitution.[[58]](#footnote-59)58 Therefore, this ownership arises out of a Constitutional foundation, but the states have ultimate discretion on how to apply the PTD. While this limitation presents issues for creating uniformity across the country, it allows states to be flexible in refining their own doctrine to suit their ecological needs and social values.

Outside the judicial sphere, the PTD has manifested as a powerful tool within state constitutions. The Pennsylvania Constitution states:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.[[59]](#footnote-60)59

In 2013, the Supreme Court of Pennsylvania invoked this mandate to protect the environment to protect its water resources from fracking.[[60]](#footnote-61)60 New York State has a "forever wild" provision in its Constitution that honors the intrinsic value of the state's forests and mandates keeping them wild.[[61]](#footnote-62)61

Themes from the PTD also arise in statutory provisions. The South Dakota Water Resources Act orders the use of PTD principles in water resources management, implicating the need for the state government to protect natural resources for "the greatest public benefit."[[62]](#footnote-63)62 The North Carolina General Statutes preserve ownership of marine and wildlife resources for the public, and allow agencies to bring suit when public trust rights have been violated.[[63]](#footnote-64)63 The federal government enshrined the theory of state title to submerged navigable lands in the Submerged Lands Act of 1953, declaring that the public interest is served when states possess "(1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law."[[64]](#footnote-65)64

The PTD has evolved uniquely across the country to suit each state's needs, geography, and policy goals. The doctrine is flexible, responsive, and has expanded over time. While the PTD was originally focused on commerce, trade, and fishing,[[65]](#footnote-66)65 developments over the past half century have indicated its ability**[\*86]**to reflect changing national values of natural resources. These myriad examples of past PTD expansion give the environmental movement good reason to favor using the PTD as a tool to expand protections for natural resources.

**V. Failures of the Public Trust Doctrine in the Legal Sphere**

Despite the environmental movement's success in asserting the PTD, courts across the country have also rejected its expansion in many instances. The most famous recent effort to assert the PTD was made by a group of twenty-one children in *Juliana v. United States.*[[66]](#footnote-67)66 The young citizen plaintiffs accused the government of continuing to "permit, authorize, and subsidize" fossil fuel use and development despite its awareness of the risks, in turn causing injuries to the plaintiffs.[[67]](#footnote-68)67 They sought an injunction to stop this activity, alleging that the government has a duty to hold the atmosphere in trust for the benefit of the public.[[68]](#footnote-69)68 The Ninth Circuit Court of Appeals dismissed the children's claims, however, due to lack of standing.[[69]](#footnote-70)69 The requirement of standing arises from Article III of the Constitution, which requires the judiciary only to hear actual cases and controversies.[[70]](#footnote-71)70 The three elements of standing require that the plaintiff assert an (1) injury-in-fact that is concrete, particularized, actual, and imminent (2) that is fairly traceable to the defendant's conduct and (3) likely to be redressed by a favorable decision.[[71]](#footnote-72)71 The court claimed that while the children alleged concrete and particularized injuries that were caused by the fossil fuel industry, they failed on the issue of redressability.[[72]](#footnote-73)72 Even if the court issued an injunction to stop the development of fossil fuel use, that would only impact a fraction of the world's total greenhouse gas emissions, and likely would not impact climate change in a meaningful way.[[73]](#footnote-74)73 Therefore the children's injuries would not, and could not, be redressed by a favorable court decision.

Similarly, in *Aji P v. State*, plaintiffs asked the Washington Court of Appeals to create an enforceable public trust duty to the atmosphere.[[74]](#footnote-75)74 Thirteen children brought suit against the state for "creating, operating, and maintaining a fossil-fuel based energy and transportation system" that resulted in greenhouse gas emissions.[[75]](#footnote-76)75 They alleged that this constituted a violation of the PTD because the state was actively harming natural resources.[[76]](#footnote-77)76 The court dismissed the claims because they presented a non-justiciable political question.[[77]](#footnote-78)77 It recognized that while the state of Washington had a strong PTD the state had not yet**[\*87]**addressed the question of expanding it for atmospheric protection.[[78]](#footnote-79)78 The question was rooted in policy and thus for the legislature to decide, and the court was not ready to balance the competing interests at play.[[79]](#footnote-80)79

The Oregon Supreme Court examined whether the PTD applies to all waters of the state, fish and wildlife, and the atmosphere in *Chernaik v. Brown*.[[80]](#footnote-81)80 The plaintiffs alleged that the state had a duty to protect natural resources at risk from the impacts of climate change.[[81]](#footnote-82)81 They suggested a two-part test for determining when a natural resource should be held in trust by the state: "(1) they are not easily held or improved and (2) they are of great value to the public for uses such as commerce, navigation, hunting, and fisheries."[[82]](#footnote-83)82 Unlike in *Juliana* and *Aji P*, this court reached the merits of the question, recognizing that the doctrine has broadened over time from its limited scope.[[83]](#footnote-84)83 It declined to extend the PTD, however, because "the test that the plaintiffs propose is so broad that it is difficult to conceive of a natural resource that would not satisfy it."[[84]](#footnote-85)84 Despite dicta in the opinion suggesting a favorable view of expanding the PTD in the future, the plaintiffs asked too much of the court in this case.

The body of litigation regarding this topic does not end there: numerous cases were presented and decided in recent years. In an unpublished 2022 opinion, the Alaska Supreme Court declined to hear a case asking the court to extend the public trust to broader natural resource categories because the controversy presented a non-justiciable political question.[[85]](#footnote-86)85 In 2021, the Iowa Supreme Court found lack of standing and a non-justiciable political question when asked to examine whether the state has a duty as trustee for navigable waters to reduce pollution in the ***rivers***.[[86]](#footnote-87)86 The U.S. District Court for North Carolina found standing, but strictly limited the public trust to allow only the state to bring complaints of a violation.[[87]](#footnote-88)87 A nonprofit law firm called Our Children's Trust focuses on litigating climate cases with the public trust, and at this time has pending cases in, Florida, Hawai'i, Montana, Utah, and Virginia.[[88]](#footnote-89)88

The broad theme linking the failures of the public trust in climate change cases is the court's unwillingness to decide these questions. In all of these cases, the various courts have favored judicial restraint in decision-making. Either the plaintiffs failed to show standing to allow the court the even broach the question on the merits, they presented a non-justiciable political question outside the scope of the judicial branch, or the court found some reason to decline the**[\*88]**public trust on the merits. Courts have been reluctant to extend the PTD when faced with big questions that have far-reaching implications. Before examining how to effectively apply the PTD to water law in the ***Colorado*** ***River*** Basin, we must first examine the current legal framework that governs water resources in the region.

**VI. Prior Appropriation in the *Colorado* *River* Basin**

Prior appropriation is the foundation of water law in the West. It stands in contrast with riparian water rights in the East, where a person has a right to use water that is on or adjacent to his land.[[89]](#footnote-90)89 In the early development of the United States, the colonists of the East Coast were accustomed to riparian rights because the region was green, forested, and wet.[[90]](#footnote-91)90 When explorers ventured westward and encountered the arid lands beyond the Mississippi, they quickly realized that this region would need a new framework for water allocation.[[91]](#footnote-92)91 The majority of western lands have no tangible water source,[[92]](#footnote-93)92 and require diversion and irrigation to support any agriculture and industry.

Western legal systems first addressed the issue in 1855, when a dispute between miners culminated with a clash over the distribution of water rights in *Irwin v. Phillips*.[[93]](#footnote-94)93 The discovery of minerals in California led to a dramatic increase in mining, a highly water-intensive activity, across the West.[[94]](#footnote-95)94 Ad hoc mining camps developed across the region, and their residents created a loose system to resolve disputes between miners staking claims to water on public lands by supporting the first to divert water.[[95]](#footnote-96)95 The Supreme Court of California was asked whether a miner has the right to divert water from its natural flow, and to assert that right against claims from those who settle downstream on the banks of the ***river***.[[96]](#footnote-97)96 The court held that a miner may take the water as he finds it "subject to prior rights," meaning that if someone previously diverted waters from a stream on his property for a legitimate purpose, he may not interfere with this diversion.[[97]](#footnote-98)97 Disputes over water were to be settled by *qui prior est in tempore potior est injure*, meaning that "he who is first in time is first in right."[[98]](#footnote-99)98 In justifying its decision to essentially create a new maxim of property law to accommodate mining practices, the court noted that it was "bound to take notice of the political and social condition of the country" when making policy decisions.[[99]](#footnote-100)99 Here, it prioritized individual property claims to water over public ownership when it codified the system of prior appropriation into law.

**[\*89]**The two central prongs of the system are (1) first in time, first in right, and (2) beneficial use.[[100]](#footnote-101)100 The first person to divert water acquires an individual property right to it.[[101]](#footnote-102)101 He has the most senior right to it, and those who come later acquire more junior, subservient rights.[[102]](#footnote-103)102 The emphasis on beneficial use sought to prohibit speculative takings of water rights by demanding that the diverter use the water for some productive purpose.[[103]](#footnote-104)103

At the time, virtually all of the West was federally owned public land.[[104]](#footnote-105)104 The federal government had the opportunity to develop a centralized system of governance over water resources but instead prioritized private industry.[[105]](#footnote-106)105 Unfamiliar with the environment, the federal government "chose to quietly acquiesce in customary local water control, management, and allocation[.]"[[106]](#footnote-107)106 The 1866 Federal Mining Act expressly favored the local customs to prevail in western water law.[[107]](#footnote-108)107 The system developed into a scattered free-for-all, and waters in western ***rivers*** were completely allocated for private use by the beginning of the twentieth century.[[108]](#footnote-109)108

Prior appropriation spread across the region and is now deeply entrenched in western water law. The emphasis on private ownership that is fundamental to the prior appropriation system conflicts with the central theory behind PTD: community ownership and government management of natural resources.

**VII. Basin State Approaches to Prior Appropriation and the Public Trust Doctrine**

In the last two decades, Basin states have drained the ***Colorado*** ***River*** completely before it can reach its terminus at the Sea of Cortez.[[109]](#footnote-110)109 The prior appropriation system's emphasis on beneficial use incentivizes water rights holders to use the water rather than conserve it.[[110]](#footnote-111)110 Water scarcity threatens the livelihoods and economies of the ***Colorado*** ***River*** Basin. A growing awareness of the impacts of drought is shifting the region's public opinion in favor of the public trust, which in turn receives mixed reception from the Basin states.

All seven ***Colorado*** Basin states adhere to the doctrine of prior appropriation.[[111]](#footnote-112)111 Each state has a judicial authority, water board, or state agency charged with water allocation and issuance of new permits.[[112]](#footnote-113)112 Additionally, each state in**[\*90]**the Basin has a nominal provision requiring said authority to take some sort of public consideration when allocating water resources.[[113]](#footnote-114)113 ***Colorado*** requires the water conservation board to appropriate water "to preserve the natural environment to a reasonable degree,"[[114]](#footnote-115)114 and sixteen of the eighteen western states in the Basin impose an affirmative duty on water agencies "to deny new appropriations that are not in the public interest."[[115]](#footnote-116)115 This so-called public interest review appears, on its face, to be an adoption of the ideals of PTD in water allocation. In theory, it provides state agencies with a way to evaluate new diversions of water and to ensure they do not have harmful impacts on the public.[[116]](#footnote-117)116 However, only six western states actually list criteria to define "public interest."[[117]](#footnote-118)117 State agencies receive judicial deference and have broad discretion to decide what is in the public interest.[[118]](#footnote-119)118 For the most part, these provisions remain vague and allow consideration of a wide range of political and private interests.[[119]](#footnote-120)119 One of the primary problems facing the implementation of PTD concepts within the Basin is this conflation of the public trust with the ambiguous, subjective public interest provisions.

Beyond public interest review, states in the Basin have taken different approaches to reconciling, or rejecting, the PTD within their system of water law. States have a variety of tools at their disposal to reimagine and rework state ownership of water, including redefining navigable waters, expanding the uses protected by the public trust, and placing limits on appropriative rights.[[120]](#footnote-121)120 The following section outlines the individual approach that each state has historically taken.

**A. Arizona**

Arizona statutory provisions confirm that the state has ownership of the banks of navigable watercourses, but "does not include land held by this state pursuant to any other trust."[[121]](#footnote-122)121 In *Defenders of Wildlife v. Hull*, the Court of Appeals of Arizona recognized that the scope of the PTD relies on the federal test of navigability, but states have the flexibility to adopt broader tests to suit public needs.[[122]](#footnote-123)122 The court further explained that states have altered their definitions of navigability "to satisfy different policies regarding resource conservation."[[123]](#footnote-124)123 However, here the court adhered to a strict standard for navigability,[[124]](#footnote-125)124 and Arizona law limits public trust use purposes to "commerce, navigation, and**[\*91]**fishing."[[125]](#footnote-126)125 As a result, the Arizona application of the public trust is one of the strictest in the Basin, second only to ***Colorado***.[[126]](#footnote-127)126

The Arizona judiciary issued a resounding endorsement of private, vested property rights in water based on prior appropriation because "there is not enough water to meet everyone's demands."[[127]](#footnote-128)127 In *San Carlos Apache Tribe v. Superior Court ex rel. County of Maricopa*, the court weighed in on the state legislature's attempt to eliminate the public trust from all water rights adjudication proceedings.[[128]](#footnote-129)128 The public trust is a matter of constitutional authority and cannot be legislated away.[[129]](#footnote-130)129 The court invalidated the statute and articulated that the public trust doctrine is purely a matter of judicial decision-making.[[130]](#footnote-131)130

The Arizona legislature has taken steps to mitigate any clashes between the public trust and prior appropriations.[[131]](#footnote-132)131 The state created the Arizona Navigable Stream Adjudication Commission (NSAC) to take responsibility for classifying ***rivers*** as navigable or non-navigable.[[132]](#footnote-133)132 One element of the NSAC is to provide financial compensation for any Arizona landowner who loses title as a result of a determination of navigability.[[133]](#footnote-134)133 For the most part, Arizona has maintained a minimalist public trust, and has limited case law to clarify the true scope of it.[[134]](#footnote-135)134

**B. California**

California is the only state in the Basin that uses a blended system of riparian and prior appropriative water rights, referred to as the California Doctrine.[[135]](#footnote-136)135 Upon development, the state first adopted the eastern system of riparian rights, but that system did not meet the needs of miners.[[136]](#footnote-137)136 California adopted a system of prior appropriation based on beneficial use, and in 1928 approved a constitutional amendment that placed the two systems on equal ground.[[137]](#footnote-138)137 Unlike most other prior appropriation states, California has explicitly extended its PTD to support ecological purposes.[[138]](#footnote-139)138 Furthermore, California seeks to reconcile the PTD with prior appropriation.[[139]](#footnote-140)139

The Supreme Court of California tackled this head-on in *National Audubon Society v. Superior Court (Mono Lake)*.[[140]](#footnote-141)140 The court examined a dispute**[\*92]**over water rights between Los Angeles County and environmental groups interested in the conservation of water and the ecosystem of Mono Lake.[[141]](#footnote-142)141 In 1940, the California Division of Water Resources granted the City of Los Angeles a permit to divert water from the Lake and its streams.[[142]](#footnote-143)142 Over decades, Los Angeles exercised its right to divert water, causing adverse effects on the ecology of the Lake, wildlife, recreational activity, and economic productivity.[[143]](#footnote-144)143 The court noted both the scenic beauty of the lake and the reliance interests held by Los Angeles.[[144]](#footnote-145)144 Both interests were legally valid, and the court emphasized that the competing doctrines of prior appropriation and PTD were on a collision course and that either doctrine fully applied would exclude the other.[[145]](#footnote-146)145 Rather than prioritizing one over another, the court took the monumental step in attempting to reconcile them, because "to embrace one system of thought and reject the other would lead to an imbalanced structure."[[146]](#footnote-147)146 In attempting to reconcile the public trust with the system of water rights in the state, the court issued an astounding win for environmental interests.[[147]](#footnote-148)147 The decision articulated that the state may maintain a system of appropriative water rights based on beneficial use, but that it has an affirmative duty to consider the environment in its allocation of water resources "and protect public trust uses whenever feasible."[[148]](#footnote-149)148 These uses go "beyond the traditional boating, fishing, and swimming associated with navigable waters to also include ecological, recreational, and scenic considerations."[[149]](#footnote-150)149 The court remanded the case to reconsider the allocation of water to LA County as a result of the impact that the county's diversions had on the lake.[[150]](#footnote-151)150 While the consideration of impacts on public trust resources is mandatory, the state still has discretion in the outcome and may still permit potentially harmful appropriations.[[151]](#footnote-152)151

California took a step further in *Center for Biological Diversity, Inc. v. FPL* when it extended the PTD to protect and preserve wildlife.[[152]](#footnote-153)152 This expansion of the public trust is unparalleled in the rest of the ***Colorado*** ***River*** Basin and serves as an example of how the doctrine can extend to ecological and natural resources beyond water.

**[\*93] C. *Colorado***

***Colorado*** adheres to one of the most stringent applications of prior appropriation in the Basin.[[153]](#footnote-154)153 The language of the Constitution declares that "the water of every natural stream, not heretofore appropriated, within the state of ***Colorado***, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided."[[154]](#footnote-155)154 While the ownership of the resource is public, property rights in water are usufructuary and private.[[155]](#footnote-156)155 The ***Colorado*** Supreme Court expressly rejected the public trust in *People v. Emmert* (1979).[[156]](#footnote-157)156 The court recognized various reasons to allow public use of water but did not want to upset the existing common law rule that land underlying non-navigable streams is subject to private ownership.[[157]](#footnote-158)157 The court pointed out that ***Colorado***'s constitutional section regarding Mining and Irrigation "simply and firmly establishes the right of appropriation in this state."[[158]](#footnote-159)158 It was intended to support the ***Colorado*** economy for the purposes for which the state was founded, not preserve public access to waters.[[159]](#footnote-160)159 In 2023, the ***Colorado*** Supreme Court once again rejected the application of public trust principals to public rights in water in *State v. Hill*, discussed extensively in Section IX below.

***Colorado***'s rejection of the public trust has met political opposition in recent decades, though no political efforts to expand the public trust have been successful. Richard Hamilton, a biologist and lobbyist, spearheaded a series of ballot initiatives in the 1990s that attempted to amend that section of the Constitution to incorporate a PTD.[[160]](#footnote-161)160 Those initiatives sought to require ***Colorado*** to "adopt and defend a strong public trust doctrine" for water resources, and hoped to extend the doctrine as far as California's.[[161]](#footnote-162)161 Hamilton led another attempt in 2012 that sought to create a "public estate in water" that would be superior to all appropriative rights,[[162]](#footnote-163)162 but that initiative did not receive enough signatures to appear on the ballot.[[163]](#footnote-164)163 Those who reject the public trust in ***Colorado*** fear that it would cause chaos within the state's system of privately owned water rights by casting doubt on all rights holders.[[164]](#footnote-165)164 They claim that "this intolerable level of uncertainty would make it virtually impossible to plan or finance a significant water project."[[165]](#footnote-166)165 Hamilton's radical ballot proposals lend credence**[\*94]**to this fear: all of his initiatives have been so revolutionary as to have the potential to upset the entire system of water law entrenched in ***Colorado***.[[166]](#footnote-167)166 It is unsurprising that these drastic initiatives have failed when pitted against a system of water law that has existed for 150 years.

**1. State v. Hill: A Case Study**

The ***Colorado*** Supreme Court recently reviewed a dispute implicating PTD principles and public access to riverbeds of navigable waters. This litigation, underway since 2018 and dismissed due to lack of standing in June of 2023, underlines the challenges facing judicial advocacy for the PTD and related principles.[[167]](#footnote-168)167 Roger Hill, a private citizen and avid angler, enjoyed fishing on a certain segment of the Arkansas ***River***.[[168]](#footnote-169)168 Mark Warsewa and Linda Joseph owned the land on either side of this segment, and on multiple occasions sought to chase Mr. Hill and his associates off by force by throwing rocks and shooting guns.[[169]](#footnote-170)169 In response, Mr. Hill sued Mr. Warsewa, Ms. Joseph, and the State of ***Colorado*** in 2018 under the principle of navigability-for-title to secure his right to fly fish in this segment of the Arkansas.[[170]](#footnote-171)170 Mr. Hill argued that he had a right to wade along the riverbed because the Arkansas was navigable at the time of statehood, and therefore belonged to the State of ***Colorado*** in trust for the public.[[171]](#footnote-172)171 Mr. Hill did not seek to challenge water rights in the ***river***, assert an ecological PTD, or regulate appropriative water rights to solve problems presented by drought, but instead sought to implement one element of PTD principles to expand public stream access.[[172]](#footnote-173)172

As previously discussed, the state of ***Colorado*** takes the strictest approach to the PTD in the Basin. While other Western states have long recognized the public's right to access ***rivers*** and waterways for recreation based on the doctrine of navigability-for-title, ***Colorado*** has rejected this implementation of the PTD and allowed private ownership of ***rivers***.[[173]](#footnote-174)173 If Mr. Hill's theory was accepted, the State would have had to reconcile with its rejection of the PTD and related doctrine of navigability-for-title, and potentially upend private property rights on ***rivers***.

Throughout five years of litigation, the case bounced between federal and state courts at many levels, all of which disagreed on the threshold issue of whether Mr. Hill has standing to bring a claim his right as a member of the public to access this section of riverbed.[[174]](#footnote-175)174

**[\*95]**The District Court for the District of ***Colorado*** held that Mr. Hill lacked standing in both 2019 and 2020,[[175]](#footnote-176)175 each time stating that he did not possess a right to relief because he was asserting a generalized grievance based on the government's property rights, rather than his own.[[176]](#footnote-177)176 In 2019, the court stated Mr. Hill has "no legally protected interest in the government's perceived property rights, even if [he] might derive some benefit from public lands."[[177]](#footnote-178)177 In 2020, the court noted that Mr. Hill's fear deriving from altercations with landowners and the threat of arrest was not sufficient to meet the standard for standing because it is "no different from fear of repercussions that could plausibly be shared by*any*member of the public who willfully trespasses on land claimed to be owned by private individuals."[[178]](#footnote-179)178

In contrast, the Tenth Circuit found on appeal that Mr. Hill was in fact asserting a personal, individualized right.[[179]](#footnote-180)179 The Tenth Circuit compared his potential right to access the riverbed to an easement.[[180]](#footnote-181)180 Therefore, "determining whether Mr. Hill has any right to use the easement [would] require an examination of the underlying title."[[181]](#footnote-182)181 The case was then remanded to state court, and the ***Colorado*** Court of Appeals also held that the District Court improperly denied Mr. Hill's standing because Mr. Hill alleged a personal injury to a legally protected interest.[[182]](#footnote-183)182 The Court of Appeals noted that "the question of whether, and to what extent, the public trust doctrine should apply to the bed of a navigable ***river*** has never been resolved - or, as far as we can tell, even addressed - in ***Colorado***."[[183]](#footnote-184)183

The ***Colorado*** Supreme Court granted certiorari on the single issue of whether Mr. Hill has standing "to seek a declaratory judgement that a ***river*** segment was navigable for title at statehood and belongs to the State."[[184]](#footnote-185)184 It denied certiorari on all other issues.[[185]](#footnote-186)185 In a brief opinion, the court held that Mr. Hill has no legally protected interest in the ownership of the riverbed, and therefore has no standing.[[186]](#footnote-187)186 The court reasoned that his argument and claim of injury rested on the State's ownership of the riverbed, and not his own personal right to access it.[[187]](#footnote-188)187 His claim "only exists contingent on an antecedent claim that is not his to pursue - that the State owns the riverbed."[[188]](#footnote-189)188 To find that Mr. Hill has standing to assert his claim, the court alleged that he would have to win on the merits of his claim.[[189]](#footnote-190)189 Since the court cannot review the merits of a claim**[\*96]**when deciding whether a plaintiff has standing, it could not grant Mr. Hill standing.[[190]](#footnote-191)190

This position on whether an individual has standing to assert public trust rights is even stricter than the position faced by plaintiffs in *Juliana*, *Aji P.*, and *Chernaik*. It appears that the court was unwilling to find that Mr. Hill has standing despite his concrete, particularized injury, because the right itself is public, rather than individual.

The decision raised a significant problem facing advocates of the PTD in ***Colorado***: if Mr. Hill, who had rocks thrown at him and was threatened with arrest, did not suffer an injury sufficient to find standing, what plaintiff would meet the court's standard? It appears that the ***Colorado*** Supreme Court believes that the State is the only entity that can bring claims arising under the PTD. This stands in contrast with over a century of judicial tradition, described in Section III above, that suggests that the PTD protects the interests of the public, not the state.[[191]](#footnote-192)191 If the state does not assert that right on behalf of its constituents, the public should have the opportunity to challenge that abdication of duty in court. The ***Colorado*** Supreme Court has effectively foreclosed this option for Coloradans, leaving them to rely on the legislature to assert the PTD on their behalf.

***Colorado*** Attorney General Phil Weiser released a statement concerning the dispute that reflects the states' official position on the PTD:

As for any possible change to [***Colorado*** state] policy, it is the province of the political branches, not the courts, to do so. Under ***Colorado***'s current legal framework, property owners, water users, and leaders in the recreation industry have worked together to increase public access to ***rivers*** for recreation and to manage this important resource. Public calls to alter ***Colorado***'s existing policy should be addressed by the political branches, not the courts. Thus, the decision of the highest court and statements by public officials in ***Colorado*** confirm that judicial advocacy for the PTD has a limited, or perhaps nonexistent, future in the state. Other methods - such as addressing public interest review - may be more effective for addressing climate change concerns.[[192]](#footnote-193)192

Mr. Hill's argument struggled to overcome the same justiciability challenges faced by plaintiffs in PTD cases across the nation. The ***Colorado*** Supreme Court's decision on the dispute offered little path forward for judicial advocates of the PTD, likely leaving hopes of implementing the PTD to legislative, rather than judicial, action.

**d. Nevada**

Nevada law recognizes that under the PTD, the state acts as "trustee of all public natural resources [and] owes a fiduciary obligation to the general public to maintain public uses unless an alternative use would achieve a countervailing**[\*97]**public benefit."[[193]](#footnote-194)193 The state expressly adopted the PTD in 2011[[194]](#footnote-195)194, when the Nevada Supreme Court was faced with a dispute over title to land directly adjacent to the ***Colorado*** ***River***.[[195]](#footnote-196)195 The court recognized that the PTD arises from both constitutional and statutory authority, though it limited its application to the underlying land and not the water itself.[[196]](#footnote-197)196

In *Pyramid Lake Paiute Tribe of Indians v. Washoe County*, the Paiute tribe challenged the issuance of water permits on ecological grounds, alleging that the state did not conduct a proper public interest review.[[197]](#footnote-198)197 The court declined to deny the issuance of permits based on environmental reasons because the long-standing norm of the state did not demand that.[[198]](#footnote-199)198 It recognized that the prior appropriation doctrine might not be "well suited to solve the modern demands for water across our arid state," but nonetheless, the extension of the PTD to impact appropriative water rights remained, according to the court, a question for the legislature.[[199]](#footnote-200)199

More recently, the Nevada Supreme Court considered whether the PTD allows the state to reallocate already appropriated water rights.[[200]](#footnote-201)200 The court held that because the legislature emphasized "the importance of finality in water rights" in the statutory scheme, the PTD could not override and reallocate already adjudicated water rights.[[201]](#footnote-202)201 Furthermore, the state statutes already incorporated elements of the PTD by "requiring the State Engineer to consider the public interest when allocating and administering water rights."[[202]](#footnote-203)202 Even though the court recognized the ecological decline of the water source in dispute, it declined to use the PTD to displace the system of prior appropriation when the legislature has expressly endorsed finality in water rights.[[203]](#footnote-204)203

**e. New Mexico**

The New Mexico Constitution declares that "the protection of the state's beautiful and healthful environment is hereby declared to be of fundamental importance to the public interest, health, safety, and the general welfare," though it places no affirmative duty on the government to protect the environment outside of pollution control.[[204]](#footnote-205)204 The state owns public waters in trust for the people,[[205]](#footnote-206)205 and the Supreme Court of New Mexico extended the PTD to include uses such as recreation and fishing, reflecting a slightly more flexible approach than some states in the Basin.[[206]](#footnote-207)206 Additionally, in other cases the New**[\*98]**Mexico courts have held that terms such as "public interest" and "public welfare" should be interpreted broadly, indicating a potential willingness to take an extensive construction of the public trust.[[207]](#footnote-208)207

In 2022, the Supreme Court of New Mexico relied on the language of the state constitution and PTD principals to strike down state regulations that allowed private landowners to close public water to access.[[208]](#footnote-209)208 The court explained that the doctrine of prior appropriation grants individuals the private right to use water, but "those individuals have no ownership interest in those natural waters[.]"[[209]](#footnote-210)209 Recognizing previous cases that interpreted public rights in water to include recreation and fishing,[[210]](#footnote-211)210 the court extended public rights to include walking and wading on the beds beneath public water, because doing so is "reasonably necessary for the enjoyment of many forms of fishing and recreation."[[211]](#footnote-212)211 The United States Supreme Court denied a petition by New Mexican private landowners to review the decision in February 2023, allowing the state court decision in favor of public stream access to stand.[[212]](#footnote-213)212 This decision reflects the malleability of states' approaches to the PTD and public access to water, and the potential for change in other states beyond New Mexico.

**f. Utah**

The state of Utah regulates water in trust for the benefit of the people.[[213]](#footnote-214)213 In *Adams v. Portage Irrigation, Reservoir & Power* ***Co****.*, the court clarified the state's system of property regarding water, explaining that a water right is a right to divert water, whereas the wild waters of the state are publicly owned.[[214]](#footnote-215)214 The state explicitly extended the PTD for recreational purposes.[[215]](#footnote-216)215 In fact, it appears that Utah has, at least on paper, endorsed an ecological PTD for water. In *J.J.N.P.* ***Co****. v. State of Utah, By & Through Division of Wildlife Resources*, the court cited the seminal case *Marks v. Whitney* in holding that water should be allocated for the benefit and welfare of the public.[[216]](#footnote-217)216 The Utah Supreme Court has stated that the PTD "protects the ecological integrity of public lands and their public recreational uses for the benefit of the public at large."[[217]](#footnote-218)217

The Utah legislature, however, appears uneasy with this trend. In 2010, it amended its statutes regarding public ownership of water to provide that "the declaration of public ownership of water.… does not create or recognize an**[\*99]**easement for public recreational use on private property"[[218]](#footnote-219)218 and that "the legislature shall govern the use of public water for beneficial purposes, as limited by constitutional protections for private property."[[219]](#footnote-220)219 Because there is no clear mandate within the Utah Constitution to uphold the PTD, its future in the courts and legislature is unclear.

**g. Wyoming**

The Wyoming Constitution puts the ownership of water into the hands of the state, recognizing the need to "guard all the various interests involved" because water is "essential to industrial prosperity, of limited amount, and easy diversion from its natural channels."[[220]](#footnote-221)220 Wyoming adheres to a traditional public trust that recognizes state ownership of navigable waters and their beds and banks,[[221]](#footnote-222)221 and leaves non-navigable waters to private ownership by the riparian landowner.[[222]](#footnote-223)222 The Wyoming Supreme Court faced the question of navigability for title in *Day v. Armstrong* when the plaintiff claimed the right to use a ***river*** for recreational purposes.[[223]](#footnote-224)223 The plaintiff argued that the ***river*** in question was navigable because it could float craft.[[224]](#footnote-225)224 Despite this fact, the court determined that the portion of the ***river*** in question is non-navigable, and therefore the beds and banks of the water were privately owned.[[225]](#footnote-226)225 Yet the court maintained that the State holds in trust the actual water flowing through the ***river*** and can control it "as it sees fit."[[226]](#footnote-227)226 Therefore, the riparian landowner was subject to an easement to allow the plaintiff and general public to use the water for their own benefit.[[227]](#footnote-228)227 However, the court qualified this reluctant endorsement of the PTD for the waters of a non-navigable ***river*** by suggesting that the legislature has broad discretion to regulate or limit the public use of those waters within its Constitutional ability.[[228]](#footnote-229)228

**VII. Effective Advocacy to Expand Public Trust in the West**

Various state approaches illustrate the complexity of the clash of the public trust and prior appropriation doctrines, and the unique ways this tension can be handled. Before initiating legal challenges, judicial advocates of the PTD must remember that appropriative water rights are steeped in centuries of legal precedent in the ***Colorado*** ***River*** Basin. Communities rely on the system of prior appropriation for water supplies, and any overhaul of the system of private property rights could result in chaos. Rather than attempt to rewrite the water code of western states, which would upset reliance interests and implicate due process concerns, advocates must seek to make incremental changes that work**[\*100]**within the current framework. The recent line of public trust cases, outlined in Section IV, best illustrates this challenge. *Juliana*, *Aji P.*, and *Chernaik* sought monumental changes in the PTD by attempting to extend it to entirely new classes of resources and redefining the state government's role in natural resources law. These cases serve as a reminder to even the most ardent environmentalist that the PTD will not provide all of the answers to ecological crises. However, with prudent advocacy, it has the potential to reframe the way we look at water law in this arid region and perhaps place limits on the use of appropriative water rights to the benefit of the greater good.

The first obstacle facing advocates of the PTD in the Basin is simply getting into court. *Juliana*, *Aji P.*, and *Chernaik* demonstrate that one of the biggest hurdles to climate change litigation is showing standing, because the impacts of climate change are hard to pinpoint to a specific actor and even more difficult to redress. However, environmental advocates in climate change litigation did meet the burden of showing standing in one of the most landmark climate change cases of recent memory: *Massachusetts v. E.P.A*.[[229]](#footnote-230)229 Here, the Supreme Court considered whether the U.S. Environmental Protection Agency ("E.P.A.") failed to meet its statutory authority when it did not regulate greenhouse gas emissions from automobiles.[[230]](#footnote-231)230 The Court explained that "the gist of the question of standing" is whether petitioners have "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination."[[231]](#footnote-232)231 The State of Massachusetts successfully established standing by demonstrating a particularized injury from rise in sea level, causation linked to the E.P.A.'s failure to regulate greenhouse gasses, and the fact that reducing emissions from automobiles across the country would be a significant step in the right direction.[[232]](#footnote-233)232 It relied on a highly scientific argument to make its case. The Juliana plaintiffs, on the other hand, were unable to prove direct redressability of the controversy through their scientific arguments about the impacts of their requested relief.[[233]](#footnote-234)233 In the era of climate change, effective judicial intervention to reconcile the PTD with prior appropriation will likely have to rely on the weight of scientific evidence to demonstrate the urgency of the problem. When facing water resources issues in the West, judicial advocates should consider being specific and scientific in explaining how climate change is influencing the Basin. The legal arguments need to be careful in identifying injury, causation, and redressability.

Advocates must also show that their claim is justiciable by articulating the judicial branch's long role in defining the PTD. This presents a challenge in states that have statutes or constitutional mandates defining the scope of the PTD because the court likely cannot make changes to an established doctrine of state law. But in areas of law where the legislature has not spoken, the judiciary should have wide authority to adjudicate questions defining navigability, public interest, and beneficial use.

**[\*101]**Once in court, advocates have many paths to expand the PTD incrementally in the judicial sphere: re-defining navigability for title broadening the scope of natural resources included within it demanding its consideration when allocating water resources and contesting activities that harm water resources unnecessarily.

Since the PTD emerged as a creature of common law, the judiciary has an important role to play as "gatekeeper of the trust."[[234]](#footnote-235)234 Expanding the PTD in the judicial sphere has been most successful in California, and the California PTD cases represent some of the ideals that the movement should espouse across the Basin. Though *Marks v. Whitney* demonstrates effective argumentation to expand the PTD beyond navigable waters to protect natural resources for the sake of their ecological value,[[235]](#footnote-236)235 courts in the ***Colorado*** ***River*** Basin states have not followed California's lead. Advocates should turn away from the notion of an ecological public trust, and instead focus on a more limited application within appropriative water rights. *National Audubon Society v. Superior Court* sets more useful precedent on how to balance reliance interests in already allocated water rights with the need to protect water resources from overuse.[[236]](#footnote-237)236 Climate change provides an urgent backdrop for this argument: while Basin states may have been able to avoid taking the Mono Lake approach in decades past, the current state of aridification and overconsumption is likely to require a new approach.

The judiciary should take a more active role in oversight of the agencies and bodies that allocate water and issue new diversion permits. The PTD is an "inherent attribute of sovereign authority," and the judiciary ought to enforce it in public interest review.[[237]](#footnote-238)237 Rather than viewing the PTD as a threat to private property rights, it should be seen as a "check on water administration."[[238]](#footnote-239)238 Courts should seek to align the definitions of public trust and public interest review so that the doctrines find harmony and real enforcement. In reviewing applications for diversions, courts should ensure that state agencies actually consider environmental impacts of the new diversion on water resources.

Reconciling the PTD with prior appropriation may require legislative action as well. For example, one could argue that recreational uses have a legitimate reliance interest in the maintenance of normal ***river*** flows, and that the state has a duty to take responsibility to ensure that appropriative water rights do not interfere with those uses. Other legislative tools could include broadening the scope of the definitions relevant to the PTD and prior appropriation to encompass more uses and bodies of water, such as navigability and beneficial use. In the Mono Lake litigation, the court extended the PTD from the navigable waterway itself to include all of the tributaries that feed the Lake hydrologically as well.[[239]](#footnote-240)239 This illustrates how a broadening of the definition of navigability, or the expansion of resources included within the scope of the PTD, can influence**[\*102]**how its impacts play out.

Legislatures in the Basin should focus attention on public-interest provisions and define specific criteria to guide state agencies in their allocation decisions. Examples of such criteria could include: (1) maintenance of specific minimum instream flows (2) consideration of pollution concentration that may be impacted as a result of diversion and (3) conservation of water to protect recreational and aesthetic value of waterways. Water permit review should be defined to incorporate the PTD, to the extent that the state already recognizes it in common law. More specific procedures ought to guide the water distribution agencies, so that they have less discretion and ability to override public interest provisions. Further, legislatures and state agencies could attach conditions to new permits and begin monitoring efforts to ensure that the diversion remains minimally impactful.

The failed ballot initiatives in ***Colorado*** are an example of how *not* to encourage the incorporation of the PTD within a constitutional or statutory framework in a state that actively rejects the public trust.[[240]](#footnote-241)240 Instead of pushing to reverse over a century of policy with one ballot initiative, advocates should work for more incremental changes within policy. A future ballot initiative in ***Colorado*** should balance aims alongside the needs of private water interests, perhaps by asking that a change in policy require the State Engineer to more affirmatively follow its statutory mandate to appropriate water "to preserve the natural environment to a reasonable degree."[[241]](#footnote-242)241 The rhetoric surrounding the PTD casts uncertainty on property rights and therefore could be politically unpopular. It should be framed not as a restriction on property or a governmental taking, but a regulation on distribution. This would not be the first time the government asserts regulatory control over a resource. Essentially all private property rights are regulated by the government in some way, through its zoning ordinances, public easements, or land use planning. Incorporating the PTD within private property rights is analogous to regulation.

**IX. Conclusion**

While the PTD is not likely the legal hammer that environmentalists envisioned in the 1970s, the Basin has room to expand and alter water allocation policy to incorporate its ideals. There is no one-size-fits all approach to reconciling the PTD with prior appropriation in the Basin. A wide range of statutory, constitutional, and judicial options give states flexibility to adapt as they see fit. The strongest path to reconciling these two doctrines arises from the Basin states' public-interest provisions. Virtually all seven states have a statutory or constitutional mandate to consider some sort of public benefit or environmental impact in their allocation of water resources.[[242]](#footnote-243)242 Yet these provisions remain ill-defined and enforced on an ambiguous, discretionary basis. Public-interest provisions carry the same ideals as the PTD: preserving resources for community benefit. The PTD can inform courts as they seek to enforce more substantive public-interest review. The judiciary should take a more active role in hearing**[\*103]**challenges to improper water allocations and holding state water agencies accountable for harmful decision-making.

Even if a public trust case fails, it still plays a role in expanding the conversation and demonstrating what state governments are capable of doing. *Juliana* remains one of the most discussed cases in the past decade. Shifting the dialogue surrounding water resources has the potential to spur action to limit exploitive, short-term uses of water in an arid region such as the Basin. Discussion of the impacts of climate change should be as loud and urgent as possible. If the PTD fails in the courts, sparking this conversation may still encourage legislative action to modify centuries of policy, or constitutional action to preserve certain rights and resources at the highest level.

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7. 7*See generally* Robin K. Craig,*A Comparative Guide to the Western States' Public Trust Doctrines: Public Values, Private Rights, and the Evolution Toward an Ecological Public Trust*, [*37 Ecology L.Q. 53 (2010)*](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:4YVR-RT40-00CV-J039-00000-00&context=1516831). [↑](#footnote-ref-8)
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15. 15Overpeck, *supra* note 9, at 3. [↑](#footnote-ref-16)
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21. 21Overpeck, *supra* note 9, at 2. [↑](#footnote-ref-22)
22. 22*Id.* [↑](#footnote-ref-23)
23. 23Lukas & Peyton, *supra* note 10, at 70. [↑](#footnote-ref-24)
24. 24*See generally* Overpeck & Udall, *supra* note 18. [↑](#footnote-ref-25)
25. 25Eugene F. Ware, Roman Water Law, 16 (1905). [↑](#footnote-ref-26)
26. 26Sax, *supra* note 4, at 475. [↑](#footnote-ref-27)
27. 27Ware, *supra* note 25, at 24-25. [↑](#footnote-ref-28)
28. 28*Id.* at 45. [↑](#footnote-ref-29)
29. 29*Id.* at 25. [↑](#footnote-ref-30)
30. 30*Id.* at 45. [↑](#footnote-ref-31)
31. 31*See* [*Martin v. Waddell's Lessee, 41 U.S. 367, 368 (1842)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-KD80-003B-H4H1-00000-00&context=1516831). [↑](#footnote-ref-32)
32. 32Richard Loveland, Hall's Essay on the Rights of the Crown and the Privileges of the Subject in the Sea Shores of the Realm, 154 (2[su'nd'] ed. 1875). [↑](#footnote-ref-33)
33. 33*Id.* [↑](#footnote-ref-34)
34. 34Sax, *supra* note 4, at 476. [↑](#footnote-ref-35)
35. 35[*Martin, 41 U.S. 367 at 381*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-KD80-003B-H4H1-00000-00&context=1516831). [↑](#footnote-ref-36)
36. 36[*Id. at 367*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-KD80-003B-H4H1-00000-00&context=1516831). [↑](#footnote-ref-37)
37. 37[*Illinois Cent. R.* ***Co****. v. Illinois, 146 U.S. 387, 452 (1892)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-FKW0-003B-H44X-00000-00&context=1516831). [↑](#footnote-ref-38)
38. 38*Id.* [↑](#footnote-ref-39)
39. 39*Id.* [↑](#footnote-ref-40)
40. 40Sax, *supra* note 4, at 476. [↑](#footnote-ref-41)
41. 41Stephen J. Leonhardt, Steven M. Nagy & Morgan L. Figuers,*The Public Trust Doctrine and Environmental Rights Initiatives: A Tectonic Shift in* ***Colorado*** *Property Rights in Natural Resources?,* 53 Rocky Mountain Min. L. Found. J. 1, 50 (2016). [↑](#footnote-ref-42)
42. 42***The Daniel Ball, 77 U.S. 557, 563 (1870)***. [↑](#footnote-ref-43)
43. 43[*Shively v. Bowlby, 152 U.S. 1, 57 (1894)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-F7T0-003B-H3BG-00000-00&context=1516831). [↑](#footnote-ref-44)
44. 44[*Phillips Petroleum* ***Co****. v. Miss., 484 U.S. 469, 470-471 (1988)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-FPW0-003B-40GC-00000-00&context=1516831). [↑](#footnote-ref-45)
45. 45*See* [*McCready v. Virginia, 94 U.S. 391, 396 (1876)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-JDP0-003B-H058-00000-00&context=1516831). [↑](#footnote-ref-46)
46. 46Sax, *supra* note 4, at 471. [↑](#footnote-ref-47)
47. 47Sax, *supra* note 4, at 474. [↑](#footnote-ref-48)
48. 48[*Id. at 477*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-JDP0-003B-H058-00000-00&context=1516831). [↑](#footnote-ref-49)
49. 49[*Id. at 484*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-JDP0-003B-H058-00000-00&context=1516831). [↑](#footnote-ref-50)
50. 50[*Marks v. Whitney, 491 P.2d 374, 377 (Cal. 1971)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRK-J2N0-003C-H0MN-00000-00&context=1516831). [↑](#footnote-ref-51)
51. 51[*Id. at 380*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRK-J2N0-003C-H0MN-00000-00&context=1516831). [↑](#footnote-ref-52)
52. 52*Id.* [↑](#footnote-ref-53)
53. 53***In re Water Use Permit Applications, 9 P.3d 409, 445 (Haw. 2000)***. [↑](#footnote-ref-54)
54. 54***Id. at 448***. [↑](#footnote-ref-55)
55. 55*See* [*Wash. State Geoduck Harvest Ass'n v. Wash. State Dept. of Natural Res., 101 P.3d 891, 895 (Wash. Ct. App. 2004)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4DXJ-FV70-0039-41GM-00000-00&context=1516831) [*Citizens for Responsible Wildlife Mgmt. v. Washington, 103 P.3d 203, 205, 207 (Wash. Ct. App. 2004)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4F01-FDB0-0039-40CP-00000-00&context=1516831). [↑](#footnote-ref-56)
56. 56[*United Plainsmen Ass'n v. N.D. State Water Conservation Comm'n, 247 N.W.2d 457, 461, 463 (N.D. 1976)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RXP-6560-003G-90FH-00000-00&context=1516831). [↑](#footnote-ref-57)
57. 57[*PPL Montana, LLC v. Montana, 565 U.S. 576, 604 (2012)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5519-TV91-F04K-F1DT-00000-00&context=1516831). [↑](#footnote-ref-58)
58. 58*Id.* [↑](#footnote-ref-59)
59. 59Pa. Const.art. I, §27. [↑](#footnote-ref-60)
60. 60*See* [*Robinson Twp. v. Commonwealth, 83 A.3d 901, 913, 919-20 (Pa. 2013)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5B3B-F2R1-F04J-T4SD-00000-00&context=1516831). [↑](#footnote-ref-61)
61. 61NY Const. art. XIV, §1. [↑](#footnote-ref-62)
62. 62[*S.D. Codified Laws §46-1-2*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5DKM-H0H1-66PT-F12B-00000-00&context=1516831). [↑](#footnote-ref-63)
63. 63[*N.C. Gen. Stat. §113-131*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:644V-3F01-DYB7-W2V7-00000-00&context=1516831). [↑](#footnote-ref-64)
64. 64[*43 U.S.C.A. §1311*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0HD2-8T6X-7480-00000-00&context=1516831). [↑](#footnote-ref-65)
65. 65J. Craig Smith & Scott M. Ellsworth,*Public Trust vs. Prior Appropriation: A Western Water Showdown*, [*31 Nat. Resources & Env't 18, 22 (2016)*](https://advance.lexis.com/api/document?collection=legalnews&id=urn:contentItem:5KMS-VF80-00RS-N4YN-00000-00&context=1516831). [↑](#footnote-ref-66)
66. 66[*Juliana v. United States, 947 F.3d 1159, 1165 (9th Cir. 2020)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5Y0S-0FS1-JFDC-X4X4-00000-00&context=1516831). [↑](#footnote-ref-67)
67. 67*Id.* [↑](#footnote-ref-68)
68. 68*Id.* [↑](#footnote-ref-69)
69. 69[*Id. at 1175*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5Y0S-0FS1-JFDC-X4X4-00000-00&context=1516831). [↑](#footnote-ref-70)
70. 70[*U.S. Const. art. III, §2*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-R212-8T6X-72XD-00000-00&context=1516831). [↑](#footnote-ref-71)
71. 71[*Lujan v. Defs. of Wildlife, 112 S. Ct. 2130, 2136 (1992)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-XF70-003B-R3RX-00000-00&context=1516831). [↑](#footnote-ref-72)
72. 72[*Juliana, 947 F.3d at 1174*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5Y0S-0FS1-JFDC-X4X4-00000-00&context=1516831). [↑](#footnote-ref-73)
73. 73[*Id. at 1170*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5Y0S-0FS1-JFDC-X4X4-00000-00&context=1516831). [↑](#footnote-ref-74)
74. 74Aji P. by & through [*Piper v. State, 480 P.3d 438,445-446 (Wash. Ct. App. 2021)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:61YH-0XH1-F1P7-B1YW-00000-00&context=1516831), *review denied sub nom.****Aji P. v. State, 497 P.3d 350 (Wash. Ct. App. 2021)***. [↑](#footnote-ref-75)
75. 75***Id. at 444***. [↑](#footnote-ref-76)
76. 76***Id. at 446***. [↑](#footnote-ref-77)
77. 77***Id. at 447***. [↑](#footnote-ref-78)
78. 78[*Id. at 457*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:61YH-0XH1-F1P7-B1YW-00000-00&context=1516831). [↑](#footnote-ref-79)
79. 79[*Id. at 448*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:61YH-0XH1-F1P7-B1YW-00000-00&context=1516831). [↑](#footnote-ref-80)
80. 80[*Chernaik v. Brown, 475 P.3d 68, 68 (Or. 2020)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:6147-8N21-F06F-2504-00000-00&context=1516831). [↑](#footnote-ref-81)
81. 81[*Id. at 71*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:6147-8N21-F06F-2504-00000-00&context=1516831). [↑](#footnote-ref-82)
82. 82[*Id. at 81*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:6147-8N21-F06F-2504-00000-00&context=1516831). [↑](#footnote-ref-83)
83. 83[*Id. at 78*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:6147-8N21-F06F-2504-00000-00&context=1516831). [↑](#footnote-ref-84)
84. 84[*Id. at 82*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:6147-8N21-F06F-2504-00000-00&context=1516831). [↑](#footnote-ref-85)
85. 85[*Sagoonick v. State, No. S-17297, 2022 WL 262268, at \*794 (Alaska Jan. 28, 2022)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:64N0-5SK1-JNS1-M0JY-00000-00&context=1516831). [↑](#footnote-ref-86)
86. 86[*Iowa Citizens for Cmty. Improvement v. State, 962 N.W.2d 780, 781 (Iowa 2021)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:62Y9-WS61-JT99-21KW-00000-00&context=1516831). [↑](#footnote-ref-87)
87. 87N. Carolina Coastal Fisheries Reform Grp. v. Capt. Gaston LLC, No. 4:20-CV-151-FL, 2021 WL 4254856, at \*1008-09 (E.D.N.C. Sept. 17, 2021). [↑](#footnote-ref-88)
88. 88*State Legal Actions Now Pending,* Our Children's Trust, [*https://www.ourchildrenstrust.org/pending-state-actions*](https://www.ourchildrenstrust.org/pending-state-actions) (last visited August 28, 2023) (includes summary of *Held v. State of Montana*, where the First Judicial Court of Montana found that "the state of Montana violated the youth's constitutional rights, including their rights to equal protection, dignity, liberty, health and safety, and public trust" by passing laws that promoted fossil fuels.) [↑](#footnote-ref-89)
89. 89Smith & Ellsworth, *supra* note 65, at 18. [↑](#footnote-ref-90)
90. 90*Id.* [↑](#footnote-ref-91)
91. 91SeeKathryn M. Casey,Water in the West: Vested Water Rights Merit Protection under the Takings Clause, [*6 Chap. L. Rev. 305, 320 (2003)*](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:492K-S5S0-00B1-808J-00000-00&context=1516831). [↑](#footnote-ref-92)
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93. 93[*Irwin v. Phillips, 5 Cal. 140 (1855)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3SHB-SFG0-001B-81D3-00000-00&context=1516831). [↑](#footnote-ref-94)
94. 94Lawrence J. MacDonnell,*Prior Appropriation: A Reassessment*, [*18 U. Denv. Water L. Rev. 228, 243-244 (2015)*](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:5GNG-SK30-00SW-50GY-00000-00&context=1516831). [↑](#footnote-ref-95)
95. 95Reed D. Benson,*Alive but Irrelevant: The Prior Appropriation Doctrine in Today's Western Water Law*, [*83 U.* ***Colo.*** *L. Rev. 675, 676-77 (2012)*](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:55WD-TRB0-00CV-N03S-00000-00&context=1516831). [↑](#footnote-ref-96)
96. 96[*Irwin, 5 Cal. at 145*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3SHB-SFG0-001B-81D3-00000-00&context=1516831). [↑](#footnote-ref-97)
97. 97[*Id. at 147*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3SHB-SFG0-001B-81D3-00000-00&context=1516831). [↑](#footnote-ref-98)
98. 98*Id.* [↑](#footnote-ref-99)
99. 99[*Id. at 146*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3SHB-SFG0-001B-81D3-00000-00&context=1516831). [↑](#footnote-ref-100)
100. 100Benson, *supra* note 95, at 676. [↑](#footnote-ref-101)
101. 101[*Arizona v. California, 373 U.S. 546, 555 (1963)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-H3B0-003B-S2D7-00000-00&context=1516831). [↑](#footnote-ref-102)
102. 102*Id.* [↑](#footnote-ref-103)
103. 103Smith & Ellsworth, *supra* note 65, at 18. [↑](#footnote-ref-104)
104. 104David H. Getches,*The Metamorphosis of Western Water Policy: Have Federal Laws and Local Decisions Eclipsed the States' Role?*, 20 Stan. Env't L.J. 3, 6 (2001). [↑](#footnote-ref-105)
105. 105*Id.* [↑](#footnote-ref-106)
106. 106Smith & Ellsworth, *supra* note 65, at 19. [↑](#footnote-ref-107)
107. 107[*30 U.S.C.A. §51*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8S9D-WCR2-8T6X-732H-00000-00&context=1516831) (2012)[*43 U.S.C.A §661*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0HD2-8T6X-73VJ-00000-00&context=1516831) (2012). [↑](#footnote-ref-108)
108. 108Smith & Ellsworth, *supra* note 65, at 19. [↑](#footnote-ref-109)
109. 109Lisa Greenberg,*Trusting the Public: Reshaping* ***Colorado*** *Water Law in the Face of Changing Public Values*, 40 B.C. Env't Aff. L. Rev. 259, 260-261 (2013). [↑](#footnote-ref-110)
110. 110*Id*. at 283. [↑](#footnote-ref-111)
111. 111*See generally* Craig, *supra* note 7. [↑](#footnote-ref-112)
112. 112Amber L. Weeks,[*Defining the Public Interest: Administrative Narrowing and Broadening of the Public Interest in Response to the Statutory Silence of Water Codes, 50 Nat. Res. J. 255, 259 (2010)*](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:52Y3-2C00-01TH-N09S-00000-00&context=1516831). [↑](#footnote-ref-113)
113. 113Mark Squillace,*Restoring the Public Interest in WesternWaterLaw*, [*2020 Utah L. Rev. 627, 659-674 (2020)*](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:5YTX-TG41-FC6N-X2T5-00000-00&context=1516831). [↑](#footnote-ref-114)
114. 114[***Colo.*** *Rev. Stat. §37-92-102*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:61P5-WY01-DYDC-J3FN-00000-00&context=1516831) (2020). [↑](#footnote-ref-115)
115. 115Weeks, *supra* note 112, at 255. [↑](#footnote-ref-116)
116. 116Greenberg, *supra* note 109, at 269. [↑](#footnote-ref-117)
117. 117Weeks, *supra* note 112, at 256. [↑](#footnote-ref-118)
118. 118Michelle Bryan Mudd,*Hitching Our Wagon to A Dim Star: Why Outmoded Water Codes and "Public Interest" Review Cannot Protect the Public Trust in Western Water Law*, 32 Stan. Env't L.J. 283, 308 (2013). [↑](#footnote-ref-119)
119. 119[*Id. at 286*](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:52Y3-2C00-01TH-N09S-00000-00&context=1516831). [↑](#footnote-ref-120)
120. 120Craig, *supra* note 7, at 71. [↑](#footnote-ref-121)
121. 121[*Ariz. Rev. Stat. Ann. §37-1101(8)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5DP0-J151-6MP7-F432-00000-00&context=1516831) (2012). [↑](#footnote-ref-122)
122. 122*See* [*Defs. of Wildlife v. Hull, 18 P.3d 722, 729 (Az. Ct. App. 2001)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:42CD-3590-0039-4423-00000-00&context=1516831). [↑](#footnote-ref-123)
123. 123*Id.* [↑](#footnote-ref-124)
124. 124[*Id. at 731*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:42CD-3590-0039-4423-00000-00&context=1516831). [↑](#footnote-ref-125)
125. 125[*Ariz. Rev. Stat. Ann. §37-1101(9)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5DP0-J151-6MP7-F432-00000-00&context=1516831) (2012). [↑](#footnote-ref-126)
126. 126*See* Craig, *supra* note 7, at 76-77, 80, 92. [↑](#footnote-ref-127)
127. 127[*San Carlos Apache Tribe v. Superior Court ex rel. County of Maricopa, 972 P.2d 179, 202 (Ariz. 1999)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3VNF-W6J0-0039-42X1-00000-00&context=1516831). [↑](#footnote-ref-128)
128. 128[*Id. at 199*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3VNF-W6J0-0039-42X1-00000-00&context=1516831). [↑](#footnote-ref-129)
129. 129*Id.* [↑](#footnote-ref-130)
130. 130*Id.* [↑](#footnote-ref-131)
131. 131*See* [*Ariz. Rev. Stat. Ann. §37-1128(A)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5DP0-J151-6MP7-F43C-00000-00&context=1516831) (2012). [↑](#footnote-ref-132)
132. 132*See id.* [↑](#footnote-ref-133)
133. 133[*Ariz. Rev. Stat. Ann. §37-1132(A)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5DP0-J151-6MP7-F43H-00000-00&context=1516831)-(3) (2012). [↑](#footnote-ref-134)
134. 134*See* Craig, *supra* note 7, at 102-03. [↑](#footnote-ref-135)
135. 135[*Id. at 104*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:6147-8N21-F06F-2504-00000-00&context=1516831). [↑](#footnote-ref-136)
136. 136Roderick E. Walston,*California Water Law: Historical Origins to the Present*, [*29 Whittier L. Rev. 765, 767-68 (2008)*](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:4T1Y-5WM0-00CW-50RB-00000-00&context=1516831). [↑](#footnote-ref-137)
137. 137*Id.* at 770. [↑](#footnote-ref-138)
138. 138[*Marks v. Whitney, 491 P.2d 374, 380 (Cal. 1971)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRK-J2N0-003C-H0MN-00000-00&context=1516831). [↑](#footnote-ref-139)
139. 139[*Nat'l Audubon Soc'y v. Superior Ct., 658 P.2d 709, 727 (Cal. 1983)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RX6-F0N0-003D-J1V1-00000-00&context=1516831). [↑](#footnote-ref-140)
140. 140*Id.* [↑](#footnote-ref-141)
141. 141[*Id. at 709*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RX6-F0N0-003D-J1V1-00000-00&context=1516831). [↑](#footnote-ref-142)
142. 142[*Id. at 711*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RX6-F0N0-003D-J1V1-00000-00&context=1516831). [↑](#footnote-ref-143)
143. 143*See*[*id. at 715-16*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RX6-F0N0-003D-J1V1-00000-00&context=1516831). [↑](#footnote-ref-144)
144. 144[*Id. at 713*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RX6-F0N0-003D-J1V1-00000-00&context=1516831). [↑](#footnote-ref-145)
145. 145*See*[*id. at 726-27*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RX6-F0N0-003D-J1V1-00000-00&context=1516831). [↑](#footnote-ref-146)
146. 146[*Id. at 727*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RX6-F0N0-003D-J1V1-00000-00&context=1516831). [↑](#footnote-ref-147)
147. 147*See* [*id. at 728*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RX6-F0N0-003D-J1V1-00000-00&context=1516831). [↑](#footnote-ref-148)
148. 148*Id.* [↑](#footnote-ref-149)
149. 149Erin Ryan,*The Public Trust Doctrine, Private Water Allocation, and Mono Lake: The Historic Saga of National Audubon Society v. Superior Court*, 45 Env't. L. 561, 609 (2015). [↑](#footnote-ref-150)
150. 150[*Nat'l Audubon Soc'y, 658 P.2d at 728-29*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RX6-F0N0-003D-J1V1-00000-00&context=1516831). [↑](#footnote-ref-151)
151. 151*See* [*S.F. Baykeeper, Inc. v. Cal. State Lands Comm'n, 194 Cal. Rptr. 3d 880, 908 (Ct. App. 2015)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HDC-XNP1-F04B-N09D-00000-00&context=1516831). [↑](#footnote-ref-152)
152. 152[*Ctr. for Biological Diversity, Inc. v. FPL Grp., Inc., 83 Cal. Rptr. 3d 588, 597 (Cal. Ct. App. 2008)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4TGF-M3Y0-TX4N-G09M-00000-00&context=1516831),*as modified on denial of reh'g*(Oct. 9, 2008). [↑](#footnote-ref-153)
153. 153Craig, *supra* note 7, at 116. [↑](#footnote-ref-154)
154. 154***Colo.*** Const. Art. XVI, §5. [↑](#footnote-ref-155)
155. 155[*Santa Fe Trail Ranches Prop. v. Simpson, 990 P.2d 46, 54 (****Colo.*** *1999)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3Y27-KN70-0039-40TN-00000-00&context=1516831). [↑](#footnote-ref-156)
156. 156[*People v. Emmert, 597 P.2d 1025, 1028 (****Colo.*** *1979)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RX4-1DW0-003D-926G-00000-00&context=1516831). [↑](#footnote-ref-157)
157. 157[*Id. at 1027*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RX4-1DW0-003D-926G-00000-00&context=1516831). [↑](#footnote-ref-158)
158. 158[*Id. at 1028*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RX4-1DW0-003D-926G-00000-00&context=1516831). [↑](#footnote-ref-159)
159. 159*Id.* [↑](#footnote-ref-160)
160. 160Stephen Leonhardt & Jessica Spuhler, *The Public Trust Doctrine: What It Is, Where It Came from, and Why* ***Colorado*** *Does Not (and Should Not) Have One*, [*16 U. Denv. Water L. Rev. 48, 81 (2012)*](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:5801-XMW0-00SW-504M-00000-00&context=1516831). [↑](#footnote-ref-161)
161. 161Leonhardt et al., *supra* note 41, at page 24. [↑](#footnote-ref-162)
162. 162In re Title, Ballot Title, Submission Clause for 2011-2012 No. 3, [*274 P.3d 562, 564*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:55DV-KC11-F04C-302C-00000-00&context=1516831). [↑](#footnote-ref-163)
163. 163Leonhardt et al., *supra* note 41, at 25. [↑](#footnote-ref-164)
164. 164*Id.* at 36. [↑](#footnote-ref-165)
165. 165Leonhardt & Spuhler, *supra* note 160, at 89. [↑](#footnote-ref-166)
166. 166*Id.* at 88. [↑](#footnote-ref-167)
167. 167Hill v. Warsewa, No. 18-CV-01710-KMT, 2019 WL 8223291, at \*1 (D. ***Colo.*** Jan. 8, 2019),*rev'd and remanded*,[*Hill v. Warsewa, 947 F.3d 1305 (10th Cir. 2020)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5Y22-6MP1-JJ6S-624P-00000-00&context=1516831) [*State v. Hill, 530 P.3d 632, 633*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:68D6-JKV1-JSC5-M2P8-00000-00&context=1516831), *reh'g denied* (June 26, 2023). [↑](#footnote-ref-168)
168. 168[*Hill, 530 P.3d at 633*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:68D6-JKV1-JSC5-M2P8-00000-00&context=1516831). [↑](#footnote-ref-169)
169. 169[*Hill, 947 F.3d at 1307*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5Y22-6MP1-JJ6S-624P-00000-00&context=1516831). [↑](#footnote-ref-170)
170. 170*Id.* [↑](#footnote-ref-171)
171. 171*Hill*, 2019 WL 8223291 at \*2. [↑](#footnote-ref-172)
172. 172The State v. Hill line of cases "neither deals with or concerns water rights in the Arkansas ***River***." [*Id. at \*5 n.1*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-F7T0-003B-H3BG-00000-00&context=1516831). [↑](#footnote-ref-173)
173. 173[*Seee.g.,People v. Emmert, 597 P.2d 1025, 1026 (****Colo.*** *1979)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RX4-1DW0-003D-926G-00000-00&context=1516831)[*St. Jude's* ***Co****. v. Roaring Fork Club, L.L.C., 351 P.3d 442 (****Colo.*** *2015)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5GB3-MR41-F04C-301X-00000-00&context=1516831). [↑](#footnote-ref-174)
174. 174*See generally Hill*, 2019 WL 8223291 [*Hill, 947 F.3d 1305*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5Y22-6MP1-JJ6S-624P-00000-00&context=1516831) [*Hill, 2020 WL 1443594*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5YHB-VXD1-JBDT-B307-00000-00&context=1516831) [*Hill v. Warsewa, No. 20CA1780, 2022 WL 293036 (****Colo.*** *App. Jan. 27, 2022)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:64MX-3343-CGX8-11HT-00000-00&context=1516831),*cert. denied sub nom.*[*State v. Hill, No. 22SC119, 2022 WL 17585947 (****Colo.*** *Dec. 12, 2022)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:672X-YM23-CGX8-11TN-00000-00&context=1516831). [↑](#footnote-ref-175)
175. 175*Hill*, 2019 WL 8223291 [*Hill, 2020 WL 1443594*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5YHB-VXD1-JBDT-B307-00000-00&context=1516831). [↑](#footnote-ref-176)
176. 176*Hill*, 2019 WL 8223291 at \* [*4 Hill, 2020*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:40M4-WW20-003F-63WX-00000-00&context=1516831) WL 1443594 at \*5. [↑](#footnote-ref-177)
177. 177*Hill*, 2019 WL 8223291 at \*3. [↑](#footnote-ref-178)
178. 178[*Hill, 2020 WL 1443594 at \*5*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5YHB-VXD1-JBDT-B307-00000-00&context=1516831). [↑](#footnote-ref-179)
179. 179[*Hill, 947 F.3d at 1310*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5Y22-6MP1-JJ6S-624P-00000-00&context=1516831). [↑](#footnote-ref-180)
180. 180*Id.* [↑](#footnote-ref-181)
181. 181*Id.* [↑](#footnote-ref-182)
182. 182*Hill*, 2022 No. 20CA1780 at \*14. [↑](#footnote-ref-183)
183. 183[*Id. at \*16*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-F7T0-003B-H3BG-00000-00&context=1516831). [↑](#footnote-ref-184)
184. 184[*State v. Hill, No. 22SC119, 2022 WL 17585947 (****Colo.*** *2022)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:672X-YM23-CGX8-11TN-00000-00&context=1516831). [↑](#footnote-ref-185)
185. 185*Id.* [↑](#footnote-ref-186)
186. 186[*State v. Hill, 530 P.3d 632, 633 (****Colo.*** *2023)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:68D6-JKV1-JSC5-M2P8-00000-00&context=1516831), *reh'g denied* (June 26, 2023). [↑](#footnote-ref-187)
187. 187[*Id. at 635-6*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:68D6-JKV1-JSC5-M2P8-00000-00&context=1516831). [↑](#footnote-ref-188)
188. 188[*Id. at 635*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:68D6-JKV1-JSC5-M2P8-00000-00&context=1516831). [↑](#footnote-ref-189)
189. 189*Id*. [↑](#footnote-ref-190)
190. 190*Id*. [↑](#footnote-ref-191)
191. 191*See e.g.* [*Illinois Cent. R.* ***Co****. v. Illinois, 146 U.S. 387 (1892)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-FKW0-003B-H44X-00000-00&context=1516831) Section III [↑](#footnote-ref-192)
192. 192Lawrence Pacheco, ***Colorado*** *Supreme Court agrees to review case on state's long-settled rules for* ***river*** *access*, ***Colorado*** Attorney General (Dec. 12, 2022), [*https://coag.gov/press-releases/12-12-22-2*](https://coag.gov/press-releases/12-12-22-2). [↑](#footnote-ref-193)
193. 193[*Pyramid Lake Paiute Tribe of Indians v. Washoe Cnty, 918 P.2d 697, 709 (Nev. 1996)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RXR-0RY0-003D-C06D-00000-00&context=1516831). [↑](#footnote-ref-194)
194. 194[*Lawrence v. Clark Cnty., 254 P.3d 606, 607 (Nev. 2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:82N9-4941-652N-5019-00000-00&context=1516831). [↑](#footnote-ref-195)
195. 195[*Id. at 608*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:82N9-4941-652N-5019-00000-00&context=1516831). [↑](#footnote-ref-196)
196. 196[*Id. at 612*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:82N9-4941-652N-5019-00000-00&context=1516831) [*Nev. Rev. Stat. Ann. §321.0005*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5B62-N8X1-6X0H-00C9-00000-00&context=1516831). [↑](#footnote-ref-197)
197. 197[*918 P.2d at 698*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RXR-0RY0-003D-C06D-00000-00&context=1516831). [↑](#footnote-ref-198)
198. 198[*Id. at 700*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RXR-0RY0-003D-C06D-00000-00&context=1516831). [↑](#footnote-ref-199)
199. 199[*Id. at 701*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RXR-0RY0-003D-C06D-00000-00&context=1516831). [↑](#footnote-ref-200)
200. 200***Min. Cty. v. Lyon Cty., 473 P.3d 418, 421 (Nev. 2020)***. [↑](#footnote-ref-201)
201. 201***Id. at 429***. [↑](#footnote-ref-202)
202. 202***Id. at 421***. [↑](#footnote-ref-203)
203. 203***Id. at 430***. [↑](#footnote-ref-204)
204. 204N.M. Const. art. XX, §21. [↑](#footnote-ref-205)
205. 205*E.g..,* [*State ex rel. Bliss v. Dority, 225 P.2d 1007, 1010 (N.M. 1950)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S3J-WKJ0-003D-D2W5-00000-00&context=1516831). [↑](#footnote-ref-206)
206. 206*E.g.,* ***State ex rel. State Game Comm'n v. Red River Valley Co., 182 P.2d 421, 430-1 (N.M. 1945)***. [↑](#footnote-ref-207)
207. 207*See* [*Young & Norton v. Hinderlider, 110 P.2d 1045, 1049-51 (N.M. 1910)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRS-9310-003D-W0XR-00000-00&context=1516831)*see also* [*City of El Paso v. Reynolds, 597 F. Supp. 694, 698-702 (D.N.M. 1984)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4N-BS30-0054-5514-00000-00&context=1516831). [↑](#footnote-ref-208)
208. 208*See* [*Adobe Whitewater Club of New Mexico v. State Game Comm'n, 519 P.3d 46 (N.M. 2022)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:6695-4WW1-F2F4-G0GY-00000-00&context=1516831). [↑](#footnote-ref-209)
209. 209[*Id. at 53-54*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:6695-4WW1-F2F4-G0GY-00000-00&context=1516831). [↑](#footnote-ref-210)
210. 210[*Id. at 46*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:6695-4WW1-F2F4-G0GY-00000-00&context=1516831) *e.g.,* ***State ex rel. State Game Comm'n v. Red River Valley Co., 182 P.2d 421***. [↑](#footnote-ref-211)
211. 211[*Adobe Whitewater Club, 519 P.3d at 53*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:6695-4WW1-F2F4-G0GY-00000-00&context=1516831). [↑](#footnote-ref-212)
212. 212Katie McKalip, *U.S. Supreme Court Decision Upholds New Mexico Public Access Law*, Backcountry Hunters and Anglers (Feb. 27, 2023), [*https://www.backcountryhunters.org/u*](https://www.backcountryhunters.org/u)&#95;s&#95;supreme&#95;court&#95;decision&#95;upholds&#95;new&#95;mexico&#95;public&#95;access&#95;law. [↑](#footnote-ref-213)
213. 213[*Adams v. Portage Irr., Reservoir & Power* ***Co****., 72 P.2d 648, 652-53 (Utah 1937)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3WHR-PB70-00KR-D3H2-00000-00&context=1516831). [↑](#footnote-ref-214)
214. 214[*Id. at 652-54*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3WHR-PB70-00KR-D3H2-00000-00&context=1516831). [↑](#footnote-ref-215)
215. 215[*J.J.N.P.* ***Co****. v. Utah, 655 P.2d 1133, 1137 (Utah 1982)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RXP-5H00-003G-F33W-00000-00&context=1516831). [↑](#footnote-ref-216)
216. 216[*Id. at 1136*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RXP-5H00-003G-F33W-00000-00&context=1516831) (citing [*Marks v. Whitney, 491 P.2d 374 (Cal. 1971))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRK-J2N0-003C-H0MN-00000-00&context=1516831). [↑](#footnote-ref-217)
217. 217[*Nat'l Parks & Conservation Ass'n v. Bd. of State Lands, 869 P.2d 909, 919 (Utah 1993)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RXP-4SD0-003G-F0HB-00000-00&context=1516831). [↑](#footnote-ref-218)
218. 218[*Utah Code Ann. §73-1-1(2)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5BKJ-YP21-6VSV-050J-00000-00&context=1516831). [↑](#footnote-ref-219)
219. 219*Id.* §73-1-1(3). [↑](#footnote-ref-220)
220. 220Wyo. Const. art. I, §31. [↑](#footnote-ref-221)
221. 221[*Day v. Armstrong, 362 P.2d 137, 144 (Wyo. 1961)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRS-KT40-000K-1089-00000-00&context=1516831). [↑](#footnote-ref-222)
222. 222[*Id. at 146*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRS-KT40-000K-1089-00000-00&context=1516831). [↑](#footnote-ref-223)
223. 223[*Id. at 140*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRS-KT40-000K-1089-00000-00&context=1516831). [↑](#footnote-ref-224)
224. 224[*Id. at 142*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRS-KT40-000K-1089-00000-00&context=1516831). [↑](#footnote-ref-225)
225. 225[*Id. at 151*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRS-KT40-000K-1089-00000-00&context=1516831). [↑](#footnote-ref-226)
226. 226[*Armstrong, 362 P.2d at 144*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRS-KT40-000K-1089-00000-00&context=1516831). [↑](#footnote-ref-227)
227. 227[*Id. at 151*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRS-KT40-000K-1089-00000-00&context=1516831). [↑](#footnote-ref-228)
228. 228*Id.* [↑](#footnote-ref-229)
229. 229[*549 U.S. 497, 526 (2007)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4ND6-TF50-004B-Y00C-00000-00&context=1516831). [↑](#footnote-ref-230)
230. 230*Id.* [↑](#footnote-ref-231)
231. 231[*Id. at 517*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4ND6-TF50-004B-Y00C-00000-00&context=1516831) (quoting [*Baker v. Carr, 82 S.Ct. 691 (1962))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-H9R0-003B-S0SB-00000-00&context=1516831). [↑](#footnote-ref-232)
232. 232[*Id. at 524-526*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4ND6-TF50-004B-Y00C-00000-00&context=1516831). [↑](#footnote-ref-233)
233. 233[*947 F.3d at 1170-71*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5Y0S-0FS1-JFDC-X4X4-00000-00&context=1516831). [↑](#footnote-ref-234)
234. 234Mudd, *supra* note 118, at 290. [↑](#footnote-ref-235)
235. 235*See* [*Marks v. Whitney, 491 P.2d 374, 378 (Cal. 1971)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRK-J2N0-003C-H0MN-00000-00&context=1516831). [↑](#footnote-ref-236)
236. 236[*Nat'l Audubon Soc'y v. Superior Ct., 658 P.2d 709, 732 (Cal. 1983)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RX6-F0N0-003D-J1V1-00000-00&context=1516831). [↑](#footnote-ref-237)
237. 237[*Parks v. Cooper, 676 N.W.2d 823, 837 (S.D. 2004)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4BT8-KBF0-0039-44B0-00000-00&context=1516831). [↑](#footnote-ref-238)
238. 238Jason L. Deforest,*Lawrence v. Clark County and Nevada's Public Trust Doctrine: Reconsidering Water Rights in the Desert*, [*13 Nev. L.J. 290, 307 (2012)*](https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:57XF-PD90-0198-G07S-00000-00&context=1516831). [↑](#footnote-ref-239)
239. 239[*Nat'l Audubon Soc'y, 658 P.2d at 720-21*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RX6-F0N0-003D-J1V1-00000-00&context=1516831). [↑](#footnote-ref-240)
240. 240See Craig, *supra* note 7, at 116. [↑](#footnote-ref-241)
241. 241[***Colo.*** *Rev. Stat. Ann. §37-92-102(3)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:61P5-WY01-DYDC-J3FN-00000-00&context=1516831). [↑](#footnote-ref-242)
242. 242*See generally* Section VII, *supra*. [↑](#footnote-ref-243)