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

Note the bright line
Figure 1
Summary of Water Use Reporting Thresholds for Eastern Water Law States

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

Notes
- Statewide permitting process, defined permitting process, and clear approval criteria
- Permitting Process for only part of the state, for only certain water users, unclear/unstipulated process and standards for review for approving a groundwater withdrawal, or the process only protects other domestic water users. In some instances, applications for a withdrawal are simply a couple page form
- No permitting process
- Older groundwater withdrawals are grandfathered
Summary of Local Control or Involvement in Making Groundwater Withdrawal Permitting Decisions

- **One hearing and/or a general requirement of cooperation is stipulated in rule or law** (light green)
- **Either regional water districts may have approval authority, or state decisions must be consistent with regional or local water supply planning documents** (red)
- **Local conservation commission can approve or deny projects based on an assessment of impacts to wetlands or water resources** (purple)
- **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.** (teal)
- **No provisions for local involvement in the approval process for groundwater withdrawals exist** (white)
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

- $2-$30/Ac Ft
- $1-$3/Ac Ft
- $10/year
- $100+.03/Ac Ft
- $2,700-$11,500/20 years
- $135/year if >25k gal/day
- $.03/1k gal
- Ag exempt $.16/1k gal
- PWS $8.5/M Gal
- $200-$18k/year
- $.01/1000 gallons - PWS
- PWS $.029/100 gal
- Up to $1/ac-ft – Ag
- Up to $10/ac-ft (other)
- $3.5-$8/MGal
- 7% water sales tax to certain industrial and commercial users

States with Water Use Fees: [Map of the United States with different收费标准标注在不同的州或地区。]
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