THE STATE OF SOUTH CAROLINA
In The Supreme Court

James Jefferson Jowers Sr., Andrew J. Anastos, Ben Williamson, Melanie Ruhlman, and Anthony Ruhlman, Appellants,

v.

South Carolina Department of Health and Environmental Control, Respondent.

Appellate Case No. 2016-000428

Appeal from Barnwell County
R. Markley Dennis Jr., Circuit Court Judge

Opinion No. 27725
Heard December 1, 2016 – Filed July 19, 2017

AFFIRMED

Amy E. Armstrong, Amelia A. Thompson, and Jessie A. White, all of South Carolina Environmental Law Project, of Pawleys Island, for Appellants.

Attorney General Alan Wilson, Solicitor General Robert D. Cook, Deputy Solicitor General J. Emory Smith Jr., Senior Assistant Attorney General T. Parkin C. Hunter, Assistant General Counsel Michael S. Traynham, all of Columbia and Lisa A. Reynolds, of Anderson Reynolds & Stephens, LLC, of Charleston, for Respondent.

M. McMullen Taylor, of Mullen Taylor, LLC, of Columbia and John D. Echeverria, of Vermont School of Law, South Royalton, Vermont, for Amicus Curiae, Congaree Riverkeeper, Inc.

JUSTICE FEW: This is a challenge to the registration provisions in the Surface Water Withdrawal Act. The plaintiffs claim those provisions are an unconstitutional taking, a violation of due process, and a violation of the public trust doctrine. The circuit court granted summary judgment against the plaintiffs on the grounds the case does not present a justiciable controversy, both because the plaintiffs lack standing and the dispute is not ripe for judicial determination. We affirm.

I. The Surface Water Withdrawal Act

The Surface Water Withdrawal, Permitting, Use, and Reporting Act regulates surface water withdrawals in South Carolina. S.C. Code Ann. §§ 49-4-10 to -180 (Supp. 2016). Surface water is defined as "all water that is wholly or partially within the State . . . or within its jurisdiction, which is open to the atmosphere and subject to surface runoff, including, but not limited to, lakes, streams, ponds, rivers, creeks, runs, springs, and reservoirs . . . ." § 49-4-20(27). The Department of Health and Environmental Control is charged with the implementation and enforcement of the Act. § 49-4-170. The Act establishes two mechanisms to regulate surface water withdrawals—a permitting system and a registration system.

A. Permitting System

The Act requires most "surface water withdrawers" to obtain a permit before withdrawing surface water. § 49-4-25. A "surface water withdrawer" is defined as "a person withdrawing surface water in excess of three million gallons during any one month . . . ." § 49-4-20(28). A permit applicant must provide detailed information to DHEC about the proposed surface water withdrawal. § 49-4-80(A). DHEC must provide the public with notice of a permit application within thirty days, and if residents of the affected area request a hearing, DHEC must conduct one. § 49-4-80(K)(1). If DHEC determines the proposed use is reasonable, DHEC must issue a permit to the applicant. §§ 49-4-25, -80(J). In making its determination of reasonableness, DHEC is required to consider a number of criteria. § 49-4-80(B).[1] Permits are issued for a term of no less than twenty years

[1] Subsection 49-4-80(B) sets forth the criteria for determining reasonableness: (1) minimum instream flow or minimum water level and the safe yield; (2) anticipated effect of the proposed use on existing users; (3) reasonably foreseeable future need

and no more than fifty years. § 49-4-100(B). After a permit is issued, surface water withdrawals made pursuant to the terms and conditions of the permit are presumed to be reasonable. § 49-4-110(B).

B. Registration System

Agricultural users are treated differently under the Act. "[A] person who makes surface water withdrawals for agricultural uses[2] at an agricultural facility[3]" is classified as a "Registered surface water withdrawer," § 49-4-20(23), and is not required to obtain a permit, § 49-4-35(A).[4] Instead, agricultural users simply register their surface water use with DHEC and are permitted to withdraw surface water up to the registered amount. § 49-4-35(A). Because agricultural users are exempt from the permit requirement, their surface water use is not subject to the subsection 49-4-80(B) reasonableness factors.

The Act establishes two ways for agricultural users to register their water use with DHEC—one for users who were already reporting their use to DHEC when the Act was rewritten in 2010,[5] and one for users who were not yet reporting their use. For

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for surface water; (4) reasonably foreseeable detrimental impact on navigation, fish and wildlife habitat, or recreation; (5) applicant's reasonably foreseeable future water needs; (6) beneficial impact on the State; (7) impact of applicable industry standards on the efficient use of water; (8) anticipated effect of the proposed use on: (a) interstate and intrastate water use; (b) public health and welfare; (c) economic development and the economy of the State; and (d) federal laws and interstate agreements and compacts; and (9) any other reasonable criteria DHEC promulgates by regulation. § 49-4-80.

[2] "Agricultural use" is defined broadly to include the preparation, production, and sale of crops, flowers, trees, turf, and animals. § 49-4-20(3).

[3] "Agricultural facility" is also defined broadly. § 49-4-20(2).

[4] As section 49-4-25 indicates, there are other exceptions to the permit requirement "provided in Sections 49-4-30, 49-4-35, 49-4-40, and 49-4-45." The exception for agricultural users is provided in section 49-4-35.

[5] The Water Use Reporting and Coordination Act was originally enacted in 1982, Act No. 282, 1982 S.C. Acts 1980. It was completely rewritten in 2010 and renamed the Surface Water Withdrawal, Permitting, Use, and Reporting Act, Act

those already reporting, the Act allows the user to "maintain its withdrawals at its highest reported level or at the design capacity of the intake structure" and the user is deemed registered. § 49-4-35(B). For users who were not yet reporting their use, the Act requires the user to report its anticipated withdrawal amount to DHEC for DHEC to determine whether the use is within the "safe yield" of the water source. § 49-4-35(C). Safe yield is defined as,

> [T]he amount of water available for withdrawal from a particular surface water source in excess of the minimum instream flow or minimum water level for that surface water source. Safe yield is determined by comparing the natural and artificial replenishment of the surface water to the existing or planned consumptive and nonconsumptive uses.

§ 49-4-20(25). After DHEC determines whether the anticipated withdrawal amount is within the safe yield, it "must send a detailed description of its determination to the proposed registered surface water withdrawer." § 49-4-35(C).

The Act grants DHEC oversight over registered withdrawals. Subsection 49-4-35(E) provides,

> The department may modify the amount an existing registered surface water withdrawer may withdraw, or suspend or revoke a registered surface water withdrawer's authority to withdraw water, if the registered surface water withdrawer withdraws substantially more surface water than he is registered for or anticipates withdrawing, as the case may be, and the withdrawals result in detrimental effects to the environment or human health.

§ 49-4-35(E).

Registration has three effects important to the plaintiffs' claims in this case. First, unlike permits, which are issued for a term of years, registrations have no time limits. *Compare* § 49-4-35(C) (allowing registered users to continue making withdrawals "during subsequent years" with no reference to time limits), *with* § 49-

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No. 247, 2010 S.C. Acts 1824-49. The 1982 Act provided for a regulatory "reporting system for agricultural users." 1982 S.C. Acts at 1982.

4-100(B) (establishing time limits for permits). Second, the Act presumes all registered amounts are reasonable. § 49-4-110(B). Third, the Act changes the standard of proof for private causes of action for damages by requiring plaintiffs to show a registered user is violating its registration. *Id.*

II. Procedural History

The plaintiffs own property along rivers or streams in Bamberg, Darlington, and Greenville counties. In September 2014, they jointly filed this action against DHEC in Barnwell County, challenging the Act's registration system for agricultural users in three ways. First, they claim the registration system is an unconstitutional taking of private property for private use. *See* S.C. CONST. art. I, § 13(A) ("private property shall not be taken for private use"). Second, they claim the Act violates their due process rights by depriving them of their property without notice or an opportunity to be heard. *See* U.S. CONST. amend. XIV, § 1 ("No state shall . . . deprive any person of . . . property, without due process of law . . . ."); S.C. CONST. art. I, § 3 ("nor shall any person be deprived of . . . property without due process of law"). Finally, they claim the Act violates the public trust doctrine by disposing of assets the State holds in trust. *See* S.C. CONST. art. XIV, § 4 ("All navigable waters shall forever remain public highways free to the citizens of the State . . . ."); *Sierra Club v. Kiawah Resort Assocs.*, 318 S.C. 119, 128, 456 S.E.2d 397, 402 (1995) (stating "the state owns the property below . . . a navigable stream . . . [as] part of the Public Trust").

The plaintiffs and DHEC filed motions for summary judgment. The circuit court granted summary judgment in favor of DHEC after finding the plaintiffs did not have standing and the case was not ripe. The circuit court also addressed the merits of the plaintiffs' claims. The court ruled the Act's registration process was not an unconstitutional taking because the plaintiffs were not deprived of any rights. Likewise, the circuit court held that without a deprivation of rights, there could be no violation of due process. The circuit court held the public trust doctrine was not violated because the plaintiffs had not lost their right to use the waterways or been injured by any withdrawals. The circuit court did not rule on DHEC's contention the claims were barred by the statute of limitations or that venue was improper.

The plaintiffs appealed to the court of appeals and moved to certify the case to this Court pursuant to Rule 204(b) of the South Carolina Appellate Court Rules. We granted the motion to certify.

III. Justiciability

Our courts will not address the merits of any case unless it presents a justiciable controversy. *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430-31, 468 S.E.2d 861, 864 (1996). In *Byrd*, we stated, "Before any action can be maintained, there must exist a justiciable controversy," and, "This Court will not . . . make an adjudication where there remains no actual controversy." *Id.*; *see also Peoples Fed. Sav. & Loan Ass'n v. Res. Planning Corp.*, 358 S.C. 460, 477, 596 S.E.2d 51, 60 (2004) ("A threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy."). "Justiciability encompasses . . . ripeness . . . and standing." *James v. Anne's Inc.*, 390 S.C. 188, 193, 701 S.E.2d 730, 732 (2010). Standing is "a personal stake in the subject matter of the lawsuit." *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 600, 550 S.E.2d 287, 291 (2001). A plaintiff has standing to challenge legislation when he sustained, or is in immediate danger of sustaining, actual prejudice or injury from the legislative action. 345 S.C. at 600-01, 550 S.E.2d at 291. To meet the "stringent" test for standing, "the plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not 'conjectural' or 'hypothetical.'" 345 S.C. at 601, 550 S.E.2d at 291 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351, 364 (1992)).[6] We have explained ripeness by defining what is not ripe, stating "an issue that is contingent, hypothetical, or abstract is not ripe for judicial review." *Colleton Cty. Taxpayers Ass'n v. Sch. Dist. of Colleton Cty.*, 371 S.C. 224, 242, 638 S.E.2d 685, 694 (2006).

Before we may determine whether the plaintiffs have presented a justiciable controversy, we must first understand their theory of how the Act has caused them injury. Because their theory depends on their interpretation of the Act, we must then interpret the Act to determine whether they have properly alleged an "injury in fact" under it, *Sea Pines*, 345 S.C. at 601, 550 S.E.2d at 291, such that this case presents an "actual controversy" as opposed to one that is "contingent, hypothetical, or abstract," *Byrd*, 321 S.C. at 431, 468 S.E.2d at 864; *Colleton Cty.*, 371 S.C. at 242, 638 S.E.2d at 694.

We review de novo the circuit court's ruling that there is no justiciable controversy. *See Ex parte State ex rel. Wilson*, 391 S.C. 565, 570, 707 S.E.2d 402, 405 (2011) (affirming the circuit court's order granting summary judgment on the basis of

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[6] A plaintiff must show two additional elements not at issue in this case: causation and likelihood the injury can be redressed by the court's decision. *Id.*

justiciability where the ruling depended on statutory interpretation, and stating, "The construction of a statute is a question of law, which this Court may resolve without deference to the circuit court.").

IV. The Plaintiffs' Theory of Injury

The plaintiffs' claims of unconstitutional taking and violation of due process are based on their allegation the Act has deprived them of "riparian" rights. The public trust claim, on the other hand, is based on the allegation the Act disposes of assets the State holds in trust for our citizens.

A. Riparian Rights

The property rights the plaintiffs allege have been taken from them under the registration provisions of the Act are known under the common law as riparian rights. The word riparian means "pertaining to or situated on the bank of a river, or a stream." 78 Am. Jur. 2d *Waters* § 33 (2013). *See also Riparian*, BLACK'S LAW DICTIONARY (10th ed. 2014) ("Of, relating to, or located on the bank of a river or stream").[7] Under the common law, riparian property owners—those owning land adjacent to rivers or streams—hold special rights allowing them to make "reasonable use" of the water adjacent to their property. *White's Mill Colony Inc. v. Williams*, 363 S.C. 117, 129, 609 S.E.2d 811, 817 (Ct. App. 2005) (citing *Lowe v. Ottaray Mills*, 93 S.C. 420, 423, 77 S.E. 135, 136 (1913)). We have described "reasonable use" as follows,

> All that the law requires of the party, by or over whose land a stream passes, is, that he should use the water in a reasonable manner, and so as not to destroy, or render

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[7] The current editions *American Jurisprudence* and *Black's Law Dictionary* recognize that some states include lakes and tidal waters within the definition of riparian. That is not true in South Carolina. In *Lowcountry Open Land Trust v. State*, 347 S.C. 96, 552 S.E.2d 778 (Ct. App. 2001), our court of appeals held "interests attached to property abutting an ocean, sea or lake are termed 'littoral.'" 347 S.C. at 108, 552 S.E.2d at 785 (citing *Littoral*, BLACK'S LAW DICTIONARY (6th ed. 1990)); *see also White's Mill Colony Inc. v. Williams*, 363 S.C. 117, 129, 609 S.E.2d 811, 817-18 (Ct. App. 2005) (stating "there is a distinction in classification that our courts have indicated a desire to strictly observe: owners of land along rivers and streams are said to hold 'riparian' rights, while owners of land abutting oceans, seas, or lakes, are said to hold 'littoral' rights").

> useless, or materially diminish, or affect, the application of the water by the proprietor below on the stream . . . .

White v. Whitney Mfg. Co., 60 S.C. 254, 266, 38 S.E. 456, 460 (1901); *see also Mason v. Apalache Mills*, 81 S.C. 554, 559, 62 S.E. 399, 401 (1908) ("The different owners of land through which a stream flows are each entitled to the reasonable use of the water, and for an injury to one owner, incidental to the reasonable use of the stream by another, there is no right of redress.").

Thus, the right of reasonable use is "subject to the limitation that the use may not interfere with the like rights of those above, below, or on the opposite shore." *White's Mill Colony Inc.*, 363 S.C. at 129, 609 S.E.2d at 817 (citing *Mason*, 81 S.C. at 559, 62 S.E. at 401). Under the common law, if a riparian owner unreasonably interferes with another riparian owner's right of reasonable use, the injured owner's remedy is to bring an action for damages, or for an injunction, or both. *See McMahan v. Walhalla Light & Power Co.*, 102 S.C. 57, 59-61, 86 S.E. 194, 194-95 (1915) (approving a jury charge on the right of reasonable use in a case where a downstream riparian owner sued an upstream riparian owner for damages); *Mason*, 81 S.C. at 557, 62 S.E. at 400 (describing the downstream riparian owner's claim for an injunction against the upstream operator of a dam based on "the unreasonable use of the stream"); *see also* 78 Am. Jur. 2d *Waters* § 53 (2013) ("Interference with riparian rights is an actionable tort. Any interference with a vested right to the use of water . . . would entitle the party injured to damages, and an injunction would issue perpetually restraining any such interference.").

B. Public Trust Assets

The Constitution of South Carolina provides, "All navigable waters shall forever remain public highways free to the citizens of the State and the United States." S.C. CONST. art. XIV, § 4. Consistent with this provision, the State owns all property below the high water mark of any navigable stream. *Sierra Club*, 318 S.C. at 128, 456 S.E.2d at 402; *see also McCullough v. Wall*, 38 S.C.L. (4 Rich.) 68, 87 (1850) (stating "in this State all rivers navigable for boats are *juris publici*[8]"). Courts have long recognized this ownership as a trust. In 1884, this Court held:

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[8] *See Juris Publici*, BLACK'S LAW DICTIONARY (10th ed. 2014) ("Of public right; relating to common or public use").

> The state had in the beds of these tidal channels not only title as property, . . . but something more, the *jus publicum*,[9] consisting of the rights, powers, and privileges . . . which she held in a fiduciary capacity for general and public use; in trust for the benefit of all the citizens of the state, and in respect to which she had trust duties to perform.

State v. Pac. Guano Co., 22 S.C. 50, 83–84 (1884); *see also Illinois Cent. R. Co. v. State of Illinois*, 146 U.S. 387, 452-53, 13 S. Ct. 110, 118, 36 L. Ed. 1018, 1042 (1892) (recognizing this ownership as a "trust which requires the government of the state to preserve such waters for the use of the public").

We now call this the "public trust doctrine." *See Sierra Club*, 318 S.C. at 127-28, 456 S.E.2d at 402 (discussing "the Public Trust Doctrine"). Under the public trust doctrine, the State "cannot permit activity that substantially impairs the public interest in marine life, water quality, or public access." *McQueen v. S.C. Coastal Council*, 354 S.C. 142, 149, 580 S.E.2d 116, 119-20 (2003). The plaintiffs argue the Act violates the public trust doctrine by disposing of the State's water to agricultural users. According to the plaintiffs, "the State has lost complete control of registered amounts of water in perpetuity."

V. The Nature of the Plaintiffs' Claims

Having explained the plaintiffs' theory of injury, we turn now to the registration provisions of the Act to determine whether its terms support the plaintiffs' allegation of an injury in fact such that this case presents an actual controversy.

A. The Takings and Due Process Claims

The plaintiffs' takings and due process claims are based on their allegation that they have lost their riparian right to bring a challenge to another riparian owner's future unreasonable use. Significantly, the plaintiffs do not allege they have sustained any injury resulting from any withdrawal of surface water that has

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[9] *See Jus Publicum*, BLACK'S LAW DICTIONARY (10th ed. 2014) ("The right, title, or dominion of public ownership; esp., the government's right to own real property in trust for the public benefit").

already been made by an agricultural user.[10] The allegation the plaintiffs do make is based on two provisions of the Act: (1) subsection 49-4-110(B), which states registered withdrawals are presumed to be reasonable and changes the standard of proof for private causes of action for damages, and (2) subsection 49-4-100(B), which requires permits must be issued for a specific term, but is silent as to time limits for registered uses. The plaintiffs argue these provisions allow registered users to withdraw a fixed amount of water that will forever be deemed reasonable, which in turn prevents them from ever successfully challenging a registered agricultural use, regardless of how conditions may change in the future. Based on this argument, the plaintiffs allege their "rights were fundamentally altered" the moment these provisions were signed into law,[11] and thus they have suffered an "injury in fact" sufficient to establish standing, and have presented an actual controversy that is ripe for judicial determination.

We find the Act does not support the plaintiffs' allegations of injury. First, we find nothing in the Act preventing the plaintiffs from seeking an injunction against a riparian owner for unreasonable use. Prior to the Act, a riparian owner could bring an action challenging another riparian owner's unreasonable use and seeking an injunction. *See Mason*, 81 S.C. at 563, 558, 62 S.E. at 402, 400 (affirming the circuit court's order granting an injunction, as modified, against the upstream operator of a dam based on "the unreasonable use of the stream"). After the Act, a riparian owner may still challenge another riparian owner's use as unreasonable—including a registered agricultural user. If such a plaintiff can prove a registered agricultural use is unreasonably interfering with his right of reasonable use, and otherwise establish the elements for an injunction, then the plaintiff may be entitled to injunctive relief.

Second, we find nothing in the Act preventing a riparian owner from filing a declaratory judgment action to protect his right of reasonable use. Under section 15-53-20 of the South Carolina Code (2005), courts have the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." A riparian owner may file a declaratory judgment action against registered agricultural users, and request the court declare their use unreasonable. While such a declaration may be of little value without an injunction, there is

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[10] In response to a discovery request, the plaintiffs admitted "[their] property and [their] use thereof have not been injured due to any withdrawal of water for agricultural purposes occurring on a river or stream flowing past property that [they] own."

[11] The rewritten Act became effective on January 1, 2011. 2010 S.C. Acts at 1848.

nothing in the Act preventing the plaintiff from including DHEC as a defendant. This, in turn, could trigger DHEC's right to modify the registration under subsection 49-4-35(E).

Third, we find nothing in the Act prohibiting private causes of action for damages against registered agricultural users. In fact, the Act specifically contemplates such actions. Subsection 49-4-110(B) states, "No private cause of action for damages arising directly from a surface water withdrawal by a permitted or registered surface water withdrawer may be maintained *unless* the plaintiff can show a violation of a valid permit or registration." § 49-4-110(B) (emphasis added). While this provision changes the standard of proof a plaintiff must meet in an action for damages, the right of action clearly still exists. We are aware of no authority—and the plaintiffs cite none—for a finding that a change to the standard of proof in an action for damages deprives a future plaintiff of property rights under the takings or due process clauses.

Finally, we find no support in the Act for the plaintiffs' argument that the presumption of reasonableness will prevent future plaintiffs from proving a registered use is unreasonable. Under the common law, the plaintiff has the burden of proving—by a preponderance of the evidence—a defendant's use is unreasonable. The Act, however, provides, "Surface water withdrawals made by permitted or registered surface water withdrawers shall be presumed to be reasonable." § 49-4-110(B). The Act is unclear whether the presumption is rebuttable or conclusive.[12] Employing the rules of statutory construction, we find the presumption is rebuttable.[13] Therefore, under the Act, a plaintiff may still meet

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[12] A rebuttable presumption is defined as an "inference drawn from certain facts that establish a prima facie case, which may be overcome by the introduction of contrary evidence." *Rebuttable Presumption*, BLACK'S LAW DICTIONARY (10th ed. 2014). A conclusive presumption is defined as a "presumption that cannot be overcome by any additional evidence or argument because it is accepted as irrefutable proof that establishes a fact beyond dispute." *Conclusive Presumption*, BLACK'S LAW DICTIONARY (10th ed. 2014).

[13] The presumption of reasonableness is found in the first sentence of subsection 49-4-110(B). The next sentence specifically contemplates a right of action for damages, "No private cause of action for damages . . . from a surface water withdrawal . . . may be maintained *unless* the plaintiff can show a violation of a valid permit or registration." § 49-4-110(B) (emphasis added). If we interpreted the presumption in the first sentence as conclusive, it would prevent any right of

his burden by proving—by a preponderance of the evidence—the defendant's use is unreasonable.

In summary, the plaintiffs' allegations that the Act has deprived them of their common law riparian rights are not supported by the terms of the Act. The plaintiffs may still challenge an agricultural use as unreasonable, they are still entitled to injunctive relief when they prove the required elements, and they may still recover damages when they satisfy the applicable standard of proof. Because the Act has not deprived the plaintiffs of their riparian rights, they have no standing, and their claim for future injury is not ripe for our determination.

The plaintiffs also argue they have standing under the public importance exception. "[S]tanding is not inflexible and standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance." *ATC S., Inc. v. Charleston Cty.*, 380 S.C. 191, 198, 669 S.E.2d 337, 341 (2008). However, we "must be cautious with this exception, lest it swallow the rule." *S.C. Pub. Interest Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 646, 744 S.E.2d 521, 524 (2013). We find the public importance exception does not apply in this case because there is no need for "future guidance."

B. The Public Trust Claim

The plaintiffs argue the Act violates the public trust doctrine because its provisions "effectively dispose of substantial, permanent rights in South Carolina's navigable waterways to agricultural users." They allege the state has "lost complete control of registered amounts of water in perpetuity" and the "registered owner has complete control over whether or not the state can ever alter the registered amount."

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action for damages, and thus the first sentence would be in conflict with the second sentence. "[S]tatutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction." *Hudson ex rel. Hudson v. Lancaster Convalescent Ctr.*, 407 S.C. 112, 124–25, 754 S.E.2d 486, 492–93 (2014). "It is the duty of this Court to give all parts and provisions of a legislative enactment effect and reconcile conflicts if reasonably and logically possible." *Adams v. Clarendon Cty. Sch. Dist. No. 2*, 270 S.C. 266, 272, 241 S.E.2d 897, 900 (1978). Reading the presumption as rebuttable leaves no conflict.

We begin our discussion of the public trust claim by observing that, to resolve this appeal, it is not necessary that we determine whether the public trust doctrine even applies in this case. South Carolina has recognized the public trust doctrine for at least 132 years, *see Pac. Guano Co.*, 22 S.C. at 83-84, yet all of the appellate court decisions we have found applying the doctrine indicate it protects the waterway itself and the land below the high water mark. *See, e.g., Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control*, 411 S.C. 16, 29, 766 S.E.2d 707, 715 (2014) (stating public trust doctrine applies to "lands below the high water line"); *Wilson*, 391 S.C. at 572, 707 S.E.2d at 406 (stating the "State holds presumptive title to all land below the high water mark"); *Sierra Club*, 318 S.C. at 128, 456 S.E.2d at 402 (stating the issue before the Court was "whether the docks substantially impair the public interest in the public trust lands and waters" and finding no violation of the public trust doctrine because "the docks would not substantially impair marine life, water quality, or public access to the area");[14] *Pac. Guano Co.*, 22 S.C. at 87 (finding "the defendants mined in the beds of [navigable] streams running through their lands under an honest but mistaken belief of their right to do so"); *Grant v. State*, 395 S.C. 225, 229, 717 S.E.2d 96, 98 (Ct. App. 2011) ("Title to land between the high and low water marks remains in the State and is held in trust for the benefit of the public."). We have never held the public trust doctrine prohibits the State from allowing riparian landowners to use the water in the waterway.

Nevertheless, the non-justiciability of the claim that the Surface Water Withdrawal Act violates the public trust doctrine is apparent on the face of the Act itself. The basic premise of the doctrine is the State does not have the power to convey to private owners assets the State holds in trust for its people. The Supreme Court of the United States explained this in *Illinois Central Railroad Company*:

> A grant of all the lands under the navigable waters of a state has never been adjudged to be within the legislative power; and any attempted grant of the kind would be held, if not absolutely void on its face, as subject to

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[14] In *Sierra Club*, to explain the general nature of the public trust doctrine, we quoted an expansive statement from an article in the Tulane Environmental Law Journal as to the scope of the doctrine. 318 S.C. at 127-28, 456 S.E.2d at 402. However, the permit applicant in that case never intended to consume the water itself, and we therefore confined our actual ruling to the permit's impact on the waterway: "marine life, water quality, or public access." 318 S.C. at 128, 456 S.E.2d at 402.

> revocation. The state can no more abdicate its trust over property in which the whole people are interested, like navigable waters and soils under them . . . than it can abdicate its police powers . . . .

146 U.S. at 453, 13 S. Ct. at 118, 36 L. Ed. at 1043.

The State does have the power, however, to take legislative action "promoting the interests of the public." *Id.*; *see also Pac. Guano Co.*, 22 S.C. at 84 (stating "the state as such trustee has the power to dispose of these beds as she may think best for her citizens"). The issue in *Illinois Central Railroad Company* was "whether the railroad corporation can hold the lands and control the waters by the grant, against any future exercise of power over them by the State." 146 U.S. at 452, 13 S. Ct. at 118, 36 L. Ed. at 1042. Explaining the applicability of the public trust doctrine to that question, the Supreme Court differentiated between grants by the state that improve the interests of the people and grants that interfere with those interests:

> The interest of the people in the navigation of the waters and in commerce over them may be improved in many instances by the erection of wharves, docks, and piers therein, for which purpose the state may grant parcels of the submerged lands; and, so long as their disposition is made for such purpose, no valid objections can be made to the grants. It is grants of parcels of lands under navigable waters that may afford foundation for wharves, piers, docks, and other structures in aid of commerce, and grants of parcels which, being occupied, do not substantially impair the public interest in the lands and waters remaining, that are chiefly considered and sustained in the adjudged cases as a valid exercise of legislative power consistently with the trust to the public upon which such lands are held by the state. But that is a very different doctrine from the one which would sanction the abdication of the general control of the state over lands under the navigable waters of an entire harbor or bay, or of a sea or lake. Such abdication is not consistent with the exercise of that trust which requires the government of the state to preserve such waters for the use of the public.

146 U.S. at 452-53, 13 S. Ct. at 118, 36 L. Ed. at 1042.

By its terms, the Surface Water Withdrawal Act is designed to allow use of surface waters to promote the interests of the people, while protecting against any use of surface water that is contrary to those interests. First, the Act allows DHEC to grant a permit only if it "determines that the applicant's proposed use is reasonable," § 49-4-25, and requires DHEC, before allowing registration, to make a "determination as to whether [the anticipated withdrawal] quantity is within the safe yield for that water source," § 49-4-35(C). Second, the Act grants DHEC the power to subsequently restrict permitted and registered surface water usage when necessary to protect the public interest. Under subsection 49-4-120(A), DHEC "may modify, suspend, or revoke a permit under [listed] conditions." Similarly, subsection 49-4-35(E) enables DHEC to "modify the amount an existing registered surface water withdrawer may withdraw, or suspend or revoke a registered surface water withdrawer's authority to withdraw water."[15]

The plaintiffs' public trust doctrine claims are based exclusively on their belief that future surface water withdrawals may endanger assets held in trust by the State, and their argument that the Surface Water Withdrawal Act prohibits the State from protecting those assets. As we have explained, however, the Act provides several mechanisms for DHEC to protect against the loss of trust assets. On its face, therefore, the Act is entirely consistent with the State's obligations under the public trust doctrine. Until a plaintiff alleges the State is failing to utilize its power under the Act or otherwise failing to protect public trust assets, any claim based on the public trust doctrine does not present a justiciable controversy.

In *Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004), we explained that the decision of whether to utilize the public importance exception to standing requires balancing two competing interests:

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[15] In addition, the Drought Response Act protects the State's interest in the water in navigable streams. S.C. Code Ann. §§ 49-23-10 to -100 (2008 & Supp. 2016). Under the Drought Response Act, the Department of Natural Resources has the duty to "formulate, coordinate, and execute a drought mitigation plan," § 49-23-30, and has broad powers to protect the water in navigable streams against excessive consumption by surface water withdrawers, *e.g.*, § 49-23-50. These powers include the authority to prevent most registered agricultural users from withdrawing unreasonable amounts of water during periods of drought. § 49-23-70(C).

> An appropriate balance between the competing policy concerns underlying the issue of standing must be realized. Citizens must be afforded access to the judicial process to address alleged injustices. On the other hand, standing cannot be granted to every individual who has a grievance against a public official. Otherwise, public officials would be subject to numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits.

357 S.C. at 434, 593 S.E.2d at 472.

The "alleged injustice" the plaintiffs seek to address in this case is that at some point in the future the State may fail to protect against currently nonexistent unreasonable uses of surface water, which in turn could become so severe that the State's inaction amounts to a violation of its responsibilities to protect the public trust. However, neither the plaintiffs nor this Court can predict whether the State will attempt the necessary future action to protect against these hypothetical future unreasonable uses, and thus the "Citizens must be afforded access to the judicial process" side of the *Sloan* balance carries very little weight. After weighing that factor against the other competing interests we described in *Sloan*, we find the public importance exception should not apply to the plaintiffs' public trust claim. As we have stated before, courts "must be cautious with this exception, lest it swallow the rule." *S.C. Pub. Interest Found.*, 403 S.C. at 646, 744 S.E.2d at 524.

VI. Conclusion

We find the plaintiffs do not have standing and have not made any claim that is ripe for judicial determination. Therefore, the circuit court correctly determined there is no justiciable controversy. Accordingly, the circuit court's decision to grant summary judgment in favor of DHEC is **AFFIRMED**.

Acting Justices Costa M. Pleicones and James E. Moore, concur. HEARN, J., concurring in part and dissenting in part in a separate opinion in which BEATTY, C.J., concurs.

JUSTICE HEARN: I concur with the majority's analysis of Appellants' takings and due process claims, but I respectfully dissent on the issue of the public trust doctrine. Because of the Surface Water Withdrawal Act's inherent connection to the public waterways of South Carolina, I would find that Appellants' public trust claim comes within the public importance exception to standing. Cognizant of the fact that the public importance exception is used sparingly by this Court, I believe if there is ever a time when the doctrine should be applied, this is it.

DISCUSSION

I. STANDING

The public importance exception provides standing to a plaintiff where an issue is of such public importance that its resolution is required for future guidance. *Sloan v. Dep't of Transp.*, 365 S.C. 299, 304, 618 S.E.2d 876, 878 (2005). Thus, the doctrine affords citizens access to the judicial process to address alleged injustices where standing otherwise would not be available. *See Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004). We have applied the doctrine in a wide range of cases where we determined an underlying societal interest required resolution. *See, e.g.*, *S.C. Pub. Interest Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 645, 744 S.E.2d 521, 524 (2013) (issue of whether statute governing composition of board of directors of state infrastructure bank was unconstitutional fell within public interest exception); *Davis v. Richland County Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 742 (2007) (finding public importance standing to bring action challenging constitutionality of act altering method for electing members of county commission); *Baird v. Charleston County*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999) (doctors had standing to seek injunction against county issuing tax exempt bonds for purchase of medical facility).

The circuit judge based his decision to deny public importance standing to Appellants in part on the lack of previous challenges to the Act. This was error. A history of previous challenges to legislation is not a prerequisite to achieving standing under the public importance exception; if indeed it were, no party could ever raise a novel issue without meeting traditional standing requirements, and the public importance exception would be rendered meaningless. Rather, the touchstone of the doctrine is whether the matter is "inextricably connected to the public need for court resolution for future guidance." *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008). Given Appellants' allegations regarding violations of the public trust, I believe the claim implicates significant societal interests deserving of a definitive disposition.

Accordingly, I would reverse the circuit judge's grant of summary judgment as to the public trust claim. Rather than address the merits of Appellants' claim at this stage without the benefit of a fully developed record, I would simply reverse summary judgment and remand to the circuit court. However, because the majority has expressed its views on the merits of Appellants' claim, I feel compelled to do so as well.

II. PUBLIC TRUST DOCTRINE

The public trust doctrine protects the public's "inalienable right to breathe clean air; to drink safe water; to fish and sail, and recreate upon the high seas, territorial seas and navigable waters; as well as to land on the seashores and riverbanks." *Sierra Club v. Kiawah Resort Associates*, 318 S.C. 119, 127–28, 456 S.E.2d 397, 402 (1995). With this in mind, I turn to the particular aspects of the Act which I believe impede the State's ability to manage the public trust.

Section 49-4-35(E) of the Act grants DHEC authority only to modify a registered user's withdrawal if the amount of water being withdrawn is "substantially more" than his registered amount and the withdrawals have detrimental effects on the environment or human health. S.C. Code Ann. § 49-4-35(E) (Supp. 2016). Whereas under the common law the right to withdraw was correlative, and reasonableness was ever dependent upon the dynamic conditions of the waterway, the Act now allows a registered user to lock in a presumed reasonable volume of withdrawable water in perpetuity. Problematically, section 49-4-35(E) grants DHEC no authority to modify withdrawals unless the user exceeds his registered amount. In other words, the Act has established fixed withdrawals which do not fluctuate according to in-stream conditions. While withdrawing four million gallons per month may have no harmful effects at the present, changing conditions in ten years may render that amount detrimental to a waterway. Under this new regulatory scheme, a user may continue to withdraw the registered amount even if it is harmful to the health of the waterway, and DHEC has no authority to curtail those withdrawals so long as the user remains within his registered amount. The common law system which once allowed for flexibility has been replaced by a more rigid framework that does not on its face provide sufficient authority for DHEC to protect the public's interest in South Carolina's waterways. Though I believe a water permitting regime can be implemented without jeopardizing the public trust, I find the Act flawed in that it does not grant DHEC the inherent authority to modify a registered user's withdrawals as conditions may require.

The majority cites to the Drought Response Act to further support its position that the State has not abrogated its duties to protect and manage public waterways. Specifically, the majority suggests that section 49-23-70(C) of the South Carolina Code (Supp. 2016) grants the State authority to limit withdrawals made by registered users in times of drought. I will not delve into a lengthy analysis of the statute because it is not at issue in this case; however, a plain reading of this subsection indicates that it grants the State authority to curtail only nonessential uses, carving out exceptions for essential uses, including agricultural operations for food production—precisely one of the industries that would qualify as a registered user under the Act. In short, neither the Act nor the Drought Response Act creates any mechanism for the State to lower the registered amount if it becomes harmful to the waterway unless the user exceeds his registered amount.

By crafting the Act in such a way that DHEC is limited in its ability to modify registered withdrawals, I believe the State has compromised its duty to prevent "activity that substantially impairs the public interest in marine life, water quality, or public access." *McQueen v. S.C. Coastal Council*, 354 S.C. 142, 149, 580 S.E.2d 116, 119-20 (2003). Therefore, I do not join the majority in holding the Act is entirely consistent with the State's obligations under the public trust doctrine.

CONCLUSION

For the foregoing reasons, I believe the circuit judge erred in granting summary judgment on Appellants' pubic trust doctrine claim, and I would reverse and remand to the circuit court for further proceedings.

BEATTY, C.J., concurs.