

Subject: Request for Legal Opinion to Verify All Nevada Waters as Navigable

The purpose of this letter is to request the State of Nevada's governing agencies and the Attorney General's Office review and rectify the classification of all the waters in Nevada as Navigable.

Over the past 48 years, I have been researching, and attempting to recreate on, Nevada's 400+ waterways. I was shocked to discover only the Truckee, Carson, Colorado and Virgin Rivers were considered navigable, and therefore, accessible to the public. Why aren't all waterways in Nevada considered Navigable, legally 'State Land' below the high water mark, and available for public use? They should be.

1. There is legal precedent defining all Nevada's rivers and streams as 'navigable', including historic and current use for commerce. Most notably "State vs Bunkowski 1972" regarding the test of navigability of the State's rivers and streams. Detailed legal references and justifications are attached.

2. The State of Nevada, its governing agencies and its citizens would greatly benefit from rectifying the status of Nevada's waters as navigable. Benefits include: accessibility for recreation, fishing, hunting, monitoring and sampling, as well as other environmental, wildlife and habitat related activities. A complete list of benefits is attached.

At its core, this is about the public's right to access public waterways, held in trust by public entities, specifically, the State of Nevada.

Thank you for your attention to this matter.

Sincerely,

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Honorable Nevada Supreme Court Water Commission:

All of the included paperwork is legal, court tested, legal and historical access and water law from well back into human history.

But let's start with Nevada Water Law. The first statement in Nevada Water Law is that ALL OF ABOVE AND BELOW WATER IN NEVADA BELONGS TO THE PUBLIC!! That fact is sacrament to the PUBLICS RIGHT to those WATERS for any purpose. Be it drinking, swimming, fishing, any recreation, paddling, food gathering, hunting, relief from Nevada's heat or even ice skating in winter. There is so much more to this fact. Why is this BASIC TENANT OF NEVADA WATER LAW SO? Several reasons that all have been supported throughout human history as early as Byzantine Emperor Justinian, parts of the Magna Carta, US Supreme Court Rulings, Martin vs Waddle 1842, and the Public Trust Doctrine. So many more ancient rulings like "Right to Roam", Right of Way, Right of Public Access, Right of Public Access to the Wilderness, Navigable in Fact is Navigable in LAW and even at least two Nevada Supreme Court Rulings. Those being State vs Bunkowski and Mineral vs Lyon. Both in essence supported the PUBLICS RIGHT of the Water and shorelines. They are included in this package. When courts began to consider the Public Trust Doctrine the State has the duty as Trustee to hold all Navigable Waterways in trust for public benefit. The Public owns up to where the water usually ends. That is referred to the Mean High Water Mark. Which is the case with those waters currently Deemed Navigable in Nevada. Hence the adage "It is not trespassing as long as your feet are wet." Navigable waters are Common Highways and FREE Forever.

In Nevada for to me unknown reasons there are only Four Rivers that are Considered Navigable. The Truckee, Carson, Colorado and Virgin Rivers. The Truckee and Carson due to the fact that they floated timber down them yet the same is true of the Walker River but it has been excluded. No one has ever answered my question as to how "Commerce at Statehood" determines Navigation Law in Nevada. Just when in Nevada History was the basic tenant of Nevada Water Law usurped? There is NO MENTION of Commerce in Nevada Water Law that I could find. However there is plenty that asserts the Public Rights to our waters.

So let's get into Nevada State Water Law:

Under State Engineer: Section 532

Section 532.220 (4) As used in this section, "navigable river" means a river or stream that is used, or is susceptible of being used, in its ordinary condition for trade or travel in the customary modes of trade or travel on rivers and streams.

Under Adjudication, Appropriation: 533

Section 533.010: "Person" defined. As used in this chapter, "person" includes a corporation, an association, the United States, and the state as well as a natural person.

533.020: "Stream System" defined. As used in this chapter, "stream system" shall be interpreted as including any stream, together with its tributaries and all streams or bodies of water to which the same may be a tributary.

533.025: Water belongs to the public. The water of all sources of water supply within the boundaries of the state whether above or below the surface, belongs to the public.

533.030: Appropriation for beneficial use. (2) The use of water, from any stream as provided in this chapter and from underground water as provided in NRS 543.040, for any recreational purpose, is hereby declared to be a beneficial use.

533.035: Beneficial use: Basis, measure and limit of right to use. Beneficial use shall be the basis, measure and the limit of the right to the use of water.

533.050: Beneficial use of water declared a public use; eminent domain.

Under Underground Water and Wells: 534

Section 534.020: Underground waters belong to the public: subject to appropriation for beneficial use: declaration of legislative intent.

Under Navigable Waters 537

Section 537.010: Colorado River declared navigable: title to lands below high water mark held by state.

537.020: Virgin River declared navigable: title to lands below high water mark held by state.

Under Interstate Waters: Compacts 538

Section 538.530 Article IX: Fish and Wildlife and Recreation: (A) In the exercise of the powers and functions conferred on the Commission, it shall be the policy of the Commission to prepare and review plans for the development and application of measures for the preventing damage to and enhancing the fish and wildlife and recreational resources of the Columbia River Basin and to cooperate with all agencies charged with the responsibility for protecting and fostering these resources.

Under Interstate Waters; Compacts 538

Section 538.600 Article XIII Fish, Wildlife, and Recreation: The use of waters for preservation, protection, enhancement of fish, wildlife, and recreation is hereby recognized as an inseparable part of the public interest in the use of the waters of Lake Tahoe, Truckee, Carson and Walker River Basins in both states, and is therefore beneficial.

Article XIV Non consumptive Use: Each State may use water for non consumptive purposes, including but not limited to flood control, recreation, fishery and wildlife maintenance and enhancement, and hydroelectric power generation, provided that such uses result in no discernable reduction in the water allocated to the other state.

Constitution of the State of Nevada

Section Article 1. Inalienable Rights. All men are by Nature free and equal and have certain inalienable rights among which are to those of enjoying and defending life and liberty; Acquiring. Possessing, and Protecting property and pursuing and obtaining and liabilities. safety and happiness.

Article 1 Section 1; Saving existing rights; That no inconvenience may arise by reason of a change from a Territorial to a permanent State Government, it is declared that all rights....., shall continue as if no change had taken place; and all process which may issue under the Authority of the Territory of Nevada, previous to its admission into the Union as one of the United States shall be valid as if issued in the name of the State of Nevada.

Article 17 Section: 2 Territorial laws to remain in force.

It should be noted that there is NO MENTION of Commerce determining waters and navigation or their usage in either Nevada Water Law or the State Constitution. At the time of Statehood for Nevada the Waters of this State were used for many purposes. With Native Americans they lived by water sources and got much of their drink, food, fish, meat, pelts, edible plants and medicines from this States Surface waters and waterways. The first white visitors to Nevada were hunting the many fur bearing animals of this state and again most were found by sources of water. SO claiming that "Commerce" did not exist on our waterways is total unacceptable in any legal argument. Those hunters were also getting much of their water needs, food, fish, edible plants just as the Native Americans were. Our states first settlers were as one would expect also living by our surface waters and doing exactly what the Indians and trappers were doing. So there is a great history of legal decisions that say that this behavior is Commerce at its basic level of human existence. Find water find food find recreation.

More Landmark rulings are enclosed but here are some more.

So with these legal points and the many more enclosed in the rest of these pages it is in excusable that any claims of private property in any way under water or along shorelines to the many waters and waterways of this state to deny access to our State of Nevada's Waters as well as their shorelines which is the fact on all of our so called Navigable Rivers.