In the United States, the public trust doctrine has traditionally been applied to commerce and fishing in navigable waters. The states have held the navigable waters and the beds beneath them in trust for the citizens and ensured that the public's ability to engage in navigation, commerce, and fishing on those waters was protected. The state of Nevada has traditionally recognized the public trust doctrine. In 1970, the Nevada Supreme Court declared that "[w]hen a territory is endowed with statehood one of the many items its sovereignty includes is the grant from the federal government of all navigable bodies of water within the particular territory, whether they be rives, lakes or streams." *State Eng'r v. Cowles Brothers, Inc., 86 Nev. 872, 874 (1970). In 2011*, the same court formally adopted the public trust doctrine, noting that the doctrine was rooted in Nevada's constitution, statutes, and the inherent limitations on the state's powers. According to the court, "because the state holds such property in trust for the public's use, the state is simply without power to dispose of public trust property when it is not in the public's interest." *Lawrence v. Clark Cty., 127 Nev. 390, 400 (2011).*

Navigable Waters [Nevada] — In Nevada bodies of water are navigable if they are used, or are susceptible of being used, in their ordinary condition as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. In Nevada, this test of navigability (*State of Nevada v. Julius Bunkowski, et al., 1972*) held that the Carson River was navigable, and therefore the State of Nevada owned its bed, as logs were floated down the river from about 1860 to 1895 (the commerce requirement).

Nevada courts have held that streams are navigable if used or susceptible to being used at regularly-occurring times as highways for commerce over which trade and travel are or may be conducted in customary modes of travel on water. *State v. Bunkowski, 503 P.2d 1231, 1234 (Nev. 1972)*. Nevada courts have applied the federal title test and found that streams that were historically used to drive logs to market satisfy the federal title test. *Bunkowski, Id. at 1233-36.* This test vests title to the beds underlying these waters in the state. *Bunkowski, Id. at 1233.* Navigability is not destroyed if the waterway is interrupted by occasional natural obstructions or portages, and a stream need not be open all year to be considered navigable. *Bunkowski, Id. at 1235.* Neither the courts nor the statutes in Nevada have addressed the issue of whether the public trust exists in streams that are too small to pass the federal title or commerce test.

In *State v. Bunkowski, 503 P.2d 1231, 1234 (Nev. 1972),* the Supreme Court settled the matter of the basic rights to river travel in any waterway in the state of Nevada:

> "Navigability, when asserted as the basis of a right arising under the constitution of the United States, **is necessarily a question of federal law** to be determined according to the general rule recognized and applied in the federal courts." *Brewer-Elliot Oil and Gas Co. v. United States, 2609 U.S. page 87, 43 S.CT. 60*; "to treat the question as turning on the varying local rules would give the constitution a diversified operation where uniformity was intended." *State v. Bunkowski, 503 P.2d 1231@1236.*

The Bunkowski also settles the rights of the public to navigate upon the rivers and streams of Nevada:

> "Members of the public have the right to navigate and to exercise the incidence of navigation in a lawful manner at any point below high water mark on waters of this state which are keepable of being navigated by oar or motor propelled small craft." *Bunkowski @503 P.2d @1236.*

Therefore, individual landowners cannot assert private property rights over a river or stream which is navigable in fact. For it has been held in a majority of cases that the States hold title to the beds of navigable water courses in trust for the people of their respective states. *Bunkowski @1240 (additional citations ommitted).*

In citing with favor, *State v. Hutchins, 79 N.H. 132, 105 A.519, 523 (1919),* Bunkowski made clear the public's right to public waters:

> ". . . the court held that the public rights in public waters cannot be alienated or made subject to easements except by legislative action: neither can the state's right in public waters be subscribed against nor can these rights be impaired by estoppel growing out of a mere failure to object to encroachment." *Bunkowski, Id at.*

Navigability is not destroyed if the waterway is interrupted by occasional natural obstructions or portages, and a stream need not be open all year to be considered navigable. *State v Bunkowski@1233-36.* Although Nevada legislature maintains a list of navigable waters, the list is not exclusive and the issue of navigability remains a "judicial question". *Bunkowski 503 P.2d @1238.* In a navigable stream, the public right is paramount to even that of State Regulators. *Weber v. Board of Harbor Commissioners, 85 U.S. 57 (1973)*; *West Chicago Railroad Co. v. Illinois, 201 U.S. 506 (1906).* Public participation in river use has dramatically increased by canoes, kayaks, rafts, stand up paddle boards, and any other manner of water craft invention entering the public imagination. It has been argued that such uses are not commerce, but merely recreation. The federal courts have fully rejected this theory stating "to deny that this use is commercial because it relates to the recreation industry is to employ too narrow a view of commercial activities". Thus confirming that the use of rivers for such recreational trips are commercial. *Alaska v. Ahtna, 891 F.2d 1401 (9th Cir. 1989).* Even the potential for commercial recreation confirms a public right to use without establishing previous commercial use. *David Zinkie, 53 F.E.R.C. p 61,029 (1990).*

In the opinion of the Attorney General of Nevada, the State Engineer, irrigation districts, the Division of State Lands, local counties through their district attorneys, and the United States have the authority to seek removal of structures that may encroach upon the natural channel of a navigable river. *Op. Att'y Gen. 80-11 (Nev. 1980).* Further, cities, counties, public districts such as irrigation districts and flood control districts, and the United States have the authority to

improve a navigable river to maintain its water capacity or to avoid flood damage to adjoining property.

Federal law already confirms that the rivers and creeks in al 50 states that are knee-deep and deeper, and were physically navigable in the past for fur trade canoes or log drives, and are physically navigable today for commercial raft, kayak, or canoe trips, are legally navigable for Commerce Clause purposes, with no official designation or confirmation needed.

Federal law already confirms the 'public navigational easement' to navigate on these rivers in small watercraft. Federal law already confirms that the 'navigational easement' is not restricted to the surface of the water, but includes the right to walk along riverbanks to scout and portage rapids, to walk above the high water line as needed when walking along the banks, and to fish and fowl.

Federal law already confirms that private ownership of the beds and banks of these rivers and creeks is "a bare technical title, always subject to public rights to use the stream" and it requires state governments to permanently hold these rivers and creeks "in trust for the people of the state, that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein, freed from the obstruction or interference of private parties." (*Scranton v. Wheeler, 179 U.S. 141 (1900). Illinois Central v. Illinois, 146 U.S. 387 (1892).)*

Rivers in all states that were usable in the past for fur trade canoes or log and lumber drives, and are usable today for commercial raft trips or kayak or canoe classes, are navigable for Commerce Clause purposes under federal law. No further court confirmation is needed. Where state court decisions conflict with current federal law, federal judges don't need to overturn them state by state.

The facts are:
1. The river is navigable under federal law, for Commerce Clause purposes, because of its historical and current usability. No official designation is needed, because rivers that are navigable in fact are navigable in law.
2. Public rights on the river are not a "taking," because the river has been public since time immemorial.
3. It is a federal crime to block the river with cables or fences, so the landowner is subject to criminal prosecution at any time, as well as immense liability if a kayaker gets killed or injured on his fence across the river. (33 U.S.C 403, obstruction of navigable waters.)
4. State courts don't have the authority to deny any of the above.

The U.S. Supreme Court has repeatedly ruled that "rivers that are navigable in fact are navigable in law. If a river is physically navigable, it is legally navigable. No court or agency has to designate it as such.

Public ownership of physically navigable rivers, including the land up to the ordinary high water mark, pre-dates property deeds. What the property deed says or doesn't say about the river is irrelevant.

Public ownership of physically navigable rivers is the same in all states. It's a U.S. Supreme Court standard, and it includes those rivers that are physically navigable by canoe, kayak, and raft.

Under the U.S. Constitution, state and local laws cannot deny public rights to use navigable rivers. Federal law requires state governments to hold rivers "as a public trust for the benefit of the whole community, to be freely used by all for navigation and fishery," "freed from the obstruction or interference of private parties."

Rivers that are navigable in canoes, kayaks, or rafts are legally navigable under federal law, with no official designation needed. Federal law confirms public rights to navigate these rivers through private land, and walk on privately-owned gravel bars and riverbanks to scout rapids, portage, fish, or simply to enjoy the river. The U.S. Supreme Court has confirmed that the navigational easement on such rivers includes public rights to portage, walk along privately-owned riverbanks, and engage in fishing and duck hunting, regardless of who owns the riverbed, and that this easement must remain "freed from the obstruction or interference of private parties.".

There is a BIG difference throughout America between what Federal law says about rivers, and the way rivers are used in practice. State governments that don't want to acknowledge federal authority, reduce their own authority. The federal government and the 50 state governments have often done very little to confirm the public's rights to their rivers. In practice, public rights are routinely ignored, disregarded, and denied, on thousands of miles of rivers, by landowners, local law enforcement personnel, and state and federal government agencies. The result has been deaths and countless incidents of unnecessary confrontation, conflict, and violence.

One might think that getting river law applied in actual practice on Nevada rivers would be a relatively quick and simple court procedure. But the legal system is ponderous, and there are only a few attorneys and judges in the whole country who are familiar with river law. River enthusiasts cannot feasibly sue government agencies or private entities to preserve rivers and assure public access to rivers. Boaters cannot feasibly run rivers that are officially closed, and then win their river access disputes in local courts. **And boaters don't need more court victories anyway; public rights on rivers have been repeatedly confirmed by the highest court in the nation, the U.S. Supreme Court.**

State governments do have authority to manage public uses of the water, fish, and other resources in rivers, but they do not have the authority to deny overall public rights to navigate, fish, fowl, and walk along the banks of the rivers in their state that are physically navigable. In

the last century, there have been thousands of disputes over river rights. Injury, threats, and even deaths have occurred from people simply not knowing or understanding the law. River rights are a serious issue.

Nevada's river disputes are not a legal problem, but a public education problem. Educating river users of their rights; landowners, and law enforcement officials about the public's rights to use physically navigable rivers and creeks under existing law is needed here in Nevada. Thus the impetus of our letter.

Real life situations include:

—Sam Essig, a very delightful and pleasant employee at Walker River State Recreation Area, at no fault of her own, gave misinformation to one of our members: "The East Walker is still non-navigable. The only open area on the East Walker River that can be floated by the public is the 4-1/2 to 5 miles between the Squeeze Shoot and Riverbend Campground at Pitchfork. Lobbyists and agencies are trying to change that so that boaters can float all the way from Bridgeport to the Park. Non-navigable means there is private land on both sides of the river; it means that you can't go on the river without everyone's permission." *[**Federal law is supreme**: Supremacy Clause, U.S. Constitution, Article VI, Clause 2; **No official designation needed**: The Montello, 87 U.S. 430 (1874); **No historical record needed**: United States v. Utah, 283 U.S. 64 (1931). United States v. Appalachian Electric, 311 U.S. 377 (1940); **Right of the public supersedes private ownership**: United States v. Cress, 243 U.S. 316 (1917).]*

—Tim from Wellington: " The park ranger at the new East Walker River State Recreation Park told me the river was non-navigable upstream of Pitchfork due to the private landowning ranches. The rancher had his barbed wire fencing stretched across the river to keep his cattle in. Is it not an irony that the public is barred from their legal right to navigate the entire river instead of just a portion, while the State allows the private landowner to ignore the 'Clean Water Act', allowing his cattle to trample the banks of the river and cross over?" *[**Violation to allow cattle to trample**: Clean Water Act, 33 U.S. Code 1251 Sec. 101(a)(7).]*

—Scott, an employee at Fort Churchill, gave the following advice to one of our callers: "If you don't want confrontations, I suggest floating from Fort Churchill down to Lake Lahontan because it is all state owned land." Scott's well-meaning advise inadvertently restricted the nervous boater's desire and legal right to float the Carson River section from Dayton to Fort Churchill. There are also manmade obstacles of impassable rocks that can only be portaged and headgate across the entire river, called the "drowning machine" on that stretch. *[State v. Bunkowski, 503 P.2d 1231, 1234 (Nev. 1972); **Right of public to use waterway supersedes any claim of private ownership**": United States v. Cress, 243 U.S. 316 (1917); **States cannot interfere with navigation**: Gibbons v. Ogden,*

*22 U.S. 1 (124); **Navigable in fact are navigable in law**: The Daniel Ball, 77 U.S. 557 (1870).]*

—Evelyn, a canoe enthusiast from Fallon: "We landed our canoes on an island midstream on the Dearborn River in Montana to camp. A woman came to the water's edge and told us we should move along before her husband came down because he would have a gun and would not hesitate to use it. We also heard the same landowner had run over a group's rafts at the public take out near the Missouri River. I hope we can avoid altercations like these in Nevada." ***[States are the guardians of free navigation**: Pollard v. Hagan, 44 U.S. 212 (1845).]*

—Bridget, teacher and mother from Fallon, NV: "Lots of people float the Carson through Fallon on inner tubes. It was a hot day and I told my kids to invite their friends, what a mistake. We ran into barbed wire stretched across, bank to bank, that we didn't see until our tubes ran into it. The tubes were caught and water was pushing our tubes under, flipping us all out into the deep, moving water. I couldn't help the kids because I was in the middle of trying not to drown! It was a real touch and go situation, but somehow we all came out alive." ***[Landowner fences across rivers violate federal law**: 33 U.S. Code 403; **Push down unauthorized fences**: Elder v. Delcour, 269 S.W.2d 17 (Missouri 1954).]*

—Sarah, canoe enthusiast from Carson City: "My husband and I took a canoe from Dayton to Fort Churchill on the Carson River. Our float was interrupted by an uncomfortable encounter with either the landowner or an employee of his. From the bank the guy yelled at us that we were on private property and to "get out of here". What could we do, but keep going and hope he wouldn't do anything. We also had to portage the dreaded "drowning machine" we had heard about, a headwall across the river that has to be portaged unless one enjoys being sucked underwater by the turbulent sous hole it creates." ***[Without obstruction or interference**: Illinois Central v. Illinois, 146 U.S. 387 (1892); **Public property of the nation**: United States v. Rands, 389 U.S. 121 (1967).]*

In summary, these incidents are the impetus behind our request for opinion asking, WHY DOES NOT NEVADA, in order to avoid disputes; dangerous obstructions, and trespass citations from uninformed law enforcement officials, align its State laws with Federal laws on the public's right to use our rivers in a lawful manner without interference so that the State can begin to educate the public and its officials in charge? Boaters by law should be able to scout and portage dangerous obstacles without fear of trespassing reprisals or servient landowner altercations. The public should be afforded legal access points to navigable rivers. Many State agencies feel their hands are tied. Please offer us an opinion on how you can help us to accomplish what the Federal laws already provide the public, "**Forever free**: Northwest Ordinance of 1787, chapter 8, 1 Stat. 50."

Very Truly Yours,

Fred Atcheson, Esquire
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Additional citations:

Federal law is supreme: Supremacy Clause, U.S. Constitution, Article VI, Clause 2.
Forever free: Northwest Ordinance of 1787, chapter 8, 1 Stat. 50.
U.S. Supreme Court regarding forever free public highways: The Montello, 87 U.S. 430 (1874).
Early fur-trading days: Economy Light & Power, 256 U.S. 113 (1921).
Floating out of logs: United States v. Appalachian Electric, 311 U.S. 377 (1940). (rivers are navigable even if they have been "out of use for a hundred years").
Use by recreation industry use is indeed commercial: Alaska v. Ahtna, 891 F.2d 1401 (9th Cir. 1989).
Small, shallow river in Florida: Goodman v. City of Crystal River, 669 F.Supp. 394 (M.D>Fla. 1987).
Shallow, rocky river in Maine: Swan Falls Corporation, 53 F.E.R.C. p 61,309 (1990).
Small, shallow river in Indiana: David Zinkie, 53 F.E.R.C. p 61,029 (1990).
Shallow, rocky river in New York: New York Sate Department of Conservation v. Federal Energy Regulatory Commission and Niagara Mohawk Power Corporation, 954 F.2d 56 (2d Cir. 1992).
Kayak and canoe classes on small, shallow, whitewater river are commerce: Atlanta School of Kayaking v. Douglasville County Water District, 981 F. Supp. 1469 (N.D.Ga 1997).
Fur traders used smaller rivers and creeks than those used today: The American Fur Trade of the Far West by Hiram Martin Chittenden, Stanford University Press 1936 and 1954, page 762.
Ankle-deep creeks are legally navigable: Natural Resources Defense Council v. Callaway, 392 F.Supp. 685 (D.D.C. 1975) (regarding scope of federal navigability, 33 U.S.C. 1251-1387).
Navigable in fact are navigable in law: The Daniel Ball, 77 U.S. 557 (1870).
No official designation needed: The Montello, 87 U.S. 430 (1874).
No historical record needed: United States v. Utah, 283 U.S. 64 (1931). United States v. Appalachian Electric, 311 U.S. 377 (1940)
Recreational use shows past usability: Appalachian Electric, 311 U.S. 377 (1940).
Easement regardless of who owns the riverbed: Montana v. United States, 450 U.S. 544 (1981).
Right of the public supersedes private ownership: United States v. Cress, 243 U.S. 316 (1917).
Servitude includes easement: Loving v. Alexander, 548 F. Supp. 1079 (W.D.Va.1982), 745 F.2d 861 (4th Cir.1984).
Right to portage around obstructions: The Montello, 87 U.S. 430 (1874)
Sports fishing and duck hunting: Montana v. United States, 450 U.S. 544 (1981); Martin v. Waddell, 41 U.S. 367 (1842).
Walking along the banks: The Montello , 87 U.S. 430 (1874).; Brown v. Dhadbourne, 31 Maine 9 (1849).
Landowner fences across rivers violate federal law: 33 U.S. Code 403
Push down unauthorized fences: Elder v. Delcour, 269 S.W.2d 17 (Missouri 1954).
Violation to allow cattle to trample: Clean Water Act, 33 U.S. Code 1251 Sec. 101(a)(7).
Walking across private land: Northwest Ordinance of 1787, reenacted Aug. 7, 1789, chapter 8, 1 Stat. 50 confirming that the "carrying places" between navigable stretches of river must remain "forever free" to the public, reaffirmed by the U.S. Supreme Court in The Montello, 87 U.S. 430 (18974) pg. 440, and Economy Light & Power, 256 U.S. 113 (1921) pp. 119-120. Illinois Central Railroad Co. v. State of Illinois, 46 U.S. 387 (1892) (confirming that states can never "abdicate" their duty to provide public access "freed from the obstruction or interference of private parties.") Gion v.

Santa Cruz, 465 P.2d 50 (California 1970) (confirming state law "requiring municipalities to maintain access to navigable waters" and "requiring the state to reserve convenient access to navigable waters.")
Public access from bridges: Public Lands Access Association (PLAA) v. Board of Commissioners of Madison County, 373 Montana 277, _P.3d_(Jan.2014).
States cannot interfere with navigation: Gibbons v. Ogden, 22 U.S. 1 (124).
States are the guardians of free navigation: Pollard v. Hagan, 44 U.S. 212 (1845).
Paramount right of navigation: Weber v. Board of Harbor Commissioners, 85 U.S. 57 (1842).
Public property of the nation: United States v. Rands, 389 U.S. 121 (1967).
Paramount power to maintain the public easement: Montana v. United States, 450 U.S. 544 (1981).
Answers are determined by federal law, not state law: Atlanta School of Kayaking v. Douglasville County Water District, 81 F.Supp. 1469 (N.D.Ga.1997).
State law cannot alter federal definitions, because they are "necessarily a question of federal law.": United States v. Holt State Bank, 270 U.S. 49 (1926).
State definitions cannot deny the public easement: Weber v. Board of Harbor Commissioners, 895 U.S. 57 (1873).
State authority is subject to the public's "paramount right of navigation.": Hitchings v. Del Rio Woods Recreation & Park District, 55 Cal. App 3d560, 127 Cal. Rptr. 830 (1st Dist. 1976).
State becomes the owner of the beds of rivers: Martin v. Waddell, 41 U.S. 367 (1842); Pollard v. Hagan, 44 U.S. 212 (1845). PPL Montana v. Montana, 565 U.S., docket 10-218 (2012).
Private ownership cannot impair public easement: Illinois Central v. Illinois, 146 U.S. 387 (1892).
Right of public to use waterway supersedes any claim of private ownership": United States v. Cress, 243 U.S. 316 (1917).
States can manage public use of rivers, for public health and safety, but they cannot deny easement to use navigable rivers: Younger v. County of El Dorado, 96 Cal. App. 3d 403 (1979).
States can never abdicate the public trust: Arizona Center for Law in the Public Interest v. Hassell, 837 P.2d 138 (Ariz. App. 1991).
Usable for commercial recreation are navigable: Alaska v. Ahtna, 891 F.2d 1401 (9th Cir. 1989).
Sports fishing and duck hunting: Montana v. United States, 450 U.S. 544 (1981).
Without obstruction or interference: Illinois Central v. Illinois, 146 U.S. 387 (1892).
Rivers navigable for Commerce Clause is defined by federal law, not state law: United States v. Holt State Bank, 270 U.S. 49 (1926).
Landowner fences across rivers violate federal law: 33 U.S.C. 403, obstruction of navigable waters.
Rights to scout and portage: The Montello, 87 U.S. 430 (1874)
Walking above high water line: The Montello, 87 U.S. 430 (1874); Brown v. Chadbourne, 31 Maine 9 (1849).
Public trust for the benefit of the whole community: Martin v. Waddell, 41 U.S. 367 (1842).
Navigational easement: Montana v. United States, 450 U.S. 544 (1981) (confirming public rights to engage in sports fishing and duck hunting on shallow river with rapids).
State laws cannot deny public rights to use navigable rivers: Gibbons v. Ogden, 22 U.S. 1 (1824).
Crime to block public use of navigable rivers: 33 U.S. Code 403.
Public right to navigate and walk along beds and banks through private land: Scranton v. Wheeler, 179 U.S. 141 (1900).
Private ownership of the beds and banks of rivers is "always subject to public rights to use the stream.": United States v. Cress, 243 U.S. 316 (1917). ("the right of the public to use a waterway supersedes any claim of private ownership.")
Rights to fish and fowl: Montana v. United States, 450 U.S. 544 (1981) Martin v. Waddell, 41 U.S. 367 (1842).
Rivers are legally navigable if usable for canoeing: Economy Light v. United States, 256 U.S. 113 (1921).

If usable for kayaking: Atlanta School of Kayaking v. Douglasville County, 981 F.Supp. 1469 (N.D.Ga.1997).
For rafting: Alaska v. Ahtna, 891 F.2d 1401 (9th Cir.1989).
For log drives: United States v. Appalachian Electric, 311 U.S. 377 (1940).
For lumber drives: Puget Sound Power v. FERC, 644 F.2d 785 (9th Cir.1981).
It is unlawful to block the public easement for "sports fishing and duck hunting.": Montana v. United States, 450 U.S. 544 (1981). Atlanta School of Kayaking (cited above) (**public rights to use rivers navigable in kayaks "are determined by federal law," not state law.**) Public trust: Martin v. Waddell, 41 U.S. 367 (1842).
violation to allow cattle to trample: Clean Water Act, 33 U.S.C. 1251 Sec. 101(a)(7) (confirming the national goal of preventing "nonpoint source pollution" from entering rivers, such as runoff from cattle.)

WIKIPEDIA

Public trust doctrine

The **public trust doctrine** is the principle that the sovereign holds in trust for public use some resources such as shoreline between the high and low tide lines, regardless of private property ownership.[1]

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Origins

The ancient laws of the Byzantine Emperor Justinian held that the sea, the shores of the sea, the air and running water were common to everyone.[2] The seashore, later defined as waters affected by the ebb and flow of the tides could not be appropriated for private use and was open to all. This principle became the law in England as well. Centuries later, *Magna Carta* further strengthened public rights. At the insistence of English nobles, fishing weirs which obstructed free navigation were to be removed from rivers.

These rights were further strengthened by later laws in England and subsequently became part of the common law of the United States. The Supreme Court first accepted the public trust doctrine in *Martin v. Waddell's Lessee* in 1842, confirming it several decades later in *Illinois Central Railroad v. Illinois*, 146 U.S. 387 (1892). In the latter case the Illinois Legislature had granted an enormous portion of the Chicago harbor to the Illinois Central Railroad. A subsequent legislature sought to revoke the grant, claiming that original grant should not have been permitted in the first place. The court held that common law public trust doctrine prevented the government from alienating the public right to the lands under navigable waters (except in the case of very small portions of land which would have no effect on free access or navigation).

The public trust applies to both waters influenced by the tides and waters that are navigable in fact. The public trust also applies to the natural resources (mineral or animal) contained in the soil and water over those public trust lands.

Application

This doctrine has been primarily significant in two areas: land access and use, and natural resource law.

Access to ocean and ponds

The doctrine is most often invoked in connection with access to the seashore. In the United States, the law differs among the fifty states but in general limits the rights of ocean front property owners to exclude the public below the mean high tide line.

Massachusetts and Maine (which share a common legal heritage) recognize private property ownership to the mean low tide line—but allow public access to the seashore between the low and high tide lines for "fishing, fowling and navigation," traditional rights going back to the Colonial Ordinance of 1647.[3] Maine's Supreme Court in 2011 expanded the public trust doctrine by concluding fishing, fowling and navigation are not an exclusive list; the court allowed the general public to cross private shoreline for scuba diving.[4]

The public trust doctrine also finds expression in the Great Pond law, a traditional right codified in case law and statutes in Massachusetts, Maine, and New Hampshire.[5] The state is said to own the land below the low water mark under great ponds (ponds over ten acres), and the public retains in effect an access easement over unimproved private property for uses such as fishing, cutting ice, and hunting.[6]

In Oregon, a 1967 "Beach Bill" affirmed the state's public trust doctrine, and the right of the public to have access to the seashore virtually everywhere between the low and high tide marks. In California the situation is more complicated: private landowners often try to block traditional public beach access, which can result in protracted litigation.[7] Freshwater use rights have also been subject to litigation in California, under the public trust doctrine.[8]

Natural resources

The doctrine has also been used to provide public access across and provide for continued public interest in those areas where land beneath tidally influenced waters has been filled. In some cases, the uses of that land have been limited (to transportation, for instance) and in others, there has been provision for public access across them.

The doctrine has been employed to assert public interest in oil resources discovered on tidally influenced lands (Mississippi, California) and has also been used to prevent the private ownership of fish stocks and crustacean beds.

In most states in the United States, lakes and navigable-in-fact streams are maintained for drinking and recreation purposes under a public-trust doctrine.

In some countries, the public trust doctrine has been applied to provide environmental protection to natural resources in order to uphold human rights.[9] A recent study also demonstrated that public trust doctrines are transnationalizing.[10]

See also

- Prescriptive easement
- Freedom to roam
- *Illinois Central Railroad Co. v. Illinois*
- *Juliana v. United States*
- *M. C. Mehta v. Kamal Nath*
- *National Audubon Society v. Superior Court*
- Public trust
- Public good
- Public space
- Public property
- Right of way

Further reading

- Sax, Joseph L. (1970). "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention" (http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=3142&context=facpubs). *Michigan Law Review*. The Michigan Law Review Association. **68** (3): 471–566. doi:10.2307/1287556 (https://doi.org/10.2307%2F1287556). JSTOR 1287556 (https://www.jstor.org/stable/1287556).
- Slade, David C. (2008). *The Public Trust Doctrine in Motion* (http://www.ptdim.com). PTDIM, LLC. ISBN 978-0-615-24111-1.
- Velozo de Melo Bento, Lucas (November 14, 2009). "Searching for Intergenerational Green Solutions: The Relevance of the Public Trust Doctrine to Environmental Preservation". *Common Law Review* (11): 7–13. SSRN 1709104 (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1709104).
- Mary Christina Wood, *Nature's Trust: Environmental Law for a New Ecological Age* (2014)[11]

Notes

1. National Working Waterfront Network (July 22, 2015). "Public Trust Doctrine" (http://www.wateraccessus.com/publictrust.html). *Wateraccessus.com*. Retrieved July 22, 2015.
2. William D. Araiza, *The Public Trust Doctrine as an Interpretive Canon*,p. 695.[1] (https://lawreview.law.ucdavis.edu/issues/45/3/Topic/45-3_Araiza.pdf)
3. Dennis W. Nixon (1 January 1994). *Marine and Coastal Law: Cases and Materials* (https://books.google.com/books?id=xCKcUbbCGXMC&pg=PA105). Greenwood Publishing Group. pp. 105–. ISBN 978-0-275-93763-8.
4. Evan Parrott (October 1, 2011). "Maine's Public Trust Doctrine Continues to Evolve" (http://nsglc.olemiss.edu/SandBar/pdfs/sandbar10.4.pdf) (PDF). *Nsglc.olemiss.edu*. Retrieved July 22, 2015. "[The] Maine Supreme Judicial Court affirmed . . . that the public has a right to walk across [privately owned] inter-tidal lands to reach the ocean for purposes of scuba diving."
5. Emory Washburn (1873). *A Treatise on the American Law of Easements and Servitudes* (https://archive.org/details/atreatiseonamer03washgoog). Little, Brown. pp. 522 (https://archive.org/details/atreatiseonamer03washgoog/page/n568)–.
6. William Randall (November 24, 2001). "Great Ponds Act – BDN Maine archive" (http://archive.bangordailynews.com/2001/11/24/great-ponds-act/). *Archive.bangordailynews.com*. Retrieved August 12, 2015.
7. Lee Romney (March 12, 2013). "Dispute heats up over blocked access to Northern California beach - latimes" (http://articles.latimes.com/2013/mar/12/local/la-me-martins-beach-20130313). *Articles.latimes.com*. Retrieved August 12, 2015.
8. "Mono Lake Committee – protect, restore, educate!" (http://www.monolake.org/mlc/). *www.monolake.org*.
9. Minors Oposa v Factoran G.R. No. 101083 (224 SCRA 792), Philippines
10. Joseph Orangias (December 1, 2021). "Towards global public trust doctrines: an analysis of the transnationalisation of state stewardship duties" (https://doi.org/10.1080/2041400520212006030). *Transnational Legal Theory*. **12** (4): 550–586. doi:10.1080/20414005.2021.2006030 (https://doi.org/10.1080%2F20414005.2021.2006030). S2CID 244864136 (https://api.semanticscholar.org/CorpusID:244864136). Retrieved December 5, 2021.
11. David Bollier, "Mary Wood's Crusade to Reinvigorate the Public Trust Doctrine" (http://www.resilience.org/stories/2014-02-12/mary-wood-s-crusade-to-reinvigorate-the-public-trust-doctrine), *Resilience*, Feb. 12, 2014.

External links

- Michael Seth Benn, Towards Environmental Entrepreneurship: Restoring the Public Trust Doctrine in New York (https://web.archive.org/web/20110203232244/http://www.pennumbra.com/issues/pdfs/155-1/Benn.pdf), 155 University of Pennsylvania Law Review 203 (2006).
- Ryan, Patrick S. (2004). "Application of the Public-Trust Doctrine and Principles of Natural Resource Management to Electromagnetic Spectrum" (http://ssrn.com/abstract=556673). *Michigan Telecommunications and Technology Law Review*. **10** (2).
- James L. Huffman, "Fish Out of Water: The Public Trust Doctrine in a Constitutional Democracy " Issues in Legal Scholarship, Joseph Sax and the Public Trust (2003): Article 6. (https://www.degruyter.com/view/j/ils.2003.3.issue-1/ils.2003.3.1.1044/ils.2003.3.1.1044.xml)
- "Restoring The Trust: Water Resources & The Public Trust Doctrine, A Manual For Advocates"

(http://www.progressivereform.org/articles/CPR_Public_Trust_Doctrine_Manual.pdf) by the Center for Progressive Reform, September 2009

- Mono Lake Committee website (http://www.monolake.org)

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