Outline for Navigable Waters to the Nevada Supreme Court Water Law Commission:

1. Letter from Supreme Court of Nevada Justice Lidia Stiglich
2. Letter sent to Justice Lidia Stiglich in response.
3. Letter to the Honorable Nevada Supreme Court Water Commission
4. Letter request for Legal Opinion to Verify All Nevada Waters as Navigable
5. Letter of response from Nevada Division of State Lands
6. Letter from State of Nevada Department of Wildlife
7. Letter sent to the Nevada Supreme Court Justices
8. Letter dated December 17, 2020 to Aaron Ford, Nevada Attorney General
9. Letter to numerous State Offices Dated January 14th, 2021
10. Public Trust Doctrine paper
11. Definition of Navigable Waters of the United States
12. State vs Bunkowski Carson River ruling 503 Nev. 623 1972
13. Other rulings related to State vs Bunkowski
14. Mineral County vs Lyon County rulings Brief
15. Mineral County vs Lyon County 136 Nev. Advanced Opinion 58 2020
16. US v Walker River Irr. Dist., 104 F. 2d 334 1939
17. New Mexico Supreme Court Ruling on Navigation of New Mexico's Waters 2022
18. American Whitewater: New Mexico Supreme Court Ruling 2022
19. Utah Supreme Court Ruling allows Public Waters Access Act to Stand 2023
20. Public Rights on Rivers
21. Title 33 Navigation and Navigable Waters
22. American Whitewater Nevada, California, Arizona, Idaho, Oregon, Utah Navigability Report
23. Citation from US 9th District Court on Walker River Navigability and another 104 F.2d 334 1939 other cases related.
24. 401 Certification Clean Water Act
25. Environmental opinions of Clean Water Act Rollback 2020
26. State Land Office Guide
27. Nevada Rivers Information
28. List of Rivers of Nevada
29. Letter regarding Paddling the Reese River David C Fiore MD
30. Letter from Rusty Bowman on several rivers and creeks paddled in Nevada
31. Letter from Michael Setlock of BLM on paddling Nevada Waters
32. Letter from Nasman Horn of USFS on various locations for paddling in Nevada
33. Letter from Martin Kramer of USFS on the Reese River
34. Letter from Michael McCampbell onto Humboldt and Quinn Rivers
35. Letter from Tipton Power on the Owyhee River
36. Letter from Seth Tonsmeire Regarding Commercial rafting and boating on the Owyhee River
37. Letter from Alan Reynolds regarding paddling the Owyhee, Jarbidge and Bruneau Rivers
38. Letter from Jason Gipson of Army Corps of Engineers on Rivers and Harbors Act and Clean Water Act
39. Salmon Falls Creek Paddling Overview
40. Letter from Fred Hill Atcheson regarding River Recreation in Nevada
41. Letter to Brett Mayer of ACA regarding Nevada Water Laws
42. Letter to Governor Sislolak et al
43. Another Navigable Waters Paper
44. Another Letter to Governor Sisolak
45. Letter from Charles Albright
46. Nevada's Outdoor Recreation Economy Impact
47. 33 CFR Part 328 EPA Revised Definition of "Waters of the United States" Rulings

SUPREME COURT OF NEVADA
LIDIA S. STIGLICH, JUSTICE
201 SOUTH CARSON STREET
CARSON CITY, NV 89701-4702
(775) 684-1530

August 10, 2022

Charles Albright
1408 Washington Street
Reno, NV 89503

Dear Mr. Albright:

Thank you for the informational packet you provided to my chambers in June regarding navigable public water rights in the state of Nevada. Your passion for recreational access to public waterways is apparent, and you have seen decades of change in Nevada, to be sure. Your packet includes my most recent water rights opinion in the case of Mineral County, so I assume you realize that this issue is one I take seriously, as I can see you do. Your frustration is understandable, and there are positive ways to institute change without getting arrested or hiring attorneys, in my opinion, so I encourage you to stay the course.

The Nevada Supreme Court commissioned a study of the adjudication of water law cases under ADKT 0576 in April 2021. I encourage you to provide this information to the commission regarding your public access concerns. Thank you again for your extensive research and commitment to recreational access for the public.

Respectfully,

Lidia S. Stiglich
Supreme Court Justice

Supreme Court of Nevada

Lidia S. Stiglich
201 South Carson Street
Carson City, Nevada
89701-4702

Dear Honorable Justice Stiglich;

I must admit that I was greatly surprised and oh so uplifted by your letter of August 10th. I had been trying again to get guidance with regard from the Clerk of the Supreme Court, the staff of the Supreme Court Library, the Nevada Bar, numerous attorneys of Civil, Water, anyone who would talk to me. And this was at local, Washoe, State and Federal levels just trying to get a foot in a door. Again, your letter might be my dream of no getting arrested, legal action at enormous costs, or just giving up and letting the situation that exists now continue when it is so blatantly wrong.

So I hope that I can indeed be accepted by your Water Law Commission to plead my legal case with all of my findings from Nevada Supreme Court Rulings to so many US Judicial Rulings that support my beliefs.

I could not help but notice the make up of the Commission and see that anything I submit will be met with great objection but I wish to do just that and hope that what our State Constitution and State Water Law say should prevail. It is hard to imagine that some Kayaker / River / Water Advocate can have this opportunity and I hope I can do my best and maybe get the Justices of the Nevada Supreme Court to make a history changing ruling to support the Publics Rights to this States Waters. Much like exists in virtually all of our States.

I had thought about listing my many battles / dealings with various levels of our government, utilities and all the positive rulings or changes that have happened but you do not need that. Suffice to say I have been busy and working on far more than just Navigation Law Wishes. All that I feel are or have been positive for our State. Thanks for your time. Bless you! Hugs too!

Sincerely Yours,

Charles Albright
1408 Washington Street
Reno, Nevada 89503
775-324-5102
cralbright@juno.com

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.

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,

Charles Albright
1408 Washington Street
Reno, Nevada 89503
775-324-5102 H
cralbright@juno.com

Nevada Division of
STATE LANDS

STATE OF NEVADA
Department of Conservation & Natural Resources
Steve Sisolak, *Governor*
Bradley Crowell, *Director*
Charles Donohue, *Administrator*

February 3, 2021

Charles Albright
1408 Washington Street
Reno NV 89503

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

Mr. Albright,

Thank you for your continued interest in promoting the use and enjoyment of Nevada's navigable waters.

Nevada asserts ownership of eight sovereign lands, per NAC 322.060. The term "navigable body of water" within NAC 322.060 is a legal term of art created by case law. As defined in NAC 322.060, "'Navigable body of water' means a body of water which is declared navigable pursuant to NRS 537.010, 537.020 or 537.030 or which is determined to have been navigable on the date on which Nevada was admitted into statehood, including, without limitation, the Carson River, the Colorado River, Lake Tahoe, the Truckee River, the Virgin River, Walker Lake, Washoe Lake and Winnemucca Lake."

The Walker River is currently not designated as a state sovereign land, so you are correct its bed and banks are currently considered private property. For the Walker River and other waters of the state to be determined state sovereign land, they must qualify as navigable in accordance with the case law. This includes establishing facts showing the physical condition of and the uses on the river as they were at statehood in 1864. This may include newspaper articles, letters, early photographs, and other historical evidence demonstrating the river was navigable in its natural and ordinary condition and was used or susceptible of being used as a highway for commerce in 1864. NAC 322.060 derives from Legislative action and state and federal case law applying these tests to the applicable facts for those eight bodies of water.

I appreciate the time you have invested in providing this information and our previous discussions on this issue.

Sincerely,

Charles Donohue

Charles Donohue
Administrator – State Land Registrar

Brian Sandoval
Governor

State of Nevada

DEPARTMENT OF WILDLIFE

6980 Sierra Center Parkway, Suite 120
Reno, Nevada 89511
(775) 688-1500 • Fax (775) 688-1595

TONY WASLEY
Director

BONNIE LONG
Deputy Director

JACK ROBB
Deputy Director

February 18, 2021

Charles Albright
1408 Washington Street
Reno, NV 89503

Dear Mr. Albright,

I am in receipt of your letter requesting an opinion from the Attorney General's office that all Nevada waterways be considered navigable.

Attached you will find a letter from the State Land Registrar's office addressing the same concern by another Nevada outdoor enthusiast.

Thank you for your continued interest in promoting the use and enjoyment of Nevada's navigable waters.

Sincerely,

Tony Wasley

Tony Wasley
Director
Nevada Department of Wildlife
6980 Sierra Center Pkwy, Suite #120, Reno, NV 89511
775-688-1590

Honorable Nevada Supreme Court Justices,

I am a Citizen of Nevada and have been since 1972. For that entire time I have been a paddler of rivers and lakes and virtually any body of water I can find. From very early on I was involved in teaching others to paddle, racing, promoting racing and being an advocate for rivers and the waters of Nevada. So in all those years I have spent many times addressing river usage issues, safety for rivers, hazards associated with rivers and dams and the rights of the public of Nevada to use our waters for recreation. As I am sure you know the numbers of folks that use our waters for recreation be it paddling, swimming, fishing, gathering food, sightseeing, relaxation, hunting or other enjoyments. Those numbers have gone up dramatically since our states population has exploded. One seldom saw kayaks or canoes on cars in the old days. Now it is a huge contribution to our states economic base.

So I have always been concerned about my rights and those of the rest of our citizens or travelers to access the waters of our state for whatever recreation they choose to enjoy on our Nevada Waters. Since you Justices are the top of the list when it comes to addressing OUR rights to OUR Waters I am writing to ask, beg, request, desire, question each of you with regards to the publics, my, your Rights to use this State of Nevada's Waters. After all these years of getting told NO YOU CANNOT PADDLE or RECREATE here, there or on that water or river. I have done LOTS of research on of State of Nevada Laws be they the State Constitution, Your rulings, US Supreme Court and other State Court rulings. I also have studied Nevada Water Law. I have talked to many State Departments, County, City and Governments Agencies about my concerns. Many times I have been successful and a number of times I have been snubbed or ignored. All these paths lead to Nevada's Supreme Court Justices as the last place to address the differences in what OUR Laws and Statutes say and what State and it's Agencies say.

Again, I am just one person but I feel that I represent any citizen or traveler thru our State who wishes to use OUR States Waters. So in what follows are numerous Nevada Constitutional Laws, State Water Laws, Court Rulings from You the Nevada Supreme Court, the US Supreme Court and those of other State Court Rulings.

So my basic question is are OUR State Waters, both Surface and Underground the property of this States Public. Our State Constitution, Nevada Water Laws and Federal Laws SAY they are the Publics. Before Statehood they belonged to the US. At Statehood the Public Trust Doctrine and our State Constitution said they belonged to the Public / State for the uses that the Public had including recreation. That was all of this States Waters above and below. You each must agree that is a fact in Nevada. Yet since some time after Statehood the Publics Rights to recreate and use all of this States Waters for our legal desires has been "Compromised". Virtually EVERY State in this Nation has laws saying that their Waters and Waterways are free of restrictions of usage by the public. That is not just interstate, intrastate of tidal waters but all waters. This is an application of hundreds of years of public rulings like the Magna Carta and other history of water also covered in the legal thoughts and rulings in following pages. Enclosed are numerous legal rulings all attest to the Publics Rights to this country's waters. So the framework for my questions to each of you is WHY? What happened that I and everybody else in this State can only LEGALLY Recreate on only 4 Rivers in Nevada. The Truckee, Carson, Virgin and Colorado Rivers. That is it! 4 Rivers I can use for recreation without in theory being

arrested, cited, intimidated, threatened or even shot at for using. And even on those rivers if someone owns land on both shores they can Legally place fences or barbed wire of other obstructions. Not exactly what was intended at Statehood. Yet virtually all of this States rivers, streams, and creeks do not allow legal public access. Somehow after Statehood and no Government Official has ever told me when or what Legal Decision was made that closed access to almost all of this States Publicly Owned Waters. As I said above Our State Constitution and Nevada Water Law all say every drop of water is the publics. Along with that right comes access. Typically up to Mean High Water for the Public to use as is the case on the Truckee, Carson, Virgin and Colorado. I questioned virtually all of our state agencies as you will see in the following pages and they ALL pointed to State Lands and the Term "Commerce " as what determines Navigability. And that was "Since Statehood" when both OUR States Constitution and again Nevada's Water Laws make NO MENTION of Commerce as determining what is Navigable or useable by the Public of Nevada. So my first Question of you the Supreme Court is when did our rights to our water get usurped in this way? What happened to the Public Trust Doctrine giving Nevada our rights to our water and Estoppel which say that right was first in line for all our waters. Many of this States Waters meet the Uniform Federal Test of Navigability. Listed below are sheets of our States Waters. Both each River and all of its upstream feeders, as well as Our Rivers that are Interstate Waterways which by Federal Rulings are Navigable in Fact.

So now if I may I will cover a number of examples of how this "Commerce Ruling at Statehood" is wrong for this State. I already mentioned Interstate and the Uniform Federal Test of Navigability, and many Court rulings. You also have made some rulings that assert Public Ownership of Our Waters. State Vs. Bunkowski was a big one where you ruled that the Carson and Truckee Rivers were Navigable due to floating logs down them for mining and other needs. Great but they also Floated Logs on the Walker River yet this was perhaps ignored probably due to irrigation, mining and other interests to usurp the rights of the Public on that drainage. State vs Bunkowski was good because your decision said that those waters and the land under its waters and the Land up to Mean High Water belonged to the State and Public. You also said that was true of other Nevada Waters. That was in the 1970's and maybe that is what changed the rights to being determined by Commerce. Now you have a Nevada State Park on the East Fork of the Walker River that is promoting paddling on a River that is Not Navigable in Nevada Law. And a strange twist for that is that a person can supposedly put in at the top of the State Park and paddle down to where there is Private Property where they MUST get out. Then travel to where the lower State Park is and then can paddle to the end of Park Property and must again get out. So from State Line up near Bridgeport California where above one can legally paddle the East Fork Walker to your State Park it is illegal to Paddle. And on all of the Walker River below Your State Park it is illegal to paddle or us the waters for any recreation where private property exists. No access to Mean High Water. Perfectly legal to put fences across the river. As for the West Fork Walker I present a Legal Document that says that even in California it is illegal to recreate yet California Law say it is legal till Stateline where again Nevada Laws usurps Federal and our own State Law to deny public usage.
We have numerous Interstate Rivers such as the Jarbidge, Bruneau, Owyhee, and Alamogosa Rivers that as soon as the reach our State Line they are Wild and Scenic. Not Navigable in our

State. The Jarbidge, Owyhee and Bruneau all have Commercial rafting on them. But again are NOT Navigable. Many folks paddle and recreate on our other Rivers and Streams and yet that activity is illegal due to our "Commerce at Statehood". Why can we NOT use Our Waters. USFWS and NDOW do stream restoration and fish stocking on over 400 waters in our State. Is that a form of Commerce?
The Clean Water Act say that any one wishing to do any projects on any of our waterways has to get a permit and each one of those water waterways is called Navigable by our Federal Government.
So I have also included many Federal and Other State Court Rulings. What Navigability laws are in our Adjoining States, a recent New Mexico Supreme Court Ruling for their Navigable Waters. Rulings that have since come down in our State regarding State Vs Bunkowski and its use in other legal cases. There is also Mineral County vs Lyon County where your court basically again ruled that the water in the Walker River belonged to far more than just the irrigators, cattle and mining interests.
Last is that much of this State is controlled by Federal Agencies like BLM, USFS and others. In talks with BLM and Forest Service I was told that they could NOT give information in Nevada regarding navigation of Our Waters due to our "Navigation determined by Commerce". They have a wonderful Book on Paddling all of the Bruneau, Jarbidge and Owyhee Rivers including many of their tributaries. You can buy it in Idaho and Oregon but not here.

So this is my intro letter to you. AS you will see I have worked hard to get you all of this information as well try to present it to each of you. I plan on delivering them to our Offices in Carson City. I seriously doubt that ANY of you will respond due to the Commerce Issue. But PLEASE at least respond that you got it and "Read" it. So what is my next step? Sue Nevada for their usurping of our most basic rights to Our Waters? I as a citizen cannot Question the Attorney General's Office. I tried last year. So is my path to file in a Federal Court for a Ruling with all of this existing Law Rulings? Get arrested and Fight it to the Nevada Supreme Court?

All of our Navigable Waters should be the Publics and have access to the Mean High Water Mark. That is what it was in 1864 when this state became a State. PLEASE RESPOND!

Charles Albright
1408 Washington Street
Reno, Nevada 89503
775-324-5102 H
775-453-5403 C
cralbright@juno.com
June 9th 2022
Maybe it is time that Nevada joined the 21st Century. I cannot afford a high priced Attorney to do all of this. Please tell me my options to get what our State Constitution and Nevada Water Law say is RIGHT. Thanks for your time.