Delivering the potential of the public trust doctrine

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Governance arrangements

PTD

Trust resources

Hold in trust

Access in the interests of

Hold to account

Beneficiaries

Trustees
General concepts

• Resources held in trust by government
• Access allowed but regulated
• For the benefit of all
• Intergenerational dimension
Delivering the potential of PTD

1. Agree on contemporary definitions
2. Pay attention to transboundary and inter-agency issues
3. Improve public participation
4. Assign clear responsibilities to trustees and trust managers
Diversity of applications

Interpretation differs between states:

• Makes PTD complicated
• Generates difficulties for working between jurisdictions
• Seen as a problem but could in fact be a strength
“The [PTD], like all common law principles, should not be considered fixed or static, but should be molded and extended to meet changing conditions and needs of the public it was created to benefit.”

- Supreme Court of New Jersey, 1972
Definitions

PTD

Trust resources

In the interests of

Access

Hold in trust

Hold to account

Trusted

Beneficiaries
Trust resources

What kind of things should be trust resources?

Pay attention to transboundary resources
Beneficiaries

• PTD clear on an inclusive definition: not just users
• Clear on future generations
• But unclear on exact scope
• Should some wildlife be beneficiaries?
Interests

• Who decides? On whose behalf?
• Silent constituencies
• Social pressures vs ecological imperatives
• Preferences vs interests?
Delivering the potential of PTD

1. Agree on contemporary definitions
2. Pay attention to transboundary and inter-agency issues
3. Improve public participation
4. Assign clear responsibilities to trustees and trust managers
"That generations of trustees have slept on public rights does not foreclose their successors from awakening."

- Arizona Supreme Court, 1991

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