

Water Rights & Responsibilities under Common Law and Federal Law

Common Law

Surface Water Rights

Riparian Doctrine apply

Doctrine of Reasonable Use as restriction on rights

Possible Reforms: see Regulated Riparian Model Water Code

Groundwater Rights

Many doctrines possible: Absolute Ownership, American Reasonable Use, Correlative Rights

Unclear (to me) what doctrine applies to Rhode Island

Possible restrictions on ground / surface water rights due to interaction of them

Public Trust

Rhode Island has public trust obligations to its stewardship over navigable waters and the lands beneath them.

Public Trust uses include navigation, swimming, along with environmental and ecological uses.

Protection of Public Trust uses may lead to restriction of diversion rights.

Federal Statutes and Doctrines

Constitutional protections against takings of vested property rights

Protection of Groundwater and Drinking Water Supplies

Safe Drinking Water Act

RCRA & CERCLA

Water Quality Standards

S 303 of the Clean Water Act, specifying ambient water quality standards (development of TMDL) for impaired waterways

S 402 of the Clean Water Act, requiring NPDES discharge permits

Environmental Protection

NEPA: requirement of environmental impact statements

Endangered Species Act

Wild & Scenic Rivers Act: certain rivers must be in freeflowing condition

Limits on Construction of new Projects

Rivers and Harbors Appropriation Act

S 404 of the Clean Water Act: requiring USACE & EPA approval for dredge / fill projects

Federal Power Act: FERC licensing

Interstate Allocation Concerns

Equitable Apportionment doctrine