

Overview of Statutory Law in Eastern Water Law States

Brandon Kernen

NH Department of Environmental Services

Common Law Exist Side by Side with Statutory Law (not administered jointly)

Common Law

- Public Trust
- Police Powers
- “Parens Patriae”
- Reasonable Use Standard

Enforced/adjudicated
in court

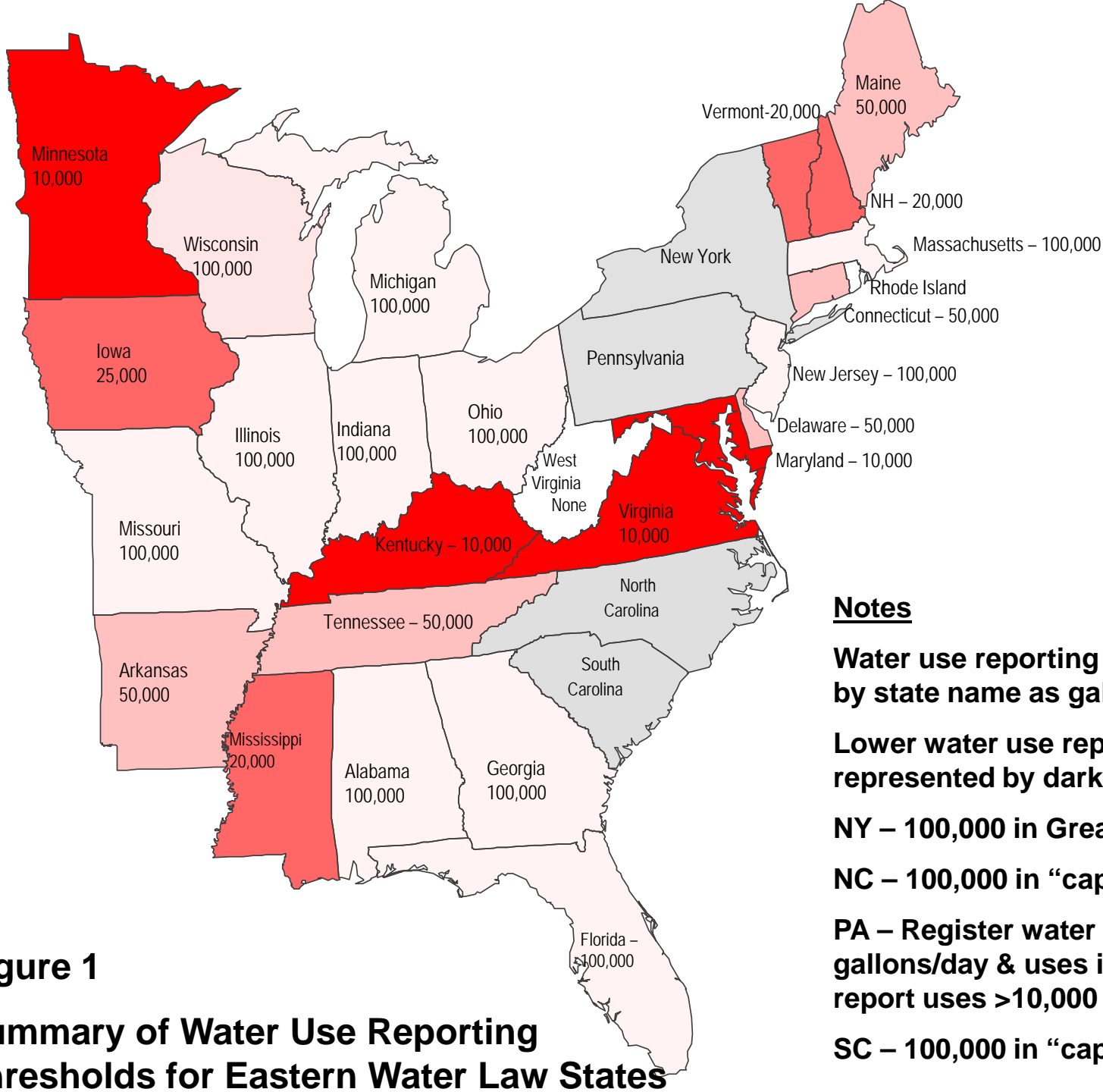
Statutory Law

- Laws established the Legislature
- Regulations developed by state agencies

Enforced by regulatory
agencies as enabled by
law

Parallel Processes

Note the bright line



Notes

Water use reporting threshold is shown by state name as gallons per day

Lower water use reporting thresholds is represented by darker red colors

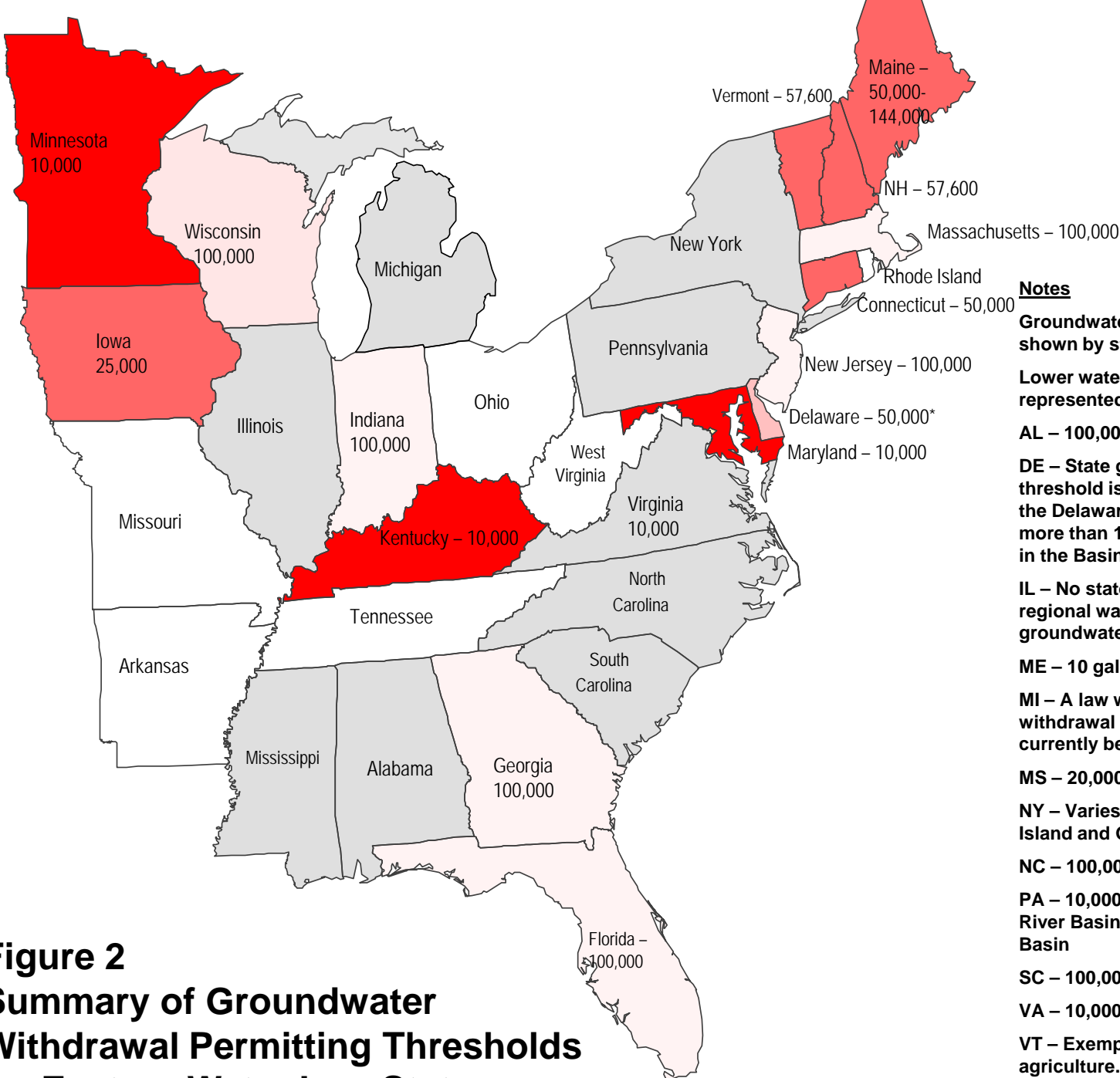
NY – 100,000 in Great Lakes Basins only

NC – 100,000 in “capacity stressed areas”

PA – Register water uses >10,000 gallons/day & uses in DE River basin report uses >10,000 gallons/day

SC – 100,000 in “capacity stressed areas”

**Figure 1
Summary of Water Use Reporting
Thresholds for Eastern Water Law States**



Notes

Groundwater Withdrawal Permitting threshold is shown by state name as gallons per day

Lower water use permitting thresholds are represented by darker red colors

AL – 100,000 in “capacity stressed areas”

DE – State groundwater withdrawal permitting threshold is 50,000 gallons per day. Additionally, the Delaware River Basin permits any withdraw more than 100,000 gallons per day that is located in the Basin

IL – No state permitting requirements, but regional water districts may be formed and permit groundwater withdrawals

ME – 10 gallons for “non traditional” water uses

MI – A law was recently passed and groundwater withdrawal regulations (including thresholds) are currently being developed

MS – 20,000 in “Water Caution Use Areas”

NY – Varies, certain requirements pertain to Long Island and Great Lake Drainage Basin

NC – 100,000 in “capacity use areas”

PA – 10,000 gallons per day in the Susquehanna River Basin/100,000 gallons/day in DE River Basin

SC – 100,000 in “capacity use areas”

VA – 10,000 in Groundwater Management Areas

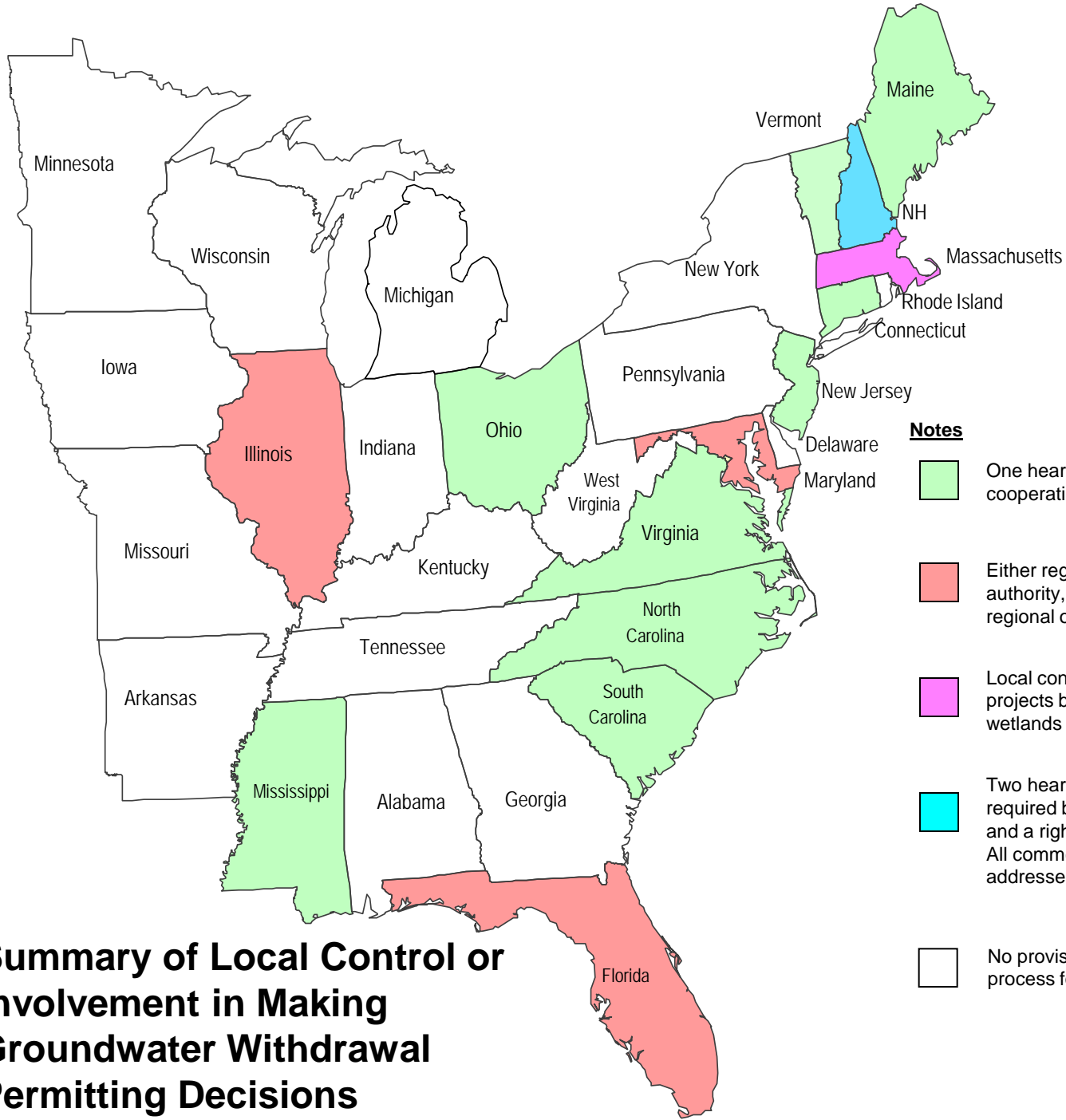
VT – Exempts public water supply and agriculture. Law has passed, regulations have not been developed.

**Figure 2
Summary of Groundwater
Withdrawal Permitting Thresholds
for Eastern Water Law States**



Statewide Groundwater Permitting Programs with Defined Permitting Processes and Criteria for Approval

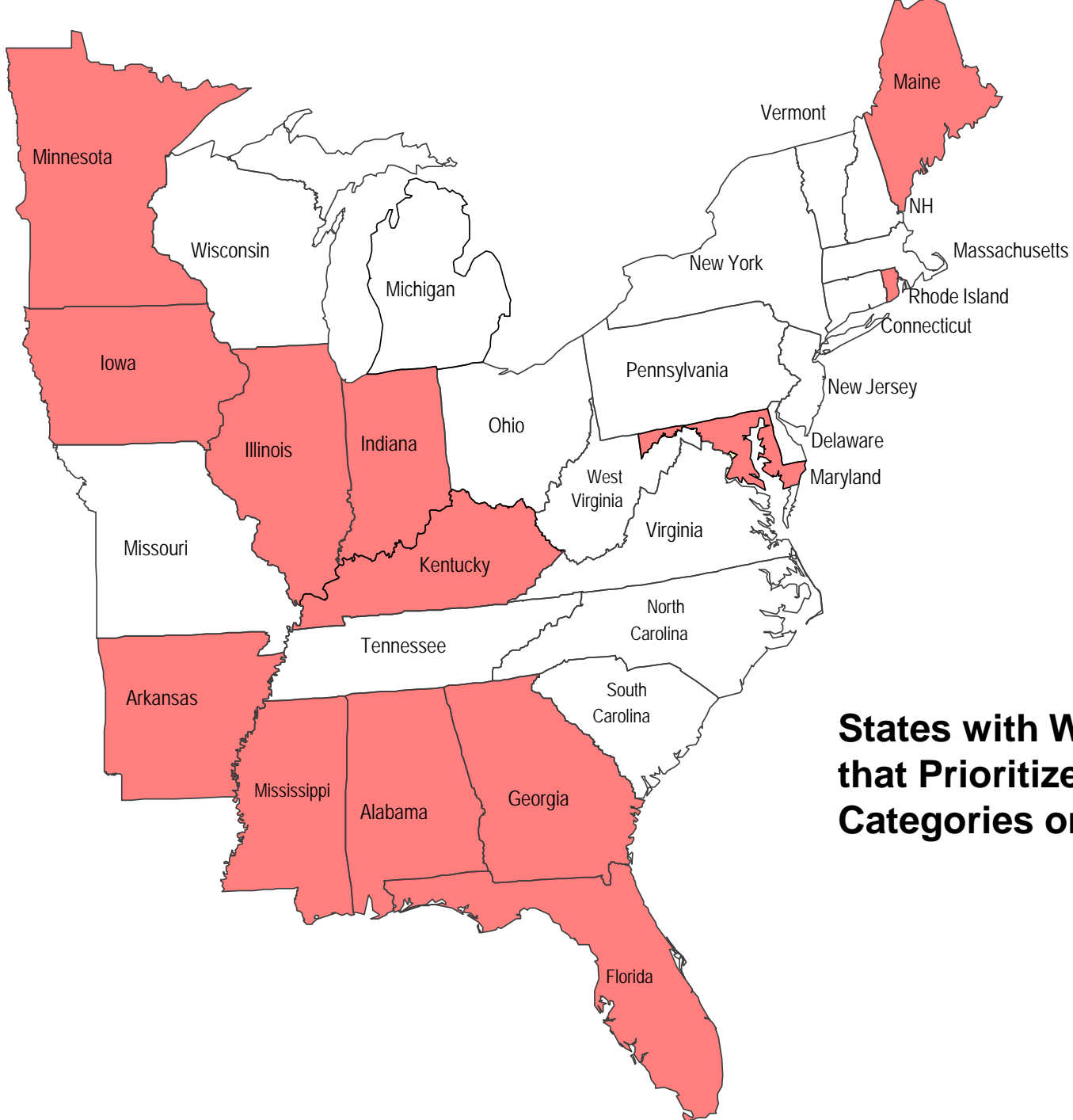
State	Permitting Status	Notes
Alabama	No	
Alaska	No	
Arizona	No	
Arkansas	No	
California	No	
Colorado	No	
Connecticut	Yes	
Delaware	No	
Florida	Yes	Older groundwater withdrawals are grandfathered
Georgia	No	
Idaho	No	
Illinois	No	
Indiana	No	
Iowa	No	
Kansas	No	
Kentucky	No	
Louisiana	No	
Maine	Yes	
Maryland	No	
Massachusetts	No	
Michigan	No	
Minnesota	Yes	
Mississippi	No	
Missouri	No	
Montana	No	
Nebraska	No	
Nevada	No	
New Hampshire	Yes	
New Jersey	No	
New Mexico	No	
New York	No	
North Carolina	No	
North Dakota	No	
Ohio	No	
Oklahoma	No	
Oregon	No	
Pennsylvania	No	
Rhode Island	No	
South Carolina	No	
South Dakota	No	
Tennessee	No	
Texas	No	
Utah	No	
Vermont	No	
Virginia	No	
Washington	No	
West Virginia	No	
Wisconsin	No	
Wyoming	No	



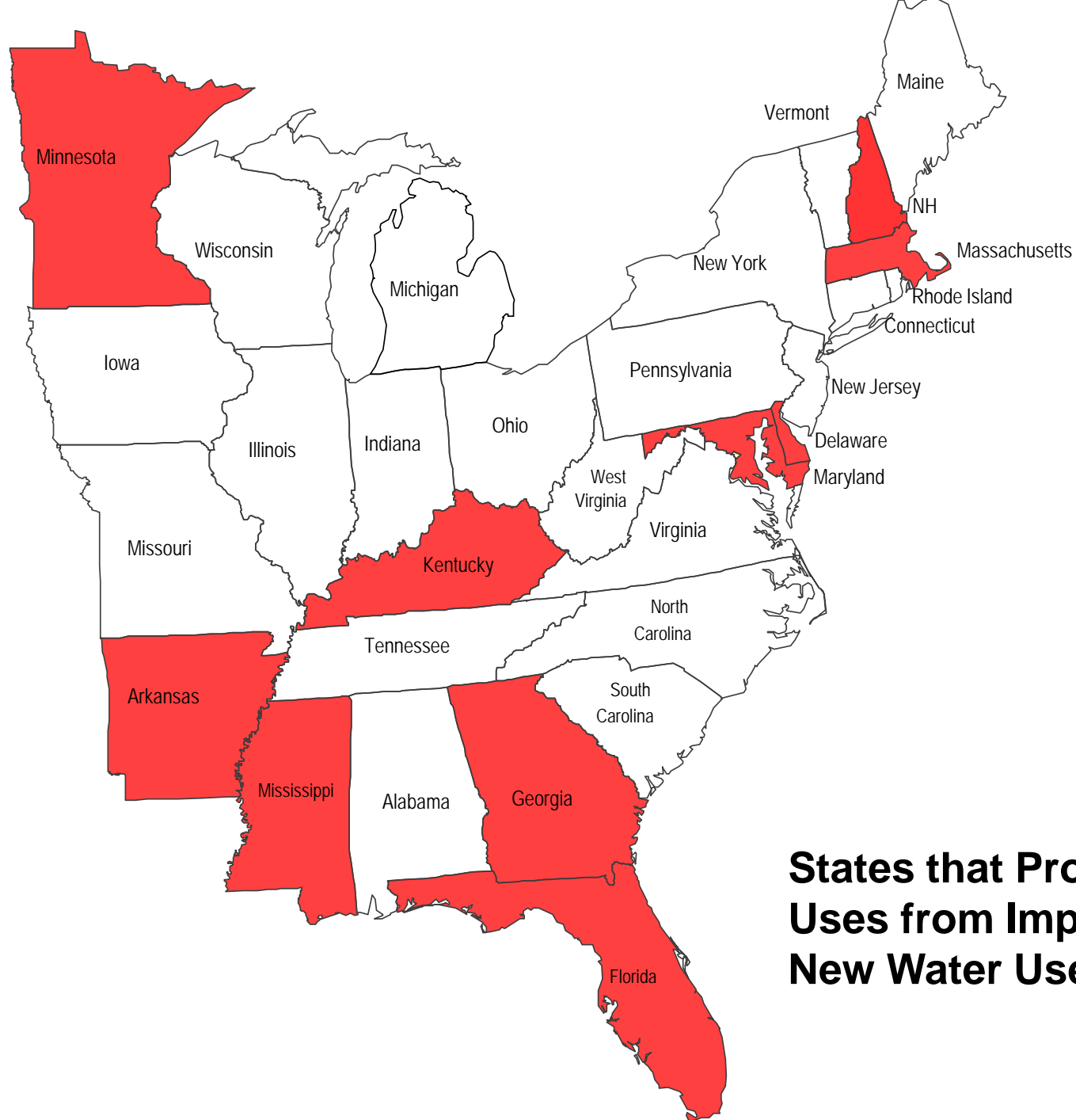
Notes

- One hearing and/or a general requirement of cooperation is stipulated in rule or law
- Either regional water districts may have approval authority, or state decisions must be consistent with regional or local water supply planning documents
- Local conservation commission can approve or deny projects based on an assessment of impacts to wetlands or water resources
- Two hearings and public comment periods are required by law. Municipalities have “intervener status and a right to meet with the state to discuss a project. All comments submitted to the state must be addressed when the state makes a permitting decision.
- No provisions for local involvement in the approval process for groundwater withdrawals exist

Summary of Local Control or Involvement in Making Groundwater Withdrawal Permitting Decisions

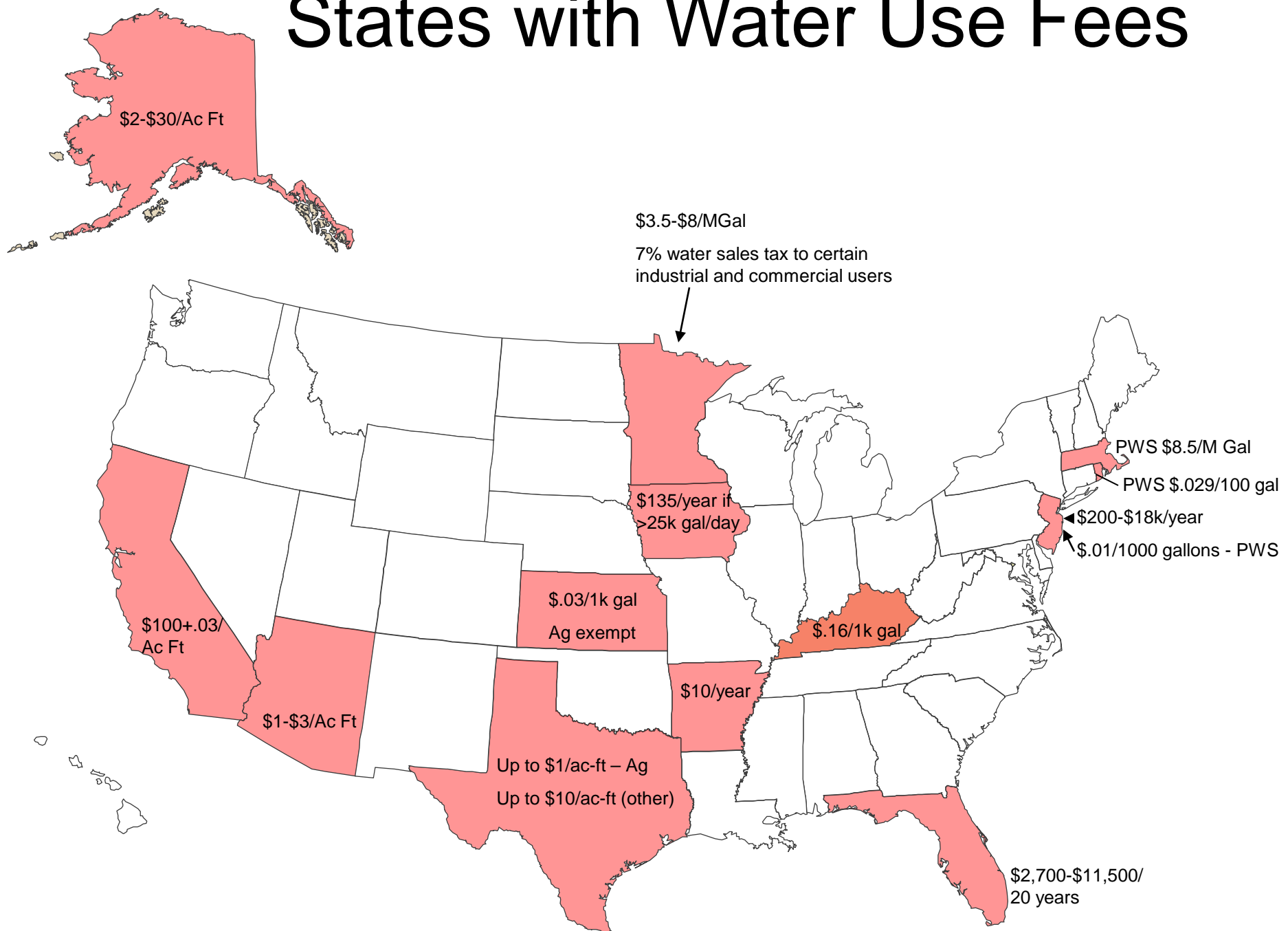


**States with Water Use Hierarchies
that Prioritize Water Use
Categories or Attributes**



States that Protect Existing Water Uses from Impacts Associated with New Water Uses in Statutory Law

States with Water Use Fees



Contact

Brandon.Kernen@des.nh.gov

To obtain written detailed info on the following for eastern water law states:

- Water use reporting
- Groundwater withdrawal permitting
- Water use hierarchy
- Water use fees