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Clark

**APPENDIX IV
 PUBLIC INTEREST/PUBLIC WELFARE LANGUAGE IN THE
 WATER CODES AND WATER LAWS OF 17 WESTERN STATES³⁴**

STATE	RELEVANT STATUTE, ADMINISTRATIVE CODE OR COURT RULING	PUBLIC INTEREST/PUBLIC WELFARE ADDRESSED?	PUBLIC INTEREST/PUBLIC WELFARE CRITERIA
ALASKA	ALASKA STAT. § 46.15.080 (a)-(b) (1987).	"The commissioner [of the Department of Natural Resources and Conservation] shall issue a permit [to appropriate water] if the commissioner finds that...the proposed application is in the public interest."	"In determining the public interest, the commissioner shall consider: (1) the benefit to the applicant resulting from the proposed appropriation; (2) the effect of the economic activity resulting from the proposed appropriation; (3) the effect on fish and game resources and on public recreational opportunities; (4) the effect on public health; (5) the effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation; (6) harm to [others] resulting from the proposed appropriation; (7) the intent and ability of the applicant to complete the appropriation; (8) the effect upon access to navigable or public water."
	ALASKA STAT. § 46.15.100 (1987).	"The commissioner may issue a permit subject to terms, conditions, restrictions and limitations necessary to protect...the public interest."	
	ALASKA STAT. § 46.15.145 (c)(4) (1987).	"[Upon perfection of a permit], the commissioner shall issue the permit holder a certificate of appropriation...[which] shall set out any condition which the commissioner may prescribe by regulation, including conditions that are necessary to protect...the public interest."	

³⁴ This list is not exclusive. For additional or related information, see: Colby, McGinnis and Rait (1989); Getches (1988); Johnson and DuMars (1989); MacDonnell and Howe (1986); Morandi (1988); Saliba and Bush (1987); Thorson (1987); Wilkinson (1987); Woodard, et al. (1988); and the relevant state statutes, water codes and court rulings.

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ALASKA [cont.]	ALASKA STAT. § 46.15.145 (c)(4) (1987).	"The commissioner shall issue a certificate reserving [water to maintain a specified instream flow or level of water] if...the proposed reservation is in the public interest."	
	11 Alaska Admin. Code § 93.930(c) (1983).	Administrative rules require that the commissioner determine that a proposed transfer or change "will not adversely affect the water rights of other persons in the public interest."	No statutory criteria, "although the commissioner apparently relies on [the above factors] in approving changes" (Thorson, 1987).
ARIZONA	ARIZ. REV. STAT. § 45-153A (1956)	The director [of water resources] shall approve applications made in proper form for the appropriation of [surface] water for a beneficial use, but when the application or the proposed use...is against the interests and welfare of the public, the application shall be rejected."	Criteria are not statutorily defined and are not applied to ground water.
	ARIZ. REV. STAT § 45-155A (1956).	"Before approving or rejecting an application, the director may require additional information to enable it to protect properly the public interest."	
	<u>Arizona Game and Fish Department v. Arizona State Land Department</u> , 24 Ariz. App., 29, 30-31, 535 P.2d 621 (1975).	Arizona Court of Appeals upheld Arizona State Land Department (the predecessor to the Arizona Department of Water Resources) use of public welfare review to reject an application for a permit to appropriate water because the creation of "another charge on the already over-burdened supply in the area does not appear...to be in the best public interest."	
	<u>Reinhard v. Arizona Department of Water Resources</u> , No. 11594 (Superior Court for Cochise County, Mar. 17, 1986) (minute entry).	The Superior Court affirmed the rejection by the Arizona Department of Water Resources of two water applications on the basis that the interests and welfare of the public were jeopardized (the proposed water use would have jeopardized the water supply of Nogales and reduced groundwater recharge in a severely over-drafted area). The case is on appeal. (Thorson, 1987, 12).	

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CALIFORNIA	CAL. CONST. ART. X, § 2 (1928).	The California Constitution requires that "the conservation of [the riparian water resources of the State] is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare."	Criteria are not statutorily defined and apply only to the administration of surface water rights and the rights to groundwater which flows through known and definite channels (not to percolation ground water, riparian uses or pre-1914 rights).
	CAL. WATER CODE § 109a (West Supp. 1989).	"It is hereby declared to be the established policy of this state to facilitate the voluntary transfer of water and water rights where consistent with the public welfare of the place of export and the place of import."	
	CAL. WATER CODE §§ 1243, 1243.5 (West 1971 & Supp. 1989).	"This section shall not be construed to affect riparian rights."	"The use of water for recreation and preservation and enhancement of fish and wildlife resources is a beneficial use of water. In determining the amount of water available for appropriation for other beneficial uses, the board shall take into account, whenever it is in the public interest, the amounts of water required for recreation and preservation and enhancement of fish and wildlife resources [and] the amounts of water needed to remain in the source for protection of beneficial uses including any uses specified to be protected in any relevant water quality control plan."
	CAL. WATER CODE §§ 1253, 1255, 1256 (West 1971 & Supp. 1989).	"The [state water resources control board] shall allow the appropriation for beneficial uses of unappropriated water under such terms and conditions as in its judgment will best develop, conserve, and utilize in the public interest the water sought to be appropriated... The board shall reject an application when in its judgment the proposed application would not best conserve the public interest." "This section shall not be construed to affect riparian rights."	"In determining the public interest under § 1253 and § 1255, the board shall give consideration to any general or coordinated plan looking toward the control, protection, development, utilization, and conservation of the water resources of the State."

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CALIFORNIA [cont.]	CAL. WATER CODE § 1257 (West 1971 & Supp. 1989).	"The board may subject such appropriations to such terms and conditions as in its judgment will best develop, conserve, utilize in the public interest the waters sought to be appropriated."	"The board shall consider the relative benefit to be derived from...all beneficial uses of the water concerned including, but not limited to use for domestic, irrigation, municipal, industrial, preservation and enhancement of fish and wildlife, recreational, mining and power purposes and any uses specified to be protected in any relevant water quality control plan; and the reuse or reclamation of the water sought to be appropriated."
	<u>East Bay Municipal Utility District v. Department of Public Works</u> , 1 Cal.2d 476, 35 P.2d 1027, 1029 (1934).	"Where the facts justify the action, the water authority should be allowed to impose [on an application to appropriate water for a power project], in the public interest, the restrictions and conditions provided for in the act."	
	<u>People v. Shirokow</u> , 26 Cal.3d 30, 162 Cal.Rptr. 30, 37, 605 P.2d 859, 866 (1980).	"The Water Resources Control Board...[has the] authority to impose for protection of the public interest [the condition that the applicant salvage the water required for his or her project].... If the board determines a particular use is not in furtherance of the greatest public benefit, on balance the public interest must prevail."	Water conservation.
	<u>National Audubon Society v. Superior Court of Alpine County</u> , 33 Cal. 3d 419, 659 P.2d 709, 189 Cal. Rptr. 346, cert. denied, 104 S.Ct. 413 (1983).	"The state has an affirmative duty to take the public trust into account in the planning and allocation of water resources and to protect public trust uses wherever feasible.... The state must bear in mind its duty as trustee preserve so far as consistent with public interest the uses practiced by the trust."	
	<u>United States v. State Water Resources Control Board</u> , 182 Cal. App. 3d. 82.227 Cal. Rptr. 161 (1986).	California decision requiring public interest considerations in water use and transfer by interpreting that the public interest includes water quality protection.	Water quality protection.

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COLORADO		Neither legislation nor case law explicitly authorizes state officials to apply public interest/public welfare criteria in water allocation or water transfer processes.	
	[See, COLO. REV. STAT §§ 37-92-102 (3) and 37-92-103 (4) (1973)].	According to Johnson and Dumars (1989:361), "in the state's view, the public interest can be indirectly protected through the state's acquisition of water rights for protecting instream flows to preserve the natural environment to a reasonable degree."	
IDAHO	IDAHO CODE § 42-203A (5)(e) (1987 & Supp. 1989).	"The director of the department of water resources may reject [any] application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions...where the proposed use is such...that it will conflict with the local public interest where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use."	See, ruling in <u>Shokal v. Dunn</u> .
	IDAHO CODE § 42-222(1) (1987 & Supp. 1989).	"The director...shall approve the change [in point of diversion, place of use, or nature of use] in whole, or in part, or upon conditions, provided...the change is in the local public interest as defined in § 42-203A, Idaho Code; except the director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area."	
	IDAHO CODE § 42-1501 (Supp. 1989).	"The legislature of the state of Idaho hereby declares that the public health, safety and welfare require that the streams of this state and their environments be protected against loss of water supply to preserve the minimum stream flows required for the protection of [the listed criteria]."	

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IDAHO [cont.]	Shokal v. Dunn, 109 Idaho 330, 707 P.2d 441 (1985).	<p>The Idaho Supreme Court held that the six local public interest criteria defined in the minimum flow statute [Idaho Code § 42-1501] shall also apply to § 42-203A.</p> <p>In addition, the Court ruled that "[Idaho Code] § 42-203A places upon the Director [of Water Resources] the affirmative <u>duty</u> to assess and protect the public interest."</p> <p>The Court also specifically referred to other public interest criteria by stating that "common sense argues [that the public interest criteria contained in ALASKA STAT. § 46.15.080] ought to be considered part of the local public interest [in Idaho]."</p> <p>Other items of note from this decision include:</p> <p>[5] "The relative elements and their relative weights will vary with local needs, circumstances, and interests. For example, in an area heavily dependent on recreation and tourism or specifically devoted to preservation in its natural state, Water Resources may give great consideration to the aesthetic and environmental ramifications of granting a permit which calls for substantial modification of the landscape or the stream."</p> <p>[7] "[I]t is not protestant's burden of proof to establish that the project is not in the local public interest. The burden of proof is upon the applicant to show that the project is either in local public interest or that there are factors that outweigh the local public interest in favor of the project."</p> <p>[8] "The determination of which elements or the public interest are impacted, and what the public interest requires, is committed to the Water Resources' sound discretion."</p>	<p>The Court held that the public interest on the local scale includes the public interest elements listed in:</p> <p>A) Idaho Code § 42-1501 [above] and</p> <p>B) ALASKA STAT. §§ 46.015.080</p> <p>"(1) the benefit to the applicant resulting from the proposed appropriation;</p> <p>(2) the effect of the economic activity resulting from the proposed appropriation;</p> <p>(3) the effect on fish and game resources and on public recreational opportunities;</p> <p>(4) the effect on public health;</p> <p>(5) the effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation;</p> <p>(6) harm to other persons resulting from the proposed appropriation;</p> <p>(7) the intent and ability of the applicant to complete the appropriation;</p> <p>(8) the effect upon access to navigable or public water."</p> <p>The Court also incorporated into Idaho's water appropriation and water transfer statutes three "other public interest elements, [which] though obvious, deserve specific mention." These other elements are:</p> <p>"(1) assuring minimum stream flows;</p> <p>(2) discouraging waste; and</p> <p>(3) encouraging conservation."</p> <p>In concluding, the Court stated that "the above-mentioned elements are not intended to be a comprehensive list."</p>

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KANSAS	KAN. STAT. ANN. § 82a-711, (a)(b) (1984 & Supp. 1988).	"If a proposed use neither impairs a use under an existing water right nor prejudicially and unreasonably affects the public interest, the chief engineer [of the division of water resources of the Kansas state board of agriculture] shall approve all applications for such use...otherwise the chief engineer shall make an order rejecting such application or requiring its modification to conform to the public interest to the end that the highest public benefit and maximum economical development may result from the use of such water."	"In ascertaining whether a proposed use will prejudicially and unreasonably affect the public interest, the chief engineer shall take into consideration: (1) established minimum desirable streamflow requirements; (2) the area, safe yield and recharge rate of the appropriate water supply; (3) the priority of existing claims of all persons to use the water of the appropriate water supply; (4) the amount of each such claim to use water from the appropriate water supply; (5) all other matters pertaining to such question."
	KAN. STAT. ANN. § 82a-712 (1984 & Supp. 1988).	"The chief engineer...may approve an application upon such terms, conditions and limitations as he or she shall deem necessary for the protection of the public interest."	
	KAN. STAT. ANN. § 82a-726 (1984 & Supp. 1988).	Public interest requirements also apply to out-of-state applications, "...including an express condition that should any water be necessary to protect the public health and safety of the citizens of the state, such approved application may be suspended, modified or revoked by the chief engineer for such necessity."	

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MONTANA	See, MONT. CODE ANN. § 85-2-311, § 85-2-316, § 85-2-402 (1989).	Statutes apply to new appropriations, to leases or reservations, and to transfers (changes in purpose of use or place of use or diversion).	Montana statutes do not specifically list public interest/public welfare criteria; however, the Department of Natural Resources can issue permits for new appropriations or transfers of more than 4000 acre-feet/year and 5.5 cubic feet per second "only if the proposed use is...defined in terms of typical public interest criteria" (Grant, 1987).
	MONT. CODE ANN. § 85-2-311(3) (1989). MONT. CODE ANN. § 85-2-316(4) (1989). MONT. CODE ANN. § 85-2-402(5) (1989).	"Although the state of Montana...recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters...the department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that...the proposed out-of-state use is not contrary to water conservation in Montana; and...is not otherwise detrimental to the public welfare of the citizens of Montana." (Similar language for "adopt[ing] an order reserving water for withdrawal and transportation for use outside the state..."). (Similar language for "approv[ing] a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state...").	"In determining whether the applicant has proved that the [conservation and public welfare] requirements are met, the department shall consider: (1) whether there are present or projected water shortages within [Montana]; (2) whether the water that is the subject of the action could feasibly be transported to alleviate water shortages within [Montana]; (3) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; (4) the demands placed on the applicant's supply in the state where the applicant intends to use the water."
	MONT. CODE ANN. § 85-2-507(2) (1989).	"The board shall by order declare [an area] to be a controlled groundwater area if the board finds ...that the public health, safety and welfare requires a corrective control be adopted."	
NEBRASKA	NEB. REV. STAT. § 46-226.02(3) (1988 Supp.)	"The director [of Water Resources] may grant [an application for a permit to appropriate water for use in the state] in a modified form, if required by the public interest and may impose such other reasonable conditions as deemed appropriate to protect the public interest."	

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NEBRASKA [cont.]	NEB. REV. STAT. §§ 46-233.01(1), (2)(b)-(c), (3)(a)-(f) (1988 Supp.)	<p>"Application may be made to the Department of Water Resources for a permit to appropriate any of the public surface waters of the State of Nebraska to be diverted or stored in Nebraska for use in any other state....</p> <p>...The application shall be deemed in the public interest if the overall benefits to Nebraska greater than the adverse impacts to Nebraska."</p>	<p>"(2) In determining whether to grant such application, the director shall consider:</p> <ul style="list-style-type: none"> (b) Whether such application and appropriation when perfected are not otherwise detrimental to the public welfare; (c) Whether denial of the application is demanded by the public interest." <p>"(3) When determining whether denial of such application is demanded by the public interest, the director shall consider:</p> <ul style="list-style-type: none"> (a) The economic, environmental, and other benefits of the proposed use; (b) Any adverse economic, environmental, and other impacts of the proposed use; (c) Any current beneficial uses being made of the unappropriated water; (d) The economic, environmental, and other benefits of not allowing the appropriation and preserving the water supply for beneficial uses within the state; (e) Alternative sources of water supply available to the applicant; (f) Any other factors...that the director deems relevant to protecting the interests of the state and its citizens."
	NEB. REV. STAT. § 46-234 (1988 Supp.)	"The director may refuse a permit...when denial is demanded by the public interest."	
	NEB. REV. STAT. § 46-294(5) (1988 Supp.)	"The Director of Water Resources shall approve an application [for an intrabasin transfer] if ...the requested change is in the public interest.... In approving an application, the director may impose any reasonable conditions deemed necessary to protect the public interest."	
	NEB. REV. STAT. § 46-295 (1988 Supp.)	"The Legislature finds that...comprehensive, conjunctive management of surface water and intentional or incidental underground water storage...serves the public interest by providing an element of certainty essential for investment in water resources development."	

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NEVADA	NEV. REV. STAT. ANN. § 533.370 (3) (1987).	Water rights appropriations and transfers are subject to review by the state engineer as follows: "Where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights or threatens to prove detrimental to the public interest, the state engineer shall reject the application and refuse to issue the permit asked for."	Not statutorily defined.
	NEV. REV. STAT. ANN. § 534.320 (1) (Supp. 1987).	"The state engineer may periodically review a [recharge] project to determine if...the public interest is properly guarded."	
	State v. Morros, 766 P.2d 263 (Nev. 1988).	Court held that a "[grant] of water appropriation rights in situ to United States in regard to natural lake, without diversion, for public recreation purposes was not against the public interest."	
NEW MEXICO	N.M. STAT. ANN. § 72-1-9 (A) (1985).	"It is hereby recognized by the state of New Mexico that it promotes the public welfare and the conservation of water within the state for municipalities, counties and public utilities supplying water to municipalities and counties to plan for the reasonable development and use of water resources. The State further recognizes the state engineer's administrative policy of not allowing municipalities and counties to acquire and hold, unused, water rights in an amount greater than their reasonable needs within forty years."	Not statutorily defined.
	N.M. STAT. ANN. §§ 72-5-6, 72-5-7, 72-5-5 (1985).	The state engineer shall approve an application to appropriate surface water "if the proposed appropriation is not contrary to the conservation of water within the state and is not detrimental to the public welfare of the state." The state engineer may refuse to consider or deny the application if approval would be contrary to either the conservation or the public welfare considerations."	

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NEW MEXICO [cont.]	N.M. STAT. ANN. § 72-5-23 (Supp. 1989).	"General public interest is not a proper consideration in [change of use applications for surface water appurtenant to the land]. Once, there has been proper application to the state engineer, detriment to existing water rights is the only basis on which an application [of this type] can be properly denied."	
	N.M. STAT. ANN. § 72-12-3 (1985).	State engineer in considering applications to appropriate ground water from within declared underground water basins must also consider the listed criteria.	"(1) whether there is unappropriated water available; (2) whether existing water rights are impaired; (3) whether the proposed use would be contrary to the conservation of water within New Mexico or detrimental to the public welfare of the state."
	N.M. STAT. ANN. § 72-12-7 (1985).	Applications to change point of diversion, place of use, or purpose of use of ground or surface water must be evaluated under same criteria as applications for new permits.	
	N.M. STAT. ANN. §§ 72-12B-1-A, -C, -D (Repl. Pamp. 1985)	"The state of New Mexico...recognizes that under appropriate conditions the out-of-state transportation and use of its public water is not in conflict with the public welfare of its citizens or the conservation of its waters."	"In order to approve an application under this act, the state engineer must find that the applicant's withdrawal and transportation of water for use outside the state would not impair existing water rights, is not contrary to the conservation of water within the state and is not otherwise detrimental to the public welfare of the citizens of New Mexico."
	Young & Norton v. Hinderlinder, 15 N.M. 666, 110 P.1045, 1050 (N.M. 1910).	"The 'public interest' should be read broadly in order to secure the greatest possible benefit from [the public waters] for the public."	

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NORTH DAKOTA	N.D. CENT. CODE § 61-04-06 (4) (1985).	The state engineer "shall issue a permit (for an appropriation of ground or surface water) if he finds...the proposed appropriation is in the public interest."	<p>"In determining the public interest, the state engineer shall consider:</p> <ul style="list-style-type: none"> (a) The benefit to the applicant resulting from the proposed appropriation. (b) The effect of the economic activity resulting from the proposed appropriation. (c) The effect on fish and game resources and public recreational opportunities. (d) The effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation. (e) Harm to other persons resulting from the proposed appropriation. (f) The intent and ability of the applicant to complete the appropriation."
	N.D. CENT. CODE § 61-04-15.1 (2) (1985).	Changes in use/place of diversion/place of use are treated as above.	
	N.D. CENT. CODE § (1985).	The state engineer "may issue a permit subject to fees for water uses, terms, conditions, restrictions, limitations, and termination dates he considers necessary to protect the rights of others, and the public interest."	
OREGON	OR. REV. STAT. § 537.170 (1), (3)-(5) (1989).	<p>"(1) If, in the judgment of the Water Resources Commission, the proposed use [of a proposed appropriation] may prejudicially affect the public interest...the commission shall hold a public hearing on the application."</p> <p>"(3) If, in the opinion of the Commission, sufficient information is not available to determine whether or not the proposed use would impair or be detrimental to the public interest, the commission may enter an interim order continuing the hearing."</p> <p>"(4) If, after the hearing, the commission determines that the proposed use...would otherwise impair or be detrimental to the public interest, the commission shall enter an order rejection the application or requiring its modification to conform to the public interest to the end that the highest public benefit may result from the use to which the water is applied."</p>	<p>"In determining whether the proposed use would impair or be detrimental to the public interest, the Water Resources Commission shall consider:</p> <ul style="list-style-type: none"> (a) Conserving the highest use of the water for all purposes, including irrigation, domestic use, municipal water supply, power development, public recreation, protection of commercial and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any other beneficial use to which water may be applied for which it may have a special value to the public; (b) the maximum economic development of the waters involved; (c) the control of the waters of this state for all beneficial purposes including drainage, sanitation and flood control;

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OREGON [cont.]	OR. REV. STAT. § 537.170 (5) (1989) [cont].		<ul style="list-style-type: none"> (d) The amount of waters available for appropriation for beneficial use; (e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved; (f) All vested and inchoate rights to the waters of this state or to the use of the waters of this state, and the means necessary to protect such rights; (g) The state water resources policy."
	OR. REV. STAT. § 537.470 (2)(e) (1989).	The commission shall allocate conserved water if the proposed conservation measure...will not adversely affect the public interest."	
	OR. REV. STAT. § 537.525 (1955) [§§ 537.505 to 537.795 are known as the "Ground Water Act of 1955").	The Legislative Assembly recognizes, declares and finds that the right to reasonable control of all water within this state from all sources of water supply belongs to the public, and that in order to insure the preservation of the public welfare, safety and health it is necessary that [11 provisions be met, including (2) listed below]	" (2) Rights to appropriated ground water and priority thereof be acknowledged and protected, except when, under certain conditions, the public welfare, safety and health require otherwise."
	OR. REV. STAT. § 537.735 (4) (1955).	"The order of the director [declaring a critical ground water area] may include...any one or more provisions making such additional requirements as are necessary to protect the public welfare, health and safety."	
	<u>Doherty v. Oregon Water Resources Director</u> , 783 p.2d 519, 308 Or. 543 (Or. 1989).	"Water Resources Director did not err in failing to state standards applied to determine that public welfare, health and safety required or permitted both designation of critical ground water area and application of corrective controls; legislature had already proclaimed those standards to which director referred explicitly in justifying order."	

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SOUTH DAKOTA	S.D. CODIFIED LAWS § 46-1-14 (Rev. 1987).	"The water management board may issue any permit or licence subject to terms, conditions, qualifications, quantifications or limitations on perpetuity...which it considers necessary to protect the public interest."	Not statutorily defined.
	S.D. CODIFIED LAWS § 46-2A-9 (Rev. 1987).	"A permit to appropriate water may be issued only if there is reasonable probability that...the proposed use is a beneficial use and in the public interest."	
	S.D. CODIFIED LAWS § 46-2A-9 (Rev. 1987).	(same as above for "a reservation for a future use may be granted only if...")	
	S.D. CODIFIED LAWS § 46-2A-12 (Rev. 1987).	(same as above for "a reservation for an amendment of an existing permit or license may be granted for a change in use, a change in point of diversion of use or other change only if...")	
TEXAS	TEX WATER CODE ANN. § 11.134 (b)(3), (c) (Vernon Supp. 1987).	The Texas Water Commission shall grant an application for a proposed appropriation only if "the proposed appropriation...is not detrimental to the public welfare.	Not statutorily defined.
	Clark v. Briscoe Irrigation Co., (Civ. App. 1947) 200 S.W.2d 674.	Court held that state board of water engineers has statutory power to determine public policy on appropriation of waters and thus has the power and duty "to determine whether change in use of appropriated waters is detrimental to the public welfare" and "to determine, in exercise of sound and reasonable discretion, whether uses for which application of appropriation of waters is made meet statutory objectives including that of being in the public interest."	
	City of San Antonio v. Texas Water Commission, 392 S.W.2d 200, affirmed 407 S.W.2d 752 (19).	"Statutes [require] that Commissioner's discretion must be exercised so as not to impair existing rights or...be detrimental to the public welfare."	

STATE	RELEVANT STATUTE, ADMINISTRATIVE CODE OR COURT RULING	PUBLIC INTEREST/PUBLIC WELFARE ADDRESSED?	PUBLIC INTEREST/PUBLIC WELFARE CRITERIA
UTAH	UTAH CODE ANN. § 73-3-8(1) (1980 and Supp. 1986).	"If the state engineer...has reason to believe that an application to appropriate water will interfere with [the listed public interest criteria] or will prove detrimental to the public welfare, it is his duty to withhold his approval or rejection of the application until he has investigated the matter. If an application does not meet the requirements of this section, it shall be rejected."	Statutory criteria for disapproval of applications for appropriations include whether an application "will interfere with its more beneficial use for irrigation, domestic or culinary, stock watering, power or mining development or manufacturing, or will unreasonably affect public recreation or the natural stream environment or will prove detrimental to the public welfare."
	Tanner v. Bacon, 103 Utah 494, 136 P.2d 957 (1943).	The State through the state engineer has "the duty to control the appropriation of the public waters in a manner that will be for the best interests of the public." "Clearly, the manner in which the unappropriated waters of the streams of the state shall be distributed among the applicants therefor involves questions of policy, and the Legislature, in the interest of public welfare, may prescribe reasonable conditions [for approval of such applications].... Where the facts justify the action, the water authority should be allowed to impose, in the public interest, the restrictions and conditions called for in the act."	"Anything which is not for the best interest of the public would be 'detrimental to the public welfare.'"
	Bonham v. Morgan, 788 P.2d 497, 102 Utah Adv. Rep. 8 (1989).	"[T]he state engineer is required to undertake the same investigation in permanent change applications that the statute mandates in applications for water appropriations."	
WASHINGTON	WASH. REV. CODE ANN §§ 90.03.290 (Supp. 1989) (surface water) and 90.44.060 (Supp. 1989) (ground water).	"The department [of ecology] shall investigate, determine, and find whether the proposed development [an appropriation of water for irrigation or power development] is likely to prove detrimental to the public interest." The department shall issue a permit if it finds that the appropriation proposed in the application "will not...be detrimental to the public welfare" and reject the application if it "threatens to prove detrimental to the public interest."	Not statutorily defined.

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WASHINGTON [cont.]	WASH. REV. CODE ANN §§ 90.54.020(3)(a) (Supp. 1989).	"Perennial rivers and streams of the state shall be retained with base flows necessary to provide for [the listed criteria].... Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that the overriding consideration of the public interest will be served."	Preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigation values. Lakes and ponds shall be retained substantially in their natural condition.
	WASH. REV. CODE ANN §§ 90.54.020(9)(Supp.1989).	"Expressions of the public interest will be sought at all stages of water planning and allocation discussions."	
	<u>Stempel v. Dept. of Water Resources</u> , 82 Wash. 2d 109, 508 P.2d 166 (1973).	"Withdrawals of water which would conflict [with policies retaining substantially lakes and ponds in their natural condition] shall be authorized only in those situations where it is clear that the public interest will be served."	Public welfare review includes "examination of potential pollution resulting from the issuance of the appropriation permit and the appropriation."
WYOMING	WYO. CONST. Art. 8, § 3 (1890).	"No appropriation shall be denied except when such denial is demanded by the public interests."	Not statutorily defined.
	WYO. STAT. ANN. § 41-3- 106(d) (Supp. 1985).	"It is the policy of the state engineer to encourage exchanges. The state engineer shall not issue an exchange order if it appears that the proposed exchange...would be adverse to the public interest."	
	WYO. STAT. ANN. §§ 41- 4-503 (Supp. 1985). (surface water) and 41- 3-931, -932 (Supp. 1985) (ground water).	"It shall be the duty of the state engineer to approve all applications...where the proposed use does not...threaten to prove detrimental to the public welfare. [Where] the proposed use conflicts with existing rights or threatens to prove detrimental to the public interest, it shall be the duty of the state engineer to reject such application."	
	WYO. STAT. ANN. § 41-3- 908 (1977 & Supp. 1985).	"In each of the water divisions of the state... there shall be established a division advisory committee on underground water. Each committee shall...adequately represent the landowners and water users of the division, the geographical areas of the division and the public interest."	