What the Connecticut State Water Plan Can and Cannot do with "Water as a Public Trust"

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I served as Program Director for the Connecticut State Water Plan (SWP) during its development and the subsequent public review period. In this role, I facilitated meetings with the Water Planning Council (WPC), its subcommittees, workshops with stakeholders, and public meetings, all with the goal of building consensus to the extent practical. I also personally drafted much of the text in the final SWP. It has come to my attention that the topic of "water as a public trust" (Sec. 22a-15) has been the subject of much debate in Connecticut since the WPC's approval of the SWP in 2018. While I have followed this debate with understandable interest, I am wholly divested from the ultimate resolution of this matter, being a resident of Massachusetts and currently having no contractual relationships with clients in Connecticut. Throughout the development of the plan, I took sides on no issue, and instead helped facilitate consensus where it was possible. In the spirit of that role, I would like to offer my opinion on the purpose – and the limitations – of the Plan in the context of the Public Trust Doctrine. It is important to separate the issues of "inclusion of the phrase" from "interpretation or resolution of the issue" within the document itself.

As agreed by all parties, the SWP serves as a platform for better decisions, and nothing more. It is not law, mandate, nor a legal interpretation of rights, and it carries no regulatory or judicial authority. Like water plans in other states, it is a compilation of scientific data, apparent needs, and a list of consensus-based recommendations for next steps in water management. It is also a vehicle to acknowledge public concerns and ideas, and one of these was the issue of water as a public trust. This issue is not new to Connecticut, and in fact, it had already been embedded in the earlier SWP white papers in the context of coastal water management (pg. 2-76). While the issue did not otherwise arise during stakeholder deliberations, it was a prevalent comment during the subsequent 6-month public comment period. Other important issues also arose during this comment period and were acknowledged in the SWP as worthy of future discussion – to ignore them would have devalued the inclusive philosophy that embodied and defined the makings of this plan. Yet, to interpret or resolve them without stakeholder input would have devalued the stakeholders who formulated the Plan.

It is neither the role nor within the authority of the SWP to interpret, endorse, or establish the legal definition of this concept. Furthermore, recognizing that the issue was not debated by stakeholders, the WPC did the only thing it could in response to this prevalent concern within the public comments:

- Acknowledged the existence of the statute (pp. ES-2 and 2-51),
- Agreed that it was a topic worthy of future discussion (pg. 6-24), and
- Noted a similarity – relevance - in language between the SWP's concept of balanced water uses and the statute's reference to "each person" and "all persons." (pp. ES-2 and 2-51), though the SWP explicitly does not equate these concepts.

None of these is an interpretation, endorsement, or application – rather, in the spirit of the Plan, these facts and observations were offered by the WPC as a platform for discussion, in direct response to

public comments. This is not a unilateral extension or application of the doctrine. On the contrary, it is a call to action to figure out what the statute means – the only thing clear is its ambiguity.

I recently spoke at an AWWA conference in Seattle on Connecticut's SWP, and many states were interested in Connecticut's model of using the Plan as a prompt to move contentious issues forward, even if not with complete resolution. I observed broad agreement at the conference that water plans are not law, not binding, and not documents that carry regulatory or judicial authority. A plan is a plan – a call to action, a collection of ideas, and a platform for more informed decisions in the future.

In this spirit, I encourage debate and the drafting of legal briefs, but would caution against relying on the SWP as the venue for debate and resolution on this subject because advocacy or resolution would extend the SWP well beyond its purview or authority without broad stakeholder consensus. There needs to be a separation between the concern over inclusion of the phrase "public trust" in the Plan (it was already there in earlier draft versions anyway with respect to coastal waters), and the actual interpretation of the law. The SWP has fulfilled its obligation by identifying a relevant issue worthy of discussion (by any measure it could be argued that this has been the single most successful recommendation in the Plan). Beyond this, the interpretation of Public Trust Doctrine requires legal, legislative, and possibly judicial intervention. The SWP on its own cannot define or apply the law – no state of which I am aware looks to its water plan for such authority. The debate should be disassociated from the SWP, because it can only be resolved outside of it, and the SWP does not advocate a position on it other than the importance of further deliberation. By definition and by its own commitment to consensus, the SWP cannot do anything except mention the issue, acknowledge its relevance to water, and encourage dialogue.

Nobody should interpret the inclusion of the phrase "public trust" in the plan as advocacy for or against the statute, or application of the statute, just like nobody should interpret the inclusion of "unused registered diversions" (for example) as a definitive interpretation or resolution on that matter. These are contentious issues that require continued thoughtful deliberation, and as such, hold their rightful place in Connecticut's non-binding platform for moving these issues forward – its first State Water Plan.

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