Works, 20 Nev. at 275, 21 P. at 319 ("And he who first connects his own labor with property thus situated and open to general exploration does, in natural justice, acquire a better right to its use and enjoyment than others who have not given such labor. So the miners on the public lands throughout the pacific states and territories by their customs, usages, and regulations everywhere recognized the inherent justice of this principle . . . ." (internal quotation marks omitted)).

Finally, the dispensation of water under the state's statutory scheme satisfies *Lawrence*'s final requirement that the dispensation "maintain the trust for the use and enjoyment of present and future generations." *See* 127 Nev. at 405, 254 P.3d at 616. As previously discussed, the state's water statutes limit water allocations to those that are put to beneficial use, *see* NRS 533.060, require the State Engineer to reject permits that are unnecessary or detrimental to the public interest, *see* NRS 533.370(2), and limit water rights when water resources are short, abandoned, or being wasted, *see* NRS 534.090; NRS 534.120. Mechanisms are thus in place to ensure the preservation of water for the future. As the state's statutory water scheme reflects *Lawrence*'s requirements, we reject appellants' contention that the statutes effect an abdication of the state's continuous public trust duties.

We therefore hold that Nevada's comprehensive water statutes are consistent with the public trust doctrine.[7]

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[7]The dissent errs in construing this opinion as holding that relevant provisions in NRS Chapter 533 supplant the public trust doctrine. Rather, the provisions we address here represent the Legislature's efforts to guide the doctrine's application. And as we conclude that they comport with

The state's water statutes recognize the importance of finality in water rights and therefore do not permit reallocation of adjudicated water rights

As part of Nevada's comprehensive water statutes, which we conclude adhere to the public trust doctrine, the Legislature enacted NRS 533.185 to establish a judicial decree regarding a water right permit. Regarding those judicial decrees, NRS 533.210(1) provides that:

> The decree entered by the court, as provided by NRS 533.185, *shall be final and shall be conclusive* upon all persons and rights lawfully embraced within the adjudication; but the State Engineer or any party or adjudicated claimant upon any stream or stream system affected by such decree may, at any time within 3 years from the entry thereof, apply to the court for a modification of the decree . . . .

(Emphasis added.) NRS 533.0245 then prohibits the State Engineer from carrying out his or her duty "in a manner that conflicts with any applicable provision of a decree or order issued by a state or federal court."

Respondents argue that the plain language of Nevada's water law statutes prohibit reallocating adjudicated water rights, and we agree. "When the language of a statute is plain and unambiguous, [this] court should give that language its ordinary meaning and not go beyond it." *See City Council of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886, 891, 784 P.2d 974, 977 (1989). NRS 533.210 expressly provides that decreed water rights "shall" be final and conclusive. *See Nat. Res. Def. Council, Inc. v. Perry*, 940

Lawrence's test, this opinion retains the distinction between the relevant statutes and the public trust doctrine, with which they must comply.

We caution against the view that an allocation necessarily comports with the public trust doctrine because it meets the statutory requirements. Apart from the statutory scheme, individual dispensations must comport with *Lawrence*'s requirements.

F.3d 1072, 1078 (9th Cir. 2019) ("The word 'will,' like the word 'shall,' is a mandatory term, unless something about the context in which the word is used indicates otherwise." (internal citation omitted)). The statutes also provide an explicit exception wherein a decree could be modified only within three years, NRS 533.210, and the State Engineer is expressly prohibited from allocating water in a manner that conflicts with such finality, NRS 533.0245. The statutory water scheme in Nevada therefore expressly prohibits reallocating adjudicated water rights that have not been abandoned, forfeited, or otherwise lost pursuant to an express statutory provision.

We note that such recognition of finality is vital in arid states like Nevada. In *Arizona v. California*, the United States Supreme Court recognized that "[c]ertainty of rights is particularly important with respect to water rights in the Western United States," and "[t]he doctrine of prior appropriation . . . is itself largely a product of the compelling need for certainty in the holding and use of water rights." 460 U.S. 605, 620 (1983); *see United States v. Alpine Land & Reservoir, Co.*, 984 F.2d 1047, 1050 (9th Cir. 1993) ("Participants in water adjudications are entitled to rely on the finality of decrees as much as, if not more than, parties to other types of civil judgments."). Municipal, social, and economic institutions rely on the finality of water rights for long-term planning and capital investments. Likewise, agricultural and mining industries rely on the finality of water for capital and output, which derivatively impacts other businesses and influences the prosperity of the state. To permit reallocation would create uncertainties for future development in Nevada and undermine the public interest in finality and thus also the management of these resources consistent with the public trust doctrine.

Appellants argue, however, that a right is not exempt from regulation to protect the public welfare simply because it has vested or been adjudicated. Moreover, they argue that water rights are not absolute, but rather relative and usufructuary. We agree that water rights are subject to regulation for the public welfare and are characterized by relative, nonownership rights. *See Desert Irrigation*, 113 Nev. at 1059, 944 P.2d at 842 (recognizing water right as a "inchoate usufructuary right" and that rights holders do not own or acquire title to water); *Town of Eureka v. Office of the State Eng'r*, 108 Nev. 163, 167, 826 P.2d 948, 950 (1992) ("Water rights are subject to regulation under the police power as is necessary for the general welfare."); *In re Manse Spring*, 60 Nev. at 287, 108 P.2d at 315 (noting the state has the right to prescribe how water may be used); *Usufruct*, *Black's Law Dictionary* (11th ed. 2019) ("A right for a certain period to use and enjoy the fruits of another's property without damaging or diminishing it."). Nonetheless, this does not necessarily mean that water rights can be reallocated under the public trust doctrine. Rather, it means that rights holders must continually use water beneficially or lose those rights. We therefore hold that the public trust doctrine does not permit reallocating water rights already adjudicated and settled under the doctrine of prior appropriation.[8]

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[8]The dissent mistakenly contends that the matter of reallocation lies beyond the scope of the certified questions and that rephrasing the first question was thus misguided. The underlying dispute involves demands for overappropriated resources that require determining whether water rights may be reallocated from current rights holders. Mineral County sought an annual allocation of minimum flows of 127,000 acre/feet, and, as stated by the Ninth Circuit, its complaint sought to "reopen and modify the final Decree." The Basin does not appear able to meet the county's needs without

We recognize the tragic decline of Walker Lake.[9] But while we are sympathetic to the plight of Walker Lake and the resulting negative impacts on the wildlife, resources, and economy in Mineral County, we cannot use the public trust doctrine as a tool to uproot an entire water system, particularly where finality is firmly rooted in our statutes. We cannot read into the statutes any authority to permit reallocation when the Legislature has already declared that adjudicated water rights are final, nor can we substitute our own policy judgments for the Legislature's.[10]

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abrogating the rights of more senior right holders. The county's request would therefore require reallocating water rights. The Ninth Circuit recognized as much in its Amended Certification Order stating, "[T]he remaining issue—whether the Walker River Decree can be amended to allow for certain minimum flows of water to reach Walker Lake—depends on whether the public trust doctrine applies to rights previously adjudicated and settled under the doctrine of prior appropriation and *permits alteration of prior allocations*." (Emphasis added.) Rephrasing the certified question thus served to "streamline [the questions certified] in order to best resolve the legal issues presented." *In re Fontainebleau Las Vegas Holdings*, 128 Nev. at 571-72, 289 P.3d at 1209.

[9]Mark Twain once observed regarding Walker Lake and other lakes in Nevada, "Water is always flowing into them; none is ever seen to flow out of them, and yet they remain always level full, neither receding nor overflowing." Mark Twain, *Roughing It*, ch. XX (Project Gutenberg 2006) (ebook) (1872). Unfortunately, this is no longer the case, and our state's water is now more precious than ever.

[10]While we recognize that the dissent would urge that we adopt a model more freely permitting reconsideration of prior allocations, such as that discussed in *National Audubon Society v. Superior Court*, 658 P.2d 709, 732 (Cal. 1983), we decline to diminish the stability of prior allocations and detract from the simultaneous operation of both prior appropriation and the public trust doctrine, *see Mineral Cty.*, 117 Nev. at 247, 20 P.3d at 808 (Rose, J., concurring).

Second certified question

Because we hold that the public trust doctrine does not permit reallocation, we need not address the second certified question, which asks: "If the public trust doctrine applies and allows for reallocation of rights settled under the doctrine of prior appropriation, does the abrogation of such adjudicated or vested rights constitute a 'taking' under the Nevada Constitution requiring payment of just compensation?" Without reallocation, no rights are abrogated and no takings issue is implicated.

CONCLUSION

Nevada's statutory scheme already incorporates the public trust doctrine, giving force to constitutional and inherent limitations on state sovereignty that protect the public interest in the waters of the state, both navigable or nonnavigable, as well as the lands underneath navigable waters. To allow the state to otherwise allocate waters without due regard for the public trust would permit the state to evade its fiduciary duties, and this we cannot sanction.

In implementing the public trust doctrine, our state's water rights statutes forbid reallocating adjudicated water rights. The public has an interest in the effective use of public trust resources. This requires that allocations of water rights have certainty and finality so that rights holders may effectively direct water usage to its beneficial use, without undue uncertainty or waste. Our state's application of the public trust doctrine thus protects the waters of Nevada in order to maintain them in trust for the use and enjoyment of present and future generations.

In response to the first certified question, as reworded, we answer that the public trust doctrine does not permit reallocating water rights already adjudicated and settled under the doctrine of prior appropriation. Because we answer the first question in the negative, we need not address the second certified question.

_____, J.
Stiglich

We concur:

_____, J.
Gibbons

_____, J.
Hardesty

_____, J.
Cadish