

DROUGHT AND PUBLIC HEALTH LAW

Drought and Human Health Workshop

St. Paul, MN

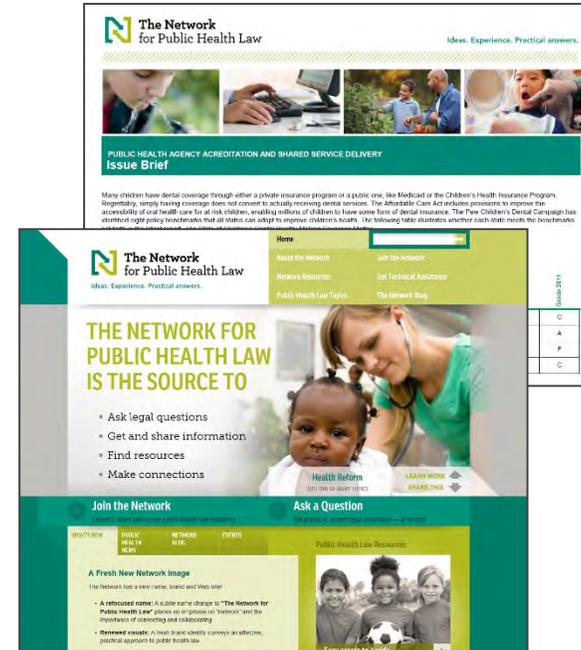
November 21, 2019

The Network for Public Health Law

Contact the Network to:

- Get practical legal assistance on a variety of public health topics
- Find helpful resources from webinars and trainings to fact sheets and legal briefs
- Connect with a community of experts and users of public health law

Support is available at no cost! Visit www.networkforphl.org for more information.



The screenshot displays the website's homepage with a green and white color scheme. At the top, the logo and tagline "Ideas. Experience. Practical answers." are visible. A navigation menu includes "Home", "About the Network", "Network Resources", "Public Health Law Topics", "Get Technical Assistance", and "The Network Blog". The main content area features a large banner with the text "THE NETWORK FOR PUBLIC HEALTH LAW IS THE SOURCE TO" followed by a list of services: "Ask legal questions", "Get and share information", "Find resources", and "Make connections". Below this is a "Join the Network" section with a list of states: ALABAMA, ARIZONA, CALIFORNIA, CONNECTICUT, DELAWARE, DISTRICT OF COLUMBIA, FLORIDA, GEORGIA, ILLINOIS, INDIANA, IOWA, KANSAS, KENTUCKY, LOUISIANA, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NEVADA, NEW JERSEY, NEW YORK, NORTH CAROLINA, NORTH DAKOTA, OHIO, OKLAHOMA, OREGON, PENNSYLVANIA, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA, TEXAS, UTAH, VERMONT, VIRGINIA, WASHINGTON, WEST VIRGINIA, WISCONSIN, WYOMING. A "Public Health Law Resources" section is also present. The footer includes a "A Fresh New Network Image" section with bullet points: "A rebraided name: A public name change to 'The Network for Public Health Law' places an emphasis on 'network' and the importance of connecting and collaborating." and "Rebrand visuals: A fresh brand identity conveys an effective, practical approach to public health law."



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EMERGENCY DECLARATIONS

Pathways to a Federal Disaster Declaration

» Major Disaster Declaration/Emergency Declaration

The Stafford Act

By the President, upon Governor's Request

» Agricultural Disaster Designation

Food and Nutrition Act of 2008; 7 C.F.R. pt. 759

By the Secretary of Ag, upon Governor's Request

» Public Health Emergency Declaration

Public Health Service Act

By Secretary of Health and Human Services



EMERGENCY DECLARATION AUTHORITIES ACROSS ALL STATES AND D.C.

Table

This table provides state statutory and regulatory authorities for emergency declarations in all 50 U.S. States and the District of Columbia. It includes emergency declarations, public health emergency declarations, and other types of declarations that may relate to the public's health as categorized in columns I - IV.

- I. **Emergency/Disaster** provides citations and hyperlinks to legal authorities for state declarations of "emergency," "disaster," and similar terms (as noted in the references) in all 51 jurisdictions.¹
- II. **Public Health Emergency** lists legal authorities for specific declarations of a "public health emergency," which may be based on the Model State Emergency Health Powers Act (MSEHPA),² or other statutory bases for emergency/disaster declarations premised on public health concerns. These authorities were identified in 35 jurisdictions.
- III. **Other Declarations** catalogs other types of declarations that may also relate to public health, as identified in 47 jurisdictions. Note that additional types of emergency declarations are not included if they may not relate to public health.³
- IV. **Posted Declarations** provides hyperlinks to existing online archives of active or expired declarations. These links are illustrative only and may not be current or comprehensive.

https://www.networkforphl.org/_asset/gxrdwm/Emergency-Declaration-Authorities.pdf (2015)

ClimateEmergencyDeclaration.org





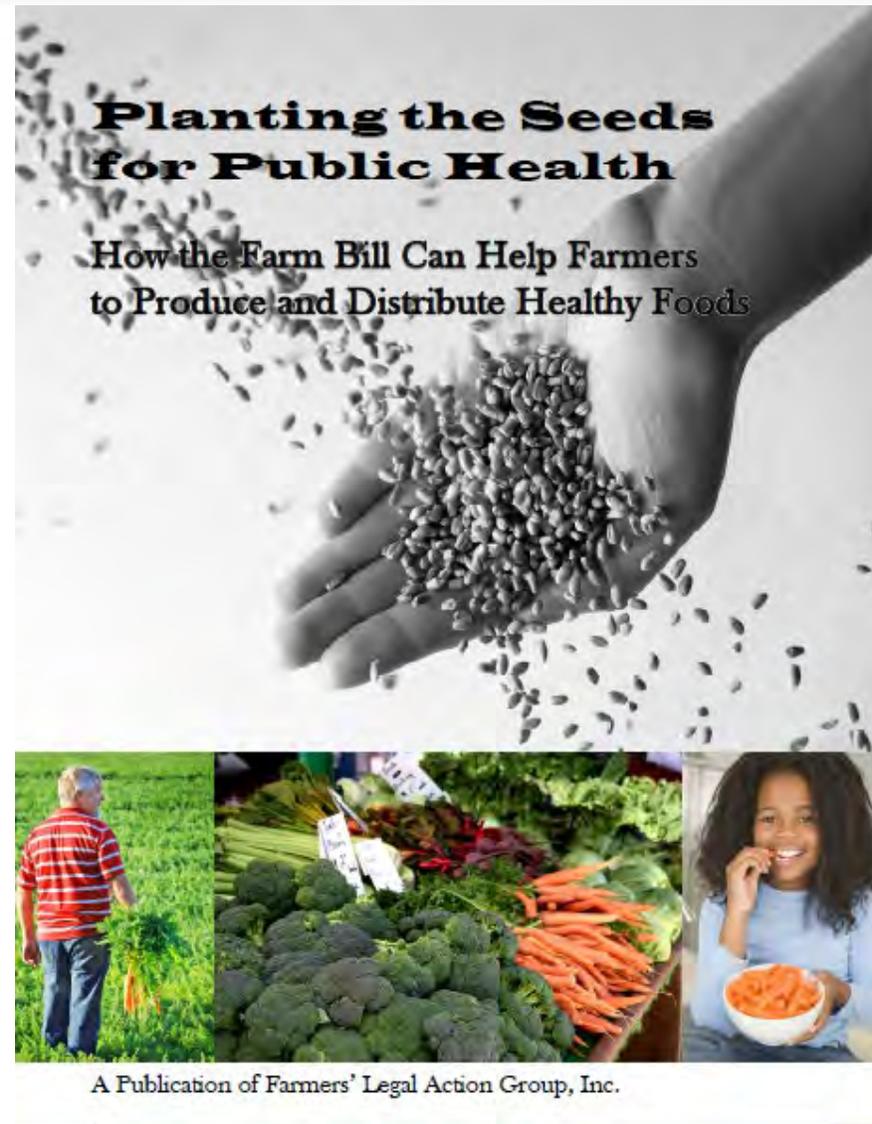
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Drought and the Farm Bill

Why Analyze the Farm Bill?

- » **Vehicle to promote better health**
- » **Impact on crops grown, food access and nutrition, and quality of soil, air, and water**
- » **Main source of federal law governing agriculture**
- » **2018 Farm Bill budget projected at about \$85 billion per year for five years**
- » **About 40% of U.S. land mass is farmland (900 million acres)**
- » **Opportunities for cross-sector collaboration**





Disaster Assistance Programs

- » **Crop Insurance**
- » **Non-insurance Crop Disaster Assistance Program (NAP)**
- » **Ad hoc programs to address loss of livestock, livestock feed, trees and tree crops, honeybees, farm-raised fish, etc.**
- » **Vital part of the financial safety net for farmers.**
- » **Policy question—Should programs do more to influence farming practices and prevent natural disasters?**

Conservation in the Farm Bill

» **Conservation programs (not an exhaustive list)**

Environmental Quality Incentives Program, Conservation Reserve Program, Conservation Stewardship Program, Farmable Wetlands Program, Emergency Conservation Program, Emergency Forest Restoration Program, Grasslands Reserve Program, Conservation Innovation Grants, Regional Conservation Partnership Program, Soil Health and Income Protection Program

» **Target poor farming practices, or reward best practices?**

» **Conservation compliance for loans and crop insurance**

» **Soil health and carbon sequestration provisions**

» **Sense of Congress re: watershed partnerships**

» **Conservation practice standards and data collection**



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Water Laws & Drought

Protecting Water Quantity and Water Quality

Protecting Water Resources: *The Public Trust Doctrine*

- The state holds navigable waters in trust for the public.
 - Protected waters
 - Protected uses
- Public water supplies that impact surface water.
 - Wisconsin's public trust duties apply to high capacity municipal groundwater withdrawals that impact navigable waters.

Lake Beulah Mgmt. Dist. v. State Dep't of Nat. Res., 2011 WI 54, ¶ 34.

- Minnesota's public trust doctrine does not apply to municipal groundwater withdrawals that impact surface water levels. On Appeal.

White Bear Lake Restoration Ass'n. v. MN Dep't of Nat. Res., 928 N.W. 2d 351, (2019), appealed



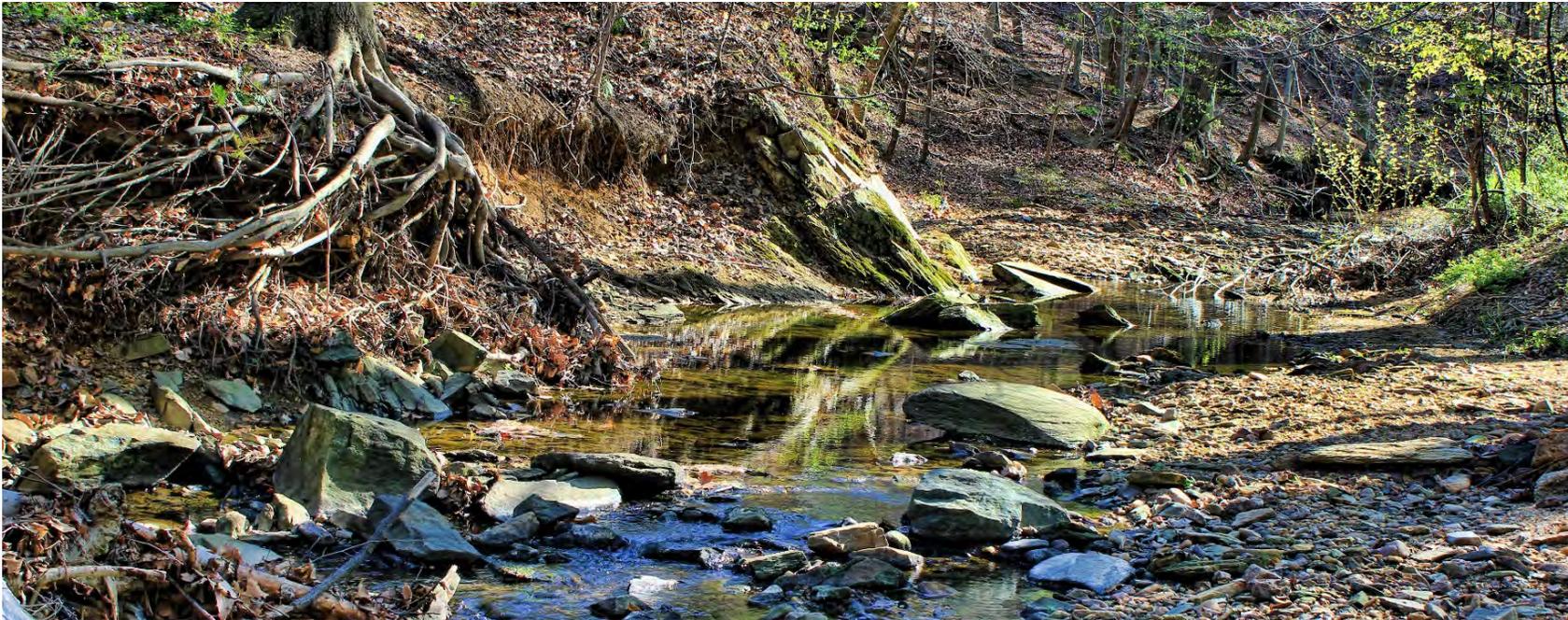
Water Quantity: *The Great Lakes Compact*

“Future Diversions and Consumptive Uses of Basin Water resources have the potential to significantly impact the environment, economy and welfare of the Great Lakes – St. Lawrence Region.”

Great Lakes-St. Lawrence River Basin Water Resources Compact, §1.3.1.d, Pub. L. No. 110-342, 122 Stat. 3739 (2008).



Water Quality



- **Safe Drinking Water Act**
 - source water protection
 - nitrate/bacteria
- **Clean Water Act**
 - historic low flows
 - harmful algal booms
- **Private Wells**

Mitigation Measures to Protect Drinking Water Supplies

Conservation Rate structure

- public water suppliers must use a conservation rate structure, or a uniform rate structure with a conservation program that achieves demand reduction.

Minn. Stat. § 103G.291(4).

Groundwater protection

- Mt. Simon-Hinckley aquifer:
 - No new water-use permits in a metro county.
Minn. Stat. § 103G.271, Subd. (4a)
 - Exception for potable water use with no feasible or practical alternatives, permit must include conservation

Recycled Water

- Level of treatment required for irrigation of various crops and uses such as parks and playgrounds.
Cal. Code Regs. Tit. 22 § 60304.
- Signage to prevent contact with or drinking of recycled water by class.
Idaho Admin. Code r. 58.01.17.603

Groundwater Protection Overlay District

- Chippewa County WI: Wellhead protection ordinance include land use regulations and restrictions to protect the municipal water supplies from contaminants
- Drought benefit: reduce projected increased concentration of pollutants that can occur during drought conditions.

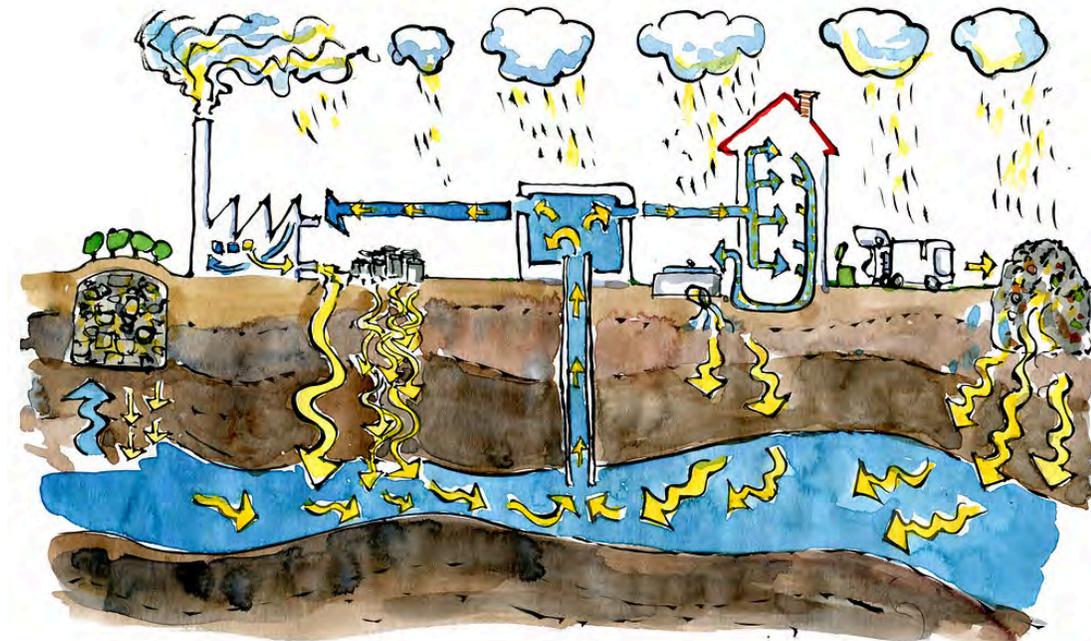
Local authority can impose fees for overuse (CA)

Development requirements for landscaping – landscaping water use standards

Lakeville, MN –

- odd/even sprinkling restriction May thru September,
- no city water can be used to irrigate or water lawns between 11 am and 5 pm.
- Penalty: surcharge for water service

Local restrictions



Green Infrastructure

- ❖ Rain water harvesting requirements for commercial buildings
- ❖ Impervious surface restrictions/permeable pavement requirements
- ❖ Tree planting programs
- ❖ Rain gardens
- ❖ Infiltration requirements included in county stormwater plans (Washtenaw County Water Resources Commissioner)



Soak Up the Rain with Green Infrastructure
www.epa.gov/soakuptherain

EPA United States Environmental Protection Agency

soak up the rain
created by EPA 2014

Tree Canopy

Rain Barrel

Rain Garden

Green Roof

Tree Planter Box

Pervious Concrete

Learn more. Take Action.

Poster created by U.S. EPA Office of Wetlands, Oceans and Watersheds.

green roof, green wall, cistern, tree planter boxes, pervious concrete, trees, rain barrel, downsport drains to rain garden, bioswale, narrower streets, curb-inlet, porous asphalt, permeable pavers, parking lot bioswales, pervious concrete, tree planter boxes

areas. Indeed, the city of Olympia, Washington found that

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