



# DELAWARE RIVERKEEPER NETWORK TOOLKIT FOR ACTION IN YOUR STATE

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*For the Generations*  
Pure Water. Clean Air. Healthy Environment.

# WHY FOR THE GENERATIONS PROJECT?

**Article 1, Section 27 of the Pennsylvania Constitution promises a right to pure water, clean air and the preservation of the natural, scenic, historic, and esthetic values of the environment for generations of Pennsylvanians. The Constitution states: “As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.” Other states have constitutional provisions, but few are as strong as Pennsylvania’s and many have none.**

Contrary to constitutional provisions and existing laws, governments across the nation, and even in Pennsylvania, have allowed environmental harm regardless of the impacts on present and future generations. From coal extraction to shale gas development, the fossil fuel industry has polluted our water, air and land. Deforestation, wildlife displacement, and mountain top removal continue to destroy natural ecosystems and the health of our communities. Industries outside the energy sector have exploited our air, water, and land for commercial purposes by dumping chemicals, dredging river beds, building dams and levees, and over harvesting on land and in the water.

Dramatically, in Pennsylvania, on December 19, 2013, the Pennsylvania Supreme Court, in the case *Robinson Township, Delaware Riverkeeper Network, et al. v. Commonwealth* created a legal framework and opportunity for Pennsylvanians to defend their constitutional right to pure water, clean air, and a healthy environment.



**“Please join with me to inspire our nation, and others around the globe, to demand Pennsylvania’s promise of environmental protection for all.”**

*Maya K. van Rossum, the Delaware Riverkeeper*

## **Article 1, Section 27 of the Pennsylvania Constitution promises:**

*"A right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people."*

# **FOR THE GENERATIONS IS AN INITIATIVE OF THE DELAWARE RIVERKEEPER NETWORK**

To pursue and secure constitutional protection of environmental rights in states across the nation.

To ensure that governments across the nation at the local and state level honor the rights of all people to pure water, clean air, and healthy environments in the laws they enact, the decisions they make, and the actions they pursue.

To ensure that the Pennsylvania Environmental Rights Amendment is further strengthened in the wake of the Pennsylvania Supreme Court decision.



# DEFENDING YOUR NATURAL RIGHTS

by Maya K. van Rossum,  
the Delaware Riverkeeper

Our rights to freedom of speech, freedom of the press, and religious freedom are among the many fundamental rights guaranteed by our federal and state constitutions, which we fiercely fight to protect in the United States.

But while our Declaration of Independence talks about the right to life, liberty, and the pursuit of happiness, what we do not find in our U.S. Constitution are the rights to three basic needs for life, liberty, and happiness: our rights to pure water, clean air, and healthy environments.

While a number of state constitutions reference varying levels of environmental entitlement, very few states clearly identify the rights to a clean and healthy environment as fundamental, individual and to be mandatorily protected by government. Pennsylvania is currently the state with the most protective environmental rights amendment included in the Bill of Rights section of its state constitution. And while for forty years this provision did little to ensure protection of the environment for the benefit of the people, in 2013 the Pennsylvania Supreme Court breathed new substantive life into the provision.

# DEFENDING YOUR NATURAL RIGHTS

## continued...

Until recently, despite the existence of the Environmental Rights Amendment in the Pennsylvania Constitution, the courts did not give due protection to the fundamental environmental rights it pronounces. But as the result of a legal action brought by the Delaware Riverkeeper Network, the Delaware Riverkeeper Maya K. van Rossum, seven towns and Dr. Mehernosh Khan, the Pennsylvania Supreme Court has declared the environmental rights of Pennsylvanians inviolable and deserving of the highest levels of protection in the State.

In the case, titled *Robinson Township, Delaware Riverkeeper Network, et al. v. the Commonwealth of Pennsylvania*, the Pennsylvania Supreme Court went a fundamental step further than just protecting environmental rights in the state. A plurality of the court made clear that our environmental rights are not granted to us by law, but are in fact inherent and inalienable rights that cannot be taken from us by government or law. Of further significance, the plurality of the court said that these environmental rights belong not just to present generations living on the earth today, but they are rights that must be protected for the future generations yet to come.

Why is this important? Because every day local, state, and federal governments are granting permission to industries to pollute, deforest, denigrate, and despoil our environments, which is having serious effects on our planet and our bodies. For example, an estimated 1.3 million cancer deaths per year result from exposure to pollution in the environment, while air pollution has been characterized as “the world’s largest single environmental health risk,” causing the death of approximately seven million people in a given year.

Often, the permission to pollute is defended by the assertion that it will create jobs, or that the near-term gain of a new energy source overshadows the need to consider environmental degradation and its harmful impacts. These kinds of excuses do not justify the harms that polluting industries create. After all, what good is a job if you don’t have the health needed to take

# DEFENDING YOUR NATURAL RIGHTS

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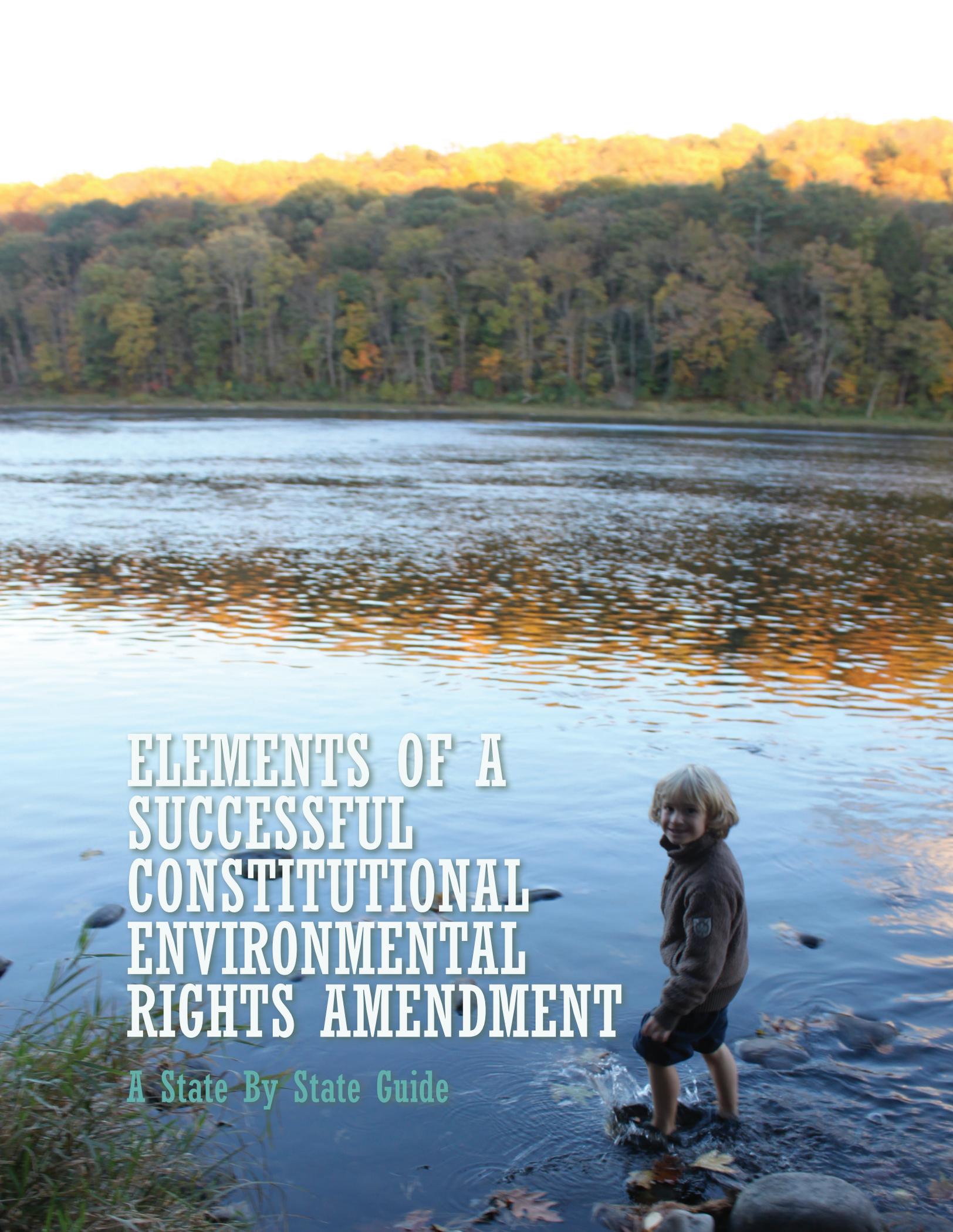
advantage of it, or if you have to sacrifice your parent, child, friend, or neighbor in order to have it?

And the truth is that most goals can be achieved in a way that protects the environment and communities at the same time. For example:

- Instead of drilling and fracking, which irreparably pollutes our water, air, and lands, by the year 2050 we could provide that very same energy using clean energy technologies, such as wind, water, solar, and geothermal, while simultaneously avoiding the devastating pollution and climate-changing impacts of shale gas.
- Instead of developing land by cutting down all of the trees, which creates floods, pollution, and erosion of our public and private lands, developers could use building practices that protect trees and the absorbency of the soils and capture rainfall in a way that allows the water to soak into the ground and doesn't generate devastating floods and pollution.

Thirty-five states offer some constitutional environmental recognitions, but many of them are mere references that depend upon additional state action to be realized, but can just as easily be ignored. Of the 35, Pennsylvania and Montana appear to provide the highest level of protection. And it is in Pennsylvania where the right to a healthy environment has been raised, by court decision, to being above the law and recognized as inherent, indefeasible and generational. And there are still 15 states with no provisions protecting the environmental rights of the people. And of course, at the federal level, clear recognition and protection of environmental rights is also glaringly absent.

**It is time for communities across the nation to demand that their environmental rights be protected by their states. It's time for us all to embrace the truth stated by Pennsylvania's Supreme Court Chief Justice, that we as people have an inherent and indefeasible right to pure water, clean air, and healthy environments and that these are rights which must be protected for those of us here today and the generations yet to come.**



**ELEMENTS OF A  
SUCCESSFUL  
CONSTITUTIONAL  
ENVIRONMENTAL  
RIGHTS AMENDMENT**

**A State By State Guide**

**Every state in the United States should seek and secure a constitutional provision that gives the same level of protection as Pennsylvania's as articulated by the Pennsylvania Supreme Court's Chief Justice.**

**Those states that have existing provisions should ensure they have a provision as strong as Pennsylvania's through amendment or court interpretation to ensure it gives the same protective weight given in Pennsylvania's Article I, Section 27, Environmental Rights Amendment.**

**An environmental rights amendment should include a number of key elements:**

- ✓ The provision should clearly be grounded in response to environmental degradation that has occurred in the state. Clear legislative history about the origins of the amendment will help guide future legislative efforts and judicial interpretation.
- ✓ The provision should mention specific environmental values to be protected such as pure water, clean air, ecologically healthy habitats, etc.
- ✓ The provision should include a broad holistic perspective on the values of protecting a healthy environment.
- ✓ The provision must be self-executing so it does not require passage of laws in order for it to take effect and for the environmental rights of the people to be vindicated.
- ✓ The provision should be generational in focus (i.e. it should explicitly acknowledge that the environmental rights belong to both present and future generations and therefore must be protected for all generations.)
- ✓ The provision should recognize that environmental rights are inherent, inalienable, and indefeasible rights of all people.
- ✓ The provision must ensure that the environmental rights asserted are characterized as "rights reserved to the people." One way to accomplish this is to place the provision in the Declaration of Rights section of the constitution, as long as that section is clear that the rights enumerated are reserved rights that are inherent and indefeasible and belong to the people regardless of constitutional pronouncement.

- ✓ The rights provision should be drafted so that it is on equal footing with other political rights such as property rights and freedom of speech.
- ✓ The provision should serve as a limitation on government action or inaction that would otherwise infringe on these rights.
- ✓ The provision should identify environmental rights as being rights of every individual, not just collective rights of the state as a whole.
- ✓ The provision should recognize a state's public trust duties, broadly defining the body of the trust to include public natural resources and environmental values and not simply state-owned land.
- ✓ The responsibilities to protect the environmental values should clearly apply to all branches and all levels of government.
- ✓ The language should specifically use the word "trustee" to solidify the relationship between the government and the citizenry - the government is not the proprietor of the environment, but is the trustee. Using trustee language implicates traditional trustee duties such as loyalty, prudence, impartiality, and providing the necessity for an accounting of the trust.
- ✓ The provision should include both affirmative duties to protect the environment and prohibitory duties (i.e., governmental actors have an obligation to refrain from legislative enactments, executive action, permitting or otherwise encouraging the degradation, diminution, or depletion of public natural resources that would occur through direct state action or indirectly, because of the state's failure to restrain the actions of others).
- ✓ The provision should necessitate a pre-action analysis that ensures actions taken and decisions made do not infringe upon environmental rights.
- ✓ The provision should be written in such a way that the court can use the plain language of the provision for its interpretation and application - this means clear language that can be easily interpreted and applied without reference to other rules of statutory construction.

# STATES & THEIR CONSTITUTIONAL PROVISIONS

This compendium includes all provisions that have been identified as providing some level of right to the benefits of a healthy environment.

## ALABAMA

Art. XI, Sec. 219.07, § 1. The Legislature of Alabama finds that Alabama is endowed with a rich diversity of natural areas having unique ecological systems, plant and animal life, geological formations, wildlife habitats, recreational values and scenic beauty. As a part of the continuing growth of the population and the economic development of the state, it is necessary and desirable that certain lands and waters be set aside, managed and preserved for use as state parks, nature preserves, recreation areas, and wildlife management areas. In order to meet the State's outdoor recreation needs and to protect the natural heritage of Alabama for the benefit of present and future generations, it is the policy of the state to: (a) Protect, manage, and enhance certain lands and waters of Alabama with full recognition that this generation is a trustee of the environment for succeeding generations; (b) Protect, to the fullest extent practicable, recreational lands and areas of unique ecological, biological and geological importance; and (c) Promote a proper balance among population growth, economic development, environmental protection, and ecological diversity. Accordingly, there is hereby established the Alabama Forever Wild Land Trust for the purpose of identifying, acquiring, managing, protecting and preserving natural lands and waters that are of environmental or recreational importance.

§ 2. Definitions. (text omitted)

§ 3. Establishment of Forever Wild Land Trust, Lead Management Agency, and Categories of Lands to be Acquired. (text omitted)

§ 4. Establishment of Board of Trustees of the Alabama Forever Wild Land Trust. (text omitted)

§ 5. Rights, Powers, and Duties of the Board. (text omitted)

§ 6. Final Approval Committee. (text omitted)

§ 7. Source of Funds. (text omitted)

§ 8. Donations of Property. (text omitted)

§ 9. Stewardship Account. (text omitted)

§ 10. Enforceability of Conservation Restrictions; Recordation; Acquisition and Disposal of Interests. (text omitted)

§ 11. Alabama Natural Heritage Program. (text omitted)

§ 12. Dedication of Natural Area Preserves. (text omitted)

§ 13. Sunset Provision. (text omitted)

§ 14. This Amendment shall be self-executing, but the Legislature shall have the right and power to enact laws supplemental hereto and in furtherance of the purposes and objectives hereof, provided that such laws are not inconsistent with the provisions of this Amendment.

§ 15. Severability. (text omitted)

Art. I, Sec. 36.02, (a) All persons shall have the right to hunt and fish in this state in accordance with law and regulations. (b) This amendment shall be known as the "Sportsperson's Bill of Rights."

## ALASKA

Art. VIII, § 1. It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

§ 2. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

§ 3. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

§ 4. Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

§ 5. The legislature may provide for facilities, improvements, and services to assure greater utilization, development, reclamation, and settlement of lands, and to assure fuller utilization and development of the fisheries, wildlife, and waters.

§ 6. Lands and interests therein, including submerged and tidal lands, possessed or acquired by the State, and not used or intended exclusively for governmental purposes, constitute the state public domain. The legislature shall provide for the selection of lands granted to the State by the United States, and for the administration of the state public domain.

§ 7. The legislature may provide for the acquisition of sites, objects, and areas of natural beauty or of historic, cultural, recreational, or scientific value. It may reserve them from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people.

§ 8. The legislature may provide for the leasing of, and the issuance of permits for exploration of, any part of the public domain or interest therein, subject to reasonable concurrent uses. Leases and permits shall provide, among other conditions, for payment by the party at fault for damage or injury arising from noncompliance with terms governing concurrent use, and for forfeiture in the event of breach of conditions.

§ 9. Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources. Reservation of access shall not unnecessarily impair the owners' use, prevent the control of trespass, or preclude compensation for damages.

§ 10. No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

§ 11. Mineral Rights. (text omitted)

# STATES & THEIR CONSTITUTIONAL PROVISIONS

## ALASKA continued

§ 12. Mineral Leases and Permits. (text omitted)

§ 13. All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to appropriation. Priority of appropriation shall give prior right. Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

§ 14. Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

§ 15. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State. [Amended 1972]

§ 16. No person shall be involuntarily divested of his right to the use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial use or public purpose and then only with just compensation and by operation of law.

§ 17. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

§ 18. Private Ways of Necessity -- (text omitted)

## ARIZONA

Art. XVII, § 2. All existing rights to the use of any of the waters in the state for all useful or beneficial purposes are hereby recognized and confirmed.

## ARKANSAS

Amend. 35, § 1. The control, management, restoration, conservation and regulation of birds, fish, game and wildlife resources of the State, including hatcheries, sanctuaries, refuges, reservations and all property now owned, or used for said purposes and the acquisition and establishment of same, the administration of the laws now and/or hereafter pertaining thereto, shall be vested in a Commission to be known as the Arkansas State Game and Fish Commission, to consist of eight members. Seven of whom shall be active and one an associate member who shall be the Head of the Department of Zoology at the University of Arkansas, without voting power.

Amend. 88, § 1, (a) (1) Citizens of the State of Arkansas have a right to hunt, fish, trap, and harvest wildlife. (2) The right to hunt, fish, trap, and harvest wildlife shall be subject only to regulations that promote sound wildlife conservation and management and are consistent with Amendment 35 of the Arkansas Constitution.

(b) Public hunting, fishing, and trapping shall be a preferred means of managing and controlling nonthreatened species and citizens may use traditional methods for harvesting wildlife.

(c) Nothing in this amendment shall be construed to alter, repeal, or modify: (1) Any provision of Amendment 35 to the Arkansas Constitution; (2) Any common law or statute relating to trespass, private property rights, eminent domain, public ownership of property, or any law concerning firearms unrelated to hunting; or (3) The sovereign immunity of the State of Arkansas.

## CALIFORNIA

Art. I, § 25. The people shall have the right to fish upon and from the public lands of the State and in the waters thereof, excepting upon lands set aside for fish hatcheries, and no land owned by the State shall ever be sold or transferred without reserving in the people the absolute right to fish thereupon; and no law shall ever be passed making it a crime for the people to enter upon the public lands within this State for the purpose of fishing in any water containing fish that have been planted therein by the State; provided, that the legislature may by statute, provide for the season when and the conditions under which the different species of fish may be taken.

Art. X, § 2. It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters 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. The right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water. Riparian rights in a stream or water course attach to, but to no more than so much of the flow thereof as may be required or used consistently with this section, for the purposes for which such lands are, or may be made adaptable, in view of such reasonable and beneficial uses; provided, however, that nothing herein contained shall be construed as depriving any riparian owner of the reasonable use of water of the stream to which the owner's land is riparian under reasonable methods of diversion and use, or as depriving any appropriator of water to which the appropriator is lawfully entitled. This section shall be self-executing, and the Legislature may also enact laws in the furtherance of the policy in this section contained.

§ 4. No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

# STATES & THEIR CONSTITUTIONAL PROVISIONS

## COLORADO

Art. XVI, § 5. The water of every natural stream, not heretofore appropriated, within the state of Colorado, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided.

§ 6. The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied. Priority of appropriation shall give the better right as between those using the water for the same purpose; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall have the preference over those claiming for any other purpose, and those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes.

Art. XVIII, § 6. The general assembly shall enact laws in order to prevent the destruction of, and to keep in good preservation, the forests upon the lands of the state, or upon lands of the public domain, the control of which shall be conferred by congress upon the state.

## CONNECTICUT

None

## DELAWARE

None

## FLORIDA

Art. II, § 7. (a) It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources.

Art. X, § 11. The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.

## GEORGIA

Art. III, § 6, Para. I. The General Assembly shall have the power to make all laws not inconsistent with this Constitution, and not repugnant to the Constitution of the United States, which it shall deem necessary and proper for the welfare of the state.

Para. II, (a) Without limitation of the powers granted under Paragraph I, the General Assembly shall have the power to provide by law for: (1). Restrictions upon land use in order to protect and preserve the natural resources, environment, and vital areas of this state.

Art. I, § I, Para. XXVIII. The tradition of fishing and hunting and the taking of fish and wildlife shall be preserved for the people and shall be managed by law and regulation for the public good.

## HAWAII

Art. XI, § 1. For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

§ 6 . The State shall have the power to manage and control the marine, seabed and other resources located within the boundaries of the State, including the archipelagic waters of the State, and reserves to itself all such rights outside state boundaries not specifically limited by federal or international law.

All fisheries in the sea waters of the State not included in any fish pond, artificial enclosure or state-licensed mariculture operation shall be free to the public, subject to vested rights and the right of the State to regulate the same; provided that mariculture operations shall be established under guidelines enacted by the legislature, which shall protect the public's use and enjoyment of the reefs. The State may condemn such vested rights for public use.

§ 7. The State has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people.

The legislature shall provide for a water resources agency which, as provided by law, shall set overall water conservation, quality and use policies; define beneficial and reasonable uses; protect ground and surface water resources, watersheds and natural stream environments; establish criteria for water use priorities while assuring appurtenant rights and existing correlative and riparian uses and establish procedures for regulating all uses of Hawaii's water resources.

§ 9. Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law.

# STATES & THEIR CONSTITUTIONAL PROVISIONS

## IDAHO

Art. I, § 23. The rights to hunt, fish and trap, including by the use of traditional methods, are a valued part of the heritage of the State of Idaho and shall forever be preserved for the people and managed through the laws, rules and proclamations that preserve the future of hunting, fishing and trapping. Public hunting, fishing and trapping of wildlife shall be a preferred means of managing wildlife. The rights set forth herein do not create a right to trespass on private property, shall not affect rights to divert, appropriate and use water, or establish any minimum amount of water in any water body, shall not lead to a diminution of other private rights, and shall not prevent the suspension or revocation, pursuant to statute enacted by the Legislature, of an individual's hunting, fishing or trapping license.

## ILLINOIS

Art. XI, § 1. The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

§ 2. Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.

## INDIANA

None

## IOWA

None

## KANSAS

None

## KENTUCKY

Section 225A. The citizens of Kentucky have the personal right to hunt, fish, and harvest wildlife, using traditional methods, subject only to statutes enacted by the Legislature, and to administrative regulations adopted by the designated state agency to promote wildlife conservation and management and to preserve the future of hunting and fishing. Public hunting and fishing shall be a preferred means of managing and controlling wildlife. This section shall not be construed to modify any provision of law relating to trespass, property rights, or the regulation of commercial activities.

## LOUISIANA

Art. I, § 27. The freedom to hunt, fish, and trap wildlife, including all aquatic life, traditionally taken by hunters, trappers and anglers, is a valued natural heritage that shall be forever preserved for the people. Hunting, fishing and trapping shall be managed by law and regulation consistent with Article IX, Section I of the Constitution of Louisiana to protect, conserve and replenish the natural resources of the state. The provisions of this Section shall not alter the burden of proof requirements otherwise established by law for any challenge to a law or regulation pertaining to hunting, fishing or trapping the wildlife of the state, including all aquatic life. Nothing contained herein shall be construed to authorize the use of private property to hunt, fish, or trap without the consent of the owner of the property.

Art. IX, § 1. The natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people. The legislature shall enact laws to implement this policy.

§ 3. The legislature shall neither alienate nor authorize the alienation of the bed of a navigable water body, except for purposes of reclamation by the riparian owner to recover land lost through erosion. This Section shall not prevent the leasing of state lands or water bottoms for mineral or other purposes. Except as provided in this Section, the bed of a navigable water body may be reclaimed only for public use.

## MAINE

None

## MARYLAND

None

# STATES & THEIR CONSTITUTIONAL PROVISIONS

**MASSACHUSETTS** Art. XCVII. The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.  
The general court shall have the power to enact legislation necessary or expedient to protect such rights.  
In the furtherance of the foregoing powers, the general court shall have the power to provide for the taking, upon payment of just compensation therefor, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes.  
Lands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court.

**MICHIGAN** Art. IV, § 52. The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction.

**MINNESOTA** Art. II, § 2. The state of Minnesota has concurrent jurisdiction on the Mississippi and on all other rivers and waters forming a common boundary with any other state or states. Navigable waters leading into the same, shall be common highways and forever free to citizens of the United States without any tax, duty, impost or toll therefor.  
Art. XIII, § 12. Hunting and fishing and the taking of game and fish are a valued part of our heritage that shall be forever preserved for the people and shall be managed by law and regulation for the public good.

**MISSISSIPPI** None

**MISSOURI** None

**MONTANA** Art. II, § 3. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities  
Art. IX, § 1, (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations. (2) The legislature shall provide for the administration and enforcement of this duty. (3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.  
§ 3, (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed. (2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use. (3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law. (4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.  
§ 7. The opportunity to harvest wild fish and wild game animals is a heritage that shall forever be preserved to the individual citizens of the state and does not create a right to trespass on private property or diminution of other private rights.

# STATES & THEIR CONSTITUTIONAL PROVISIONS

## NEBRASKA

Art. XV, § 4. The necessity of water for domestic use and for irrigation purposes in the State of Nebraska is hereby declared to be a natural want.

§ 5. The use of the water of every natural stream within the State of Nebraska is hereby dedicated to the people of the state for beneficial purposes, subject to the provisions of the following section.

§ 6. The right to divert unappropriated waters of every natural stream for beneficial use shall never be denied except when such denial is demanded by the public interest. Priority of appropriation shall give the better right as between those using the water for the same purpose, but when the waters of any natural stream are not sufficient for the use of all those desiring to use the same, those using the water for domestic purposes shall have preference over those claiming it for any other purpose, and those using the water for agricultural purposes shall have the preference over those using the same for manufacturing purposes. Provided, no inferior right to the use of the waters of this state shall be acquired by a superior right without just compensation therefor to the inferior user.

§ 25. The citizens of Nebraska have the right to hunt, to fish, and to harvest wildlife, including by the use of traditional methods, subject only to laws, rules, and regulations regarding participation and that promote wildlife conservation and management and that preserve the future of hunting, fishing, and harvesting of wildlife. Public hunting, fishing, and harvesting of wildlife shall be a preferred means of managing and controlling wildlife. This section shall not be construed to modify any provision of law relating to trespass or property rights. This section shall not be construed to modify any provision of law relating to Article XV, section 4, Article XV, section 5, Article XV, section 6, or Article XV, section 7, of this constitution.

## NEVADA

None

## NEW HAMPSHIRE

None

## NEW JERSEY

None

## NEW MEXICO

Art. 16, § 2. The unappropriated water of every natural stream, perennial or torrential, within the state of New Mexico, is hereby declared to belong to the public and to be subject to appropriation for beneficial use, in accordance with the laws of the state. Priority of appropriation shall give the better right.

Art. 20, § 21. The protection of the state's beautiful and healthful environment is hereby declared to be of fundamental importance to the public interest, health, safety and the general welfare. The legislature shall provide for control of pollution and control of despoilment of the air, water and other natural resources of this state, consistent with the use and development of these resources for the maximum benefit of the people.

## NEW YORK

Art. XIV, § 4. The policy of the state shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products. The legislature, in implementing this policy, shall include adequate provision for the abatement of air and water pollution and of excessive and unnecessary noise, the protection of agricultural lands, wetlands and shorelines, and the development and regulation of water resources. The legislature shall further provide for the acquisition of lands and waters, including improvements thereon and any interest therein, outside the forest preserve counties, and the dedication of properties so acquired or now owned, which because of their natural beauty, wilderness character, or geological, ecological or historical significance, shall be preserved and administered for the use and enjoyment of the people. Properties so dedicated shall constitute the state nature and historical preserve and they shall not be taken or otherwise disposed of except by law enacted by two successive regular sessions of the legislature.

§ 1. The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed. Nothing herein contained shall prevent the state from constructing, completing and maintaining any highway heretofore specifically authorized by constitutional amendment, nor from constructing and maintaining to federal standards federal aid interstate highway route five hundred two ... (text describing specific locations, exceptions, projects and limitations omitted for space) ...

§ 3. (1) Forest and wild life conservation are hereby declared to be policies of the state. For the purpose of carrying out such policies the legislature may appropriate moneys for the acquisition by the state of land, outside

# STATES & THEIR CONSTITUTIONAL PROVISIONS

## NEW YORK continued

of the Adirondack and Catskill parks as now fixed by law, for the practice of forest or wild life conservation. The prohibitions of section 1 of this article shall not apply to any lands heretofore or hereafter acquired or dedicated for such purposes within the forest preserve counties but outside of the Adirondack and Catskill parks as now fixed by law, except that such lands shall not be leased, sold or exchanged, or be taken by any corporation, public or private. (2) As to any other lands of the state, now owned or hereafter acquired, constituting the forest preserve referred to in section one of this article, but outside of the Adirondack and Catskill parks as now fixed by law, and consisting in any case of not more than one hundred contiguous acres entirely separated from any other portion of the forest preserve, the legislature may by appropriate legislation, notwithstanding the provisions of section one of this article, authorize: (a) the dedication thereof for the practice of forest or wildlife conservation; or (b) the use thereof for public recreational or other state purposes or the sale, exchange or other disposition thereof; provided, however, that all moneys derived from the sale or other disposition of any of such lands shall be paid into a special fund of the treasury and be expended only for the acquisition of additional lands for such forest preserve within either such Adirondack or Catskill park.

## NORTH CAROLINA

Art. XIV, § 5. It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty.

To accomplish the aforementioned public purposes, the State and its counties, cities and towns, and other units of local government may acquire by purchase or gift properties or interests in properties which shall, upon their special dedication to and acceptance by a law enacted by a vote of three-fifths of the members of each house of the General Assembly for those public purposes, constitute part of the "State Nature and Historic Preserve," and which shall not be used for other purposes except as authorized by law enacted by a vote of three-fifths of the members of each house of the General Assembly. The General Assembly shall prescribe by general law the conditions and procedures under which such properties or interests therein shall be dedicated for the aforementioned public purposes.

## NORTH DAKOTA

Art. I, § 1. All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; pursuing and obtaining safety and happiness; and to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreational, and other lawful purposes, which shall not be infringed.

Art. XI, § 27. Hunting, trapping, and fishing and the taking of game and fish are a valued part of our heritage and will be forever preserved for the people and managed by law and regulation for the public good.

## OHIO

Art. VIII, § 2o. (A) It is determined and confirmed that the environmental and related conservation, preservation, and revitalization purposes referred to in divisions (A) (1) and (2) of this section, and provisions for them, are proper public purposes of the state and local governmental entities and are necessary and appropriate means to improve the quality of life and the general and economic well-being of the people of this state; to better ensure the public health, safety, and welfare; to protect water and other natural resources; to provide for the conservation and preservation of natural and open areas and farmlands, including by making urban areas more desirable or suitable for development and revitalization; to control, prevent, minimize, clean up, or remediate certain contamination of or pollution from lands in the state and water contamination or pollution; to provide for safe and productive urban land use or reuse; to enhance the availability, public use, and enjoyment of natural areas and resources; and to create and preserve jobs and enhance employment opportunities. Those purposes are: (1) Conservation purposes, meaning conservation and preservation of natural areas, open spaces, and farmlands and other lands devoted to agriculture, including by acquiring land or interests therein; provision of state and local park and recreation facilities, and other actions that permit and enhance the availability, public use, and enjoyment of natural areas and open spaces in Ohio; and land, forest, water, and other natural resource management projects; (2) Revitalization purposes, meaning providing for and enabling the environmentally safe and productive development and use or reuse of publicly and privately owned lands, including those within urban areas, by the remediation or clean up, or planning and assessment for remediation or clean up, of contamination, or addressing, by clearance, land acquisition or assembly, infrastructure, or otherwise, that or other property conditions or circumstances that may be deleterious to the public health and safety and the environment and water and other natural resources, or that preclude or inhibit environmentally sound or economic use or reuse of the property.

(B) The General Assembly may provide by law, subject to the limitations of and in accordance with this section, for the issuance of bonds and other obligations of the state for the purpose of paying costs of projects implementing those purposes.

Repeated in art. VIII, § 2c.

# STATES & THEIR CONSTITUTIONAL PROVISIONS

## OKLAHOMA

Art. II, § 36. All citizens of this state shall have a right to hunt, fish, trap, and harvest game and fish, subject only to reasonable regulation as prescribed by the Legislature and the Wildlife Conservation Commission. The Wildlife Conservation Commission shall have the power and authority to approve methods, practices and procedures for hunting, trapping, fishing and the taking of game and fish. Traditional methods, practices and procedures shall be allowed for taking game and fish that are not identified as threatened by law or by the Commission. Hunting, fishing, and trapping shall be the preferred means of managing game and fish that are not identified as threatened by law or by the Commission. Nothing in this section shall be construed to modify any provision of common law or statutes relating to trespass, eminent domain, or any other property rights.

## OREGON

None

## PENNSYLVANIA

Art. I, § 27. The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

## PUERTO RICO

Art. VI, § 19. It shall be the public policy of the Commonwealth to conserve, develop and use its natural resources in the most effective manner possible for the general welfare of the community; to conserve and maintain buildings and places declared by the Legislative Assembly to be of historic or artistic value; to regulate its penal institutions in a manner that effectively achieves their purposes and to provide, within the limits of available resources, for adequate treatment of delinquents in order to make possible their moral and social rehabilitation.

## RHODE ISLAND

Art. I, § 16. Private property shall not be taken for public uses, without just compensation. The powers of the state and of its municipalities to regulate and control the use of land and waters in the furtherance of the preservation, regeneration, and restoration of the natural environment, and in furtherance of the protection of the rights of the people to enjoy and freely exercise the rights of fishery and the privileges of the shore, as those rights and duties are set forth in Section 17, shall be an exercise of the police powers of the state, shall be liberally construed, and shall not be deemed to be a public use of private property.

§ 17. The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state, including but not limited to fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and passage along the shore; and they shall be secure in their rights to the use and enjoyment of the natural resources of the state with due regard for the preservation of their values; and it shall be the duty of the general assembly to provide for the conservation of the air, land, water, plant, animal, mineral and other natural resources of the state, and to adopt all means necessary and proper by law to protect the natural environment of the people of the state by providing adequate resource planning for the control and regulation of the use of the natural resources of the state and for the preservation, regeneration and restoration of the natural environment of the state.

## SOUTH CAROLINA

Art. I, § 25. The traditions of hunting and fishing are valuable parts of the state's heritage, important for conservation, and a protected means of managing nonthreatened wildlife. The citizens of this State have the right to hunt, fish, and harvest wildlife traditionally pursued, subject to laws and regulations promoting sound wildlife conservation and management as prescribed by the General Assembly. Nothing in this section shall be construed to abrogate any private property rights, existing state laws or regulations, or the state's sovereignty over its natural resources.

Art. XII, § 1. The health, welfare, and safety of the lives and property of the people of this State and the conservation of its natural resources are matters of public concern. The General Assembly shall provide appropriate agencies to function in these areas of public concern and determine the activities, powers, and duties of such agencies.

Art. XIV, § 1. The State shall have concurrent jurisdiction on all rivers bordering on this State, so far as such rivers shall form a common boundary to this and any other State bounded by the same; and they, together with all navigable waters within the limits of the State, shall be common highways and forever free, as well to the inhabitants of this State as to the citizens of the United States, without any tax or impost therefor, unless the same be expressly provided for by the General Assembly.

§ 4. All navigable waters shall forever remain public highways free to the citizens of the State and the United States without tax, impost or toll imposed; and no tax, toll, impost or wharfage shall be imposed, demanded or received from the owners of any merchandise or commodity for the use of the shores or any wharf erected on the shores or in or over the waters of any navigable stream unless the same be authorized by the General Assembly.

# STATES & THEIR CONSTITUTIONAL PROVISIONS

## SOUTH DAKOTA

None

## TENNESSEE

Art. I, § 29. That an equal participation in the free navigation of the Mississippi, is one of the inherent rights of the citizens of this State; it cannot, therefore, be conceded to any prince, potentate, power, person or persons whatever.

Art. XI, § 13 The General Assembly shall have the power to enact laws for the protection and preservation of game and fish, within the state, and such laws may be enacted for and applied and enforced in particular counties or geographical districts, designated by the General Assembly. The citizens of this state shall have the personal right to hunt and fish, subject to reasonable regulations and restrictions prescribed by law. The recognition of this right does not abrogate any private or public property rights, nor does it limit the state's power to regulate commercial activity. Traditional manners and means may be used to take non-threatened species.

## TEXAS

Art. XVI, § 59, (a) The conservation and development of all of the natural resources of this State, and development of parks and recreational facilities, including the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power and all other useful purposes, the reclamation and irrigation of its arid, semi-arid and other lands needing irrigation, the reclamation and drainage of its overflowed lands, and other lands needing drainage, the conservation and development of its forests, water and hydro-electric power, the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto.

(b) There may be created within the State of Texas, or the State may be divided into, such number of conservation and reclamation districts as may be determined to be essential to the accomplishment of the purposes of this amendment to the constitution, which districts shall be governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions concerning the subject matter of this amendment as may be conferred by law.

(c) The Legislature shall authorize all such indebtedness as may be necessary to provide all improvements and the maintenance thereof requisite to the achievement of the purposes of this amendment. All such indebtedness may be evidenced by bonds of such conservation and reclamation districts, to be issued under such regulations as may be prescribed by law... (text omitted)

(c-1) In addition and only as provided by this subsection, the Legislature may authorize conservation and reclamation districts to develop and finance with taxes those types and categories of parks and recreational facilities that were not authorized by this section to be developed and financed with taxes before September 13, 2003. For development of such parks and recreational facilities, the Legislature may authorize indebtedness payable from taxes as may be necessary to provide for improvements and maintenance only for a conservation and reclamation district all or part of which is located in Bexar County, Bastrop County, Waller County, Travis County, Williamson County, Harris County, Galveston County, Brazoria County, Fort Bend County, or Montgomery County, or for the Tarrant Regional Water District, a water control and improvement district located in whole or in part in Tarrant County... (text omitted)

## UTAH

Art. XVIII, § 1. The Legislature shall enact laws to prevent the destruction of and to preserve the Forests on the lands of the State, and upon any part of the public domain, the control of which may be conferred by Congress upon the State.

## VERMONT

Chap. 2, § 67. The inhabitants of this State shall have liberty in seasonable times, to hunt and fowl on the lands they hold, and on other lands not inclosed, and in like manner to fish in all boatable and other waters (not private property) under proper regulations, to be made and provided by the General Assembly.

# STATES & THEIR CONSTITUTIONAL PROVISIONS

## VIRGINIA

Art. XI § 1. To the end that the people have clean air, pure water, and the use and enjoyment for recreation of adequate public lands, waters, and other natural resources, it shall be the policy of the Commonwealth to conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings. Further, it shall be the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth.

§ 2. In the furtherance of such policy, the General Assembly may undertake the conservation, development, or utilization of lands or natural resources of the Commonwealth, the acquisition and protection of historical sites and buildings, and the protection of its atmosphere, lands, and waters from pollution, impairment, or destruction, by agencies of the Commonwealth or by the creation of public authorities, or by leases or other contracts with agencies of the United States, with other states, with units of government in the Commonwealth, or with private persons or corporations. Notwithstanding the time limitations of the provisions of Article X, Section 7, of this Constitution, the Commonwealth may participate for any period of years in the cost of projects which shall be the subject of a joint undertaking between the Commonwealth and any agency of the United States or of other states.

§ 3. The natural oyster beds, rocks, and shoals in the waters of the Commonwealth shall not be leased, rented, or sold but shall be held in trust for the benefit of the people of the Commonwealth, subject to such regulations and restriction as the General Assembly may prescribe, but the General Assembly may, from time to time, define and determine such natural beds, rocks, or shoals by surveys or otherwise.

§ 4. The people have a right to hunt, fish, and harvest game, subject to such regulations and restrictions as the General Assembly may prescribe by general law.

## WASHINGTON

Art. XVII, § 1. The state of Washington asserts its ownership to the beds and shores of all navigable waters in the state up to and including the line of ordinary high tide, in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes: Provided, that this section shall not be construed so as to debar any person from asserting his claim to vested rights in the courts of the state.

## WEST VIRGINIA

None

## WISCONSIN

Art. I, § 26. The people have the right to fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed by law.

Art. IX § 1. The state shall have concurrent jurisdiction on all rivers and lakes bordering on this state so far as such rivers or lakes shall form a common boundary to the state and any other state or territory now or hereafter to be formed, and bounded by the same; and the river Mississippi and the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free, as well to the inhabitants of the state as to the citizens of the United States, without any tax, impost or duty therefor.

## WYOMING

Art. 1, § 31. Water being essential to industrial prosperity, of limited amount, and easy of diversion from its natural channels, its control must be in the state, which, in providing for its use, shall equally guard all the various interests involved.

§ 39. The opportunity to fish, hunt and trap wildlife is a heritage that shall forever be preserved to the individual citizens of the state, subject to regulation as prescribed by law, and does not create a right to trespass on private property, diminish other private rights or alter the duty of the state to manage wildlife.



## *For the Generations*

Our right to pure water, clean air and a healthy environment are inherent, inalienable and fundamental rights retained by the people of all Generations. There can be no life, liberty or happiness without a healthy environment.

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