



Connecticut Fund
for the Environment
Save the Sound®



Memorandum of Support Water as a Public Trust Resource in the CT State Water Plan

Background on Water as a Public Trust in Connecticut

This “public trust” doctrine establishes the foundational values of air, water, and natural resource management and policy in our state, making it clear that all CT residents have an inherent right to clean air, clean water, and a healthy environment. Additionally, it recognizes the public’s right to participate, and if necessary, to intervene in actions that put the state’s natural resources at risk of undue harm.

CT General Statutes title 22a-15 states “It is hereby declared that there is a public trust in the air, water and other natural resources of the state of Connecticut and that each person is entitled to the protection, preservation and enhancement of the same. It is further declared that it is in the public interest to provide all persons with an adequate remedy to protect the air, water and other natural resources from unreasonable pollution, impairment or destruction.”

Connecticut State Water Plan Must Recognize Water as a Public Trust

The State Water Plan (SWP) was crafted as a guidance document to help policy makers make informed water management decisions that are consistent with agreed-upon, stakeholder defined principles and sound scientific data. The final plan does not establish enforceable water management regulations, but instead offers a series of consensus-based recommendations to the legislature for long-term water management planning in Connecticut.

It is critical that the SWP recognize long-standing, foundational values of natural resource management in our state, including, but not limited to, the recognition of water as a public trust. While there is no analysis or in-depth discussion of the Public Trust Doctrine in the final SWP, the SWP plainly states that the doctrine exists as a matter of policy, and highlights the overwhelming public support demonstrated for this concept when residents had the opportunity to participate in the development of the SWP.

The language recognizing the public trust doctrine is appropriate and does not “delegate the interpretation, application, and evolution of this doctrine in Connecticut to the Water Planning Council (WPC) or the final water plan,” as erroneously asserted by the January 2018 memo prepared for CWWA¹. In fact, a March 2018 memo by Kirk Westphal, Program Director and Senior Principal Planner for the CT State Water Plan intended to clarify the role of the SWP by stating “it is neither the role or authority of the SWP to interpret, endorse or establish the legal definition of this concept²,” and added that the only actions WPC took in response to this prevalent concern included in the public comments:

- 1) Acknowledge the existence of the public trust doctrine in existing statute;
- 2) Agree that it was a topic worthy of future discussion;
- 3) Note a similarity in language between the SWP’s concept of balanced water uses and the statute’s reference to “each person” and “all persons”.

The SWP took more than a year to develop and cost over \$1 million to complete. Dozens of stakeholders from diverse constituencies (e.g. water utilities, state agencies and conservation groups)

¹ Day Pitney, LLP. (2018). State Water Plan and The Public Trust Doctrine in Connecticut

² Westphal, Kirk (2018). “What the State Water Plan Can and Cannot do with “Water as a Public Trust”

served on the WPC's various committees and advisory groups. *While many stakeholder groups were actively represented and involved in shaping the SWP throughout this process, the main avenue for the general public to have its voice heard during the SWP's development was either in-person at the various WPC public meetings, or during the official 120 day public comment period.*

The vast majority of comments received by the WPC during the public comment period emphasized the concept of water as a public trust resource. The overwhelming request from the public was that the WPC acknowledge that Connecticut has an *existing* statement of policy recognizing water as a public trust resource, and that it is the duty of state government and the right of our citizens to protect their water resources from unreasonable harm. **Over 2,300 hand written letters over 4,600 petition signatures were sent to members of the WPC urging inclusion of water as a public trust resource in the final SWP.**

Our organizations respectfully urge Connecticut legislators to approve the State Water Plan as presented—it is a detailed, consensus driven guide that attempts to identify the state's priority water supply management challenges of the future. It helps strike a thorough balance so that Connecticut can move forward on the critical issue of planning for all of our state's future water needs, and should be enacted into law as soon as possible.

Louis W. Burch
Citizens Campaign for the Environment

Karen Burnaska
Connecticut Fund for the Environment/Save the Sound

Lori Brown
Connecticut League of Conservation Voters

Alicea Charamut
Connecticut River Conservancy

Leendert DeJong
Pomperaug River Watershed Coalition

Margaret Miner
Rivers Alliance of Connecticut

Dr. Valerie Rossetti
Save Our Water CT