

Definition: “Navigable waters of the United States are *those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.*”

Justification

- Nevada has many Interstate rivers and streams, including the Carson, Truckee, Walker, Bruneau, Jarbidge, Owyhee, Virgin, Colorado, Amargosa, Quinn, Kings, Salmon Falls Creek and many more. The Walker, Carson and Truckee Rivers and their tributaries were used to float logs down into the valley to support mining. The Carson and Truckee are determined ‘navigable’, the Walker is not.
- The Owyhee, Jarbidge and Bruneau Rivers have commercial rafting operations on them.
- Indigenous people lived along the river systems, gathered food, hunted and fished.
- The first settlers in this area travelled along the waterways and were fur trappers. It’s reasonable to assume ‘commerce’ occurred among groups that lived nearby and used the river systems for travel and food. Historical accounts from the Humboldt River system document native people trading fish for supplies with the settlers. Before the dam was built in Idaho, there were large runs of salmon on Salmon Falls Creek. The salmon were caught and sold on Salmon Falls Creek.
- Water from almost every river, stream, and creek in Nevada has been diverted for agriculture, which is ‘commerce’. Waterways have also been dug up for gravel for road construction and other commercial uses.
- Animal trapping for fur-bearing animals still occurs along Nevada waterways, including for sale. The Nevada Department of Wildlife issues these licenses.
- The Nevada Department of Wildlife has hatchery operations, stocks rivers and streams with fish, and sells fishing licenses for fishermen to fish on all Nevada rivers and streams. They also sell boating licenses for use on Nevada’s lakes and rivers. That’s commerce.

Legal Precedent

Public trust doctrine: 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 rivers, 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). 2

A copy of the letter from Fred Atcheson, Esquire, to Aaron Ford, Nevada Attorney General, regarding “Public Rights to use Public Streams and Rivers of Nevada” is included. This document contains the information for legal precedent and a list of cited legal documents.

“**State v. Bunkowski, 1972**” regarding the test of navigability of the State’s rivers and streams and Shepherding citations regarding subsequent decisions are attached.

Benefits to the State of Nevada

Access

- The public would have access to all waterways below the high water mark.
- State employees doing water quality and species sampling and surveys would have access to all waterways below the high water mark.

Recreation & Tourism

- The public could freely wade, float, boat, fish and hunt 'within' the waterway and along adjacent public lands.
- Commercial rafting and kayaking tours could occur on more sections of more rivers.
- Nevada State Parks could promote river access and use. For example, Walker River State Park would benefit from having the entire length of the Walker River, from the California/Nevada border to Walker Lake State Park and beyond, possibly to Walker Lake, be accessible for boating and fishing.
- The potential for rivers in Nevada to be designated 'Wild and Scenic'. The Bruneau, Jarbidge, Owyhee and Amargosa Rivers have sections in other States that are designated "Wild and Scenic", adding the Nevada sections would be a great opportunity.
- Tourism offices could expand advertisement of recreational opportunities on the rivers and streams of Nevada.

Administrative Consistency

- The State of Nevada owns all the surface waters and waterways except on Tribal lands. The land beneath the 'high water mark' is owned only on waters identified as 'navigable', which is currently only the Colorado, Carson, Truckee and Virgin Rivers. Nevada State Lands as well as other Divisions within the Department of Conservation and Natural Resources, Department of Wildlife and the Department of Transportation would benefit from having all Nevada rivers and streams owned and managed consistently.
- All waters in Nevada would fall under the same State and Federal regulations, the Clean Water Act in particular.

Dear Governor Sisolak, Attorney General Ford, and Department Directors and Administrators and Assistants:

We are asking that you each consider what we are supplying you in our plea for another view of Nevada's Waters. Our Nevada Laws say that ALL of the Surface Waters of Nevada belong TO THE STATE! That means as well to the Public of this State and Visitors as well. Yet in spite of Numerous Legal Rulings at both the National and State Level we do not have OUR WATERS Legally available for our citizens to use for recreation in any form. Be it hiking, fishing, gathering of food or furs, hunting, paddling, swimming and many more forms of recreation. How can this exist in 2021? Those Legal Rulings repeatedly agree that Nevada's Waters are indeed Navigable and therefore available for all forms of Recreation along the length of those Waterways up to the Mean High Water line of each Waterway. So how do we go about agreeing that the Laws and Legal Rulings of Nevada and the US Government favor the Publics Right to use those Waterways? The only way available to those of us seeking another view of this States Water is to get YOUR DEPARTMENTS to request a Legal Opinion of the Attorney Generals Office. I and others of the public have NO OTHER OPTION other than legislative. Nevada and US Law Rulings already say what the Law is so why should legislative, expensive and time consuming options be required?

Below We will explain many reasons why your agencies should make that request of the Attorney Generals Office for a new Legal View of our Waters and Waterways.

Again we will start with the fact that Nevada legally OWNS All the Surface Waters and Waterways of Nevada.

Nevada has many Interstate flowing Rivers and streams. The Carson, Truckee, Walker, Bruneau, Jarbidge, Owyhee, Virgin, Colorado, Amargosa, Quinn, Kings, Salmon Falls Creek and many more. Federal Laws say that ALL Interstate Waters Ways are Navigable in fact. Nevada has posted that only the Colorado, Virgin, Truckee and Carson Rivers are Navigable. Why? Commerce! The Carson and Truckee Rivers due to log floating for the mining needs. That ALSO occurred on the Walker River yet for other reasons that was denied Navigable Status. The Commerce issue comes from the time of Statehood for Nevada in 1864. Every other waterway in Nevada was denied a Navigable Status when in reality history says the opposite. The first white people to come to Nevada were fur hunters which is an Act of Commerce. There are still many folks who hunt fur bearing animals in Nevada. Just ask NDOW. The term Commerce also is used for hunting and gathering. What did all of our first pioneers do and the Native Americans ahead of them do for food? They were living by this states waters and finding anything they could to feed, clothe and house their families and livestock. So how is it that this was ignored when Statehood occurred? This would still be true today but for the fact that many of Nevada's Waterways cannot legally be accessed for those activities. Say What! History of Commerce denied.

So how will a State Wide acceptance of Navigability for our State Owned Waters benefit our State?

First and biggest is that the Lands adjoining Nevada's Legally Navigable Waters would be legally accessible to the public for all forms of recreation. (Except perhaps limits on hunting in some areas with the discharge of firearms limits). Both on the waters and above to the Mean High Water Line where the limit currently exists on the currently Navigable Rivers. State Lands would control those Waters and Lands. It would gain control of the riverbeds, waters and land to Mean High Water Line on ALL of Nevada's Waterways should you agree that they are in fact Navigable. A basic question to ask once that is considered is who will better care for those Riparian Lands and Waters? State Lands or

other land owners, interests, mining or others. State Lands does an excellent job now. It would create a far greater job for them but I am sure they would gladly accept that.

Others benefitting Navigable Status are several of Conservation and Natural Resources Departments. State Parks currently has a State Park on the East Fork Walker River. Where they are currently promoting paddling, hiking, fishing, and other forms of Recreation along the waterway there. YET it is not considered Navigable by Nevada. So what is the liability for Nevada should an incident such as a drowning occur at a River Park that is NOT Navigable? They are promoting the feasibility of paddling from the California State Line area of the East Fork Walker all the way to the current park location. Yet at the Park itself there are two sections that promote river use but there is a section of Private Property in between where again it is ILLEGAL to use the river and its shoreline by the public. I have recreated via kayak from near the State Line with California to the area of the Walker River State Park. It is very scenic and relatively easy but has several places where the river ends in vast thickets of brush due to small floods from side canyons. There is also a history of barbed wire fences. Several of which we encountered. Plus some rather dangerous drops through boulders and trees.

The Office of Outdoor Recreation has now been established by Governor Sisolak and how can a State Promote Outdoor Recreation in a State here it is illegal to use all but 4 waterways? ODNR Staff have been working on compiling locations for public use of trails, mountain bike trails, OHV trails and other ways of promoting on Internet Sites their usage. Yet they are unable to list anything to do with recreation of Non Navigable Waterways currently in this State. Again one has to ask why?

Would not Outdoor Recreation and Tourism and Cultural Affairs not benefit GREATLY from a new view of our States Resources? They are currently doing much to promote Tourism or our rural State Areas. Do you think that those rural areas might benefit from additional areas available to recreate and enjoy? Currently they cannot legally offer these areas for recreation due to our current view of the waters in those rural areas. Hamstringed is a word that comes to mind with the current view of this States Waterways.

Would not the State's Water Engineer and his Staff benefit from the legalization of all our State's Waterways. They after all oversee all of Nevada's Waters. How could it hurt their affairs?

Nevada's Department of Wildlife would greatly benefit from this new look at our State's Waterways. It would vastly improve the publics usage of our Waters with greater access. Again it is illegal currently to access all but 4 waterways in Nevada. Much is overlooked by them currently but still by Declaring ALL of Nevada's Waterways Legal they would have legal access to the Mean High Water Line on all of Nevadas Waterways. Not just for fishing but hunting (again with limits), fur gathering and paddling for recreation.

So there are other considerations. First is the thought of Commerce in this year 2021. Again US Law sees recreation as a form of Commerce. There are thousands of non motorized paddlers in this state. Just look on top of cars everywhere you drive. There are several rivers in our north State that already have COMMERCIAL Rafting on them. They are the Bruneau, Jarbidge and Owyhee. Yet Nevada still sees those Rivers as Non Navigable. There are numerous Guide Books including Bureau of Land Management printed books that describe those waters and are considered Navigable in fact. In conversations I have had with BLM, US Forest Service, US Fish and Wildlife and Bureau of Reclamation Officials they ALL legally cannot say that all but the current 4 Rivers are Navigable in fact. Amazing!!

US Fish and Wildlife as well as NDOW do rehabilitation and fishery management on many streams, creeks and rivers in this state. They spend lots of tax payer monies on these projects to benefit the riparian habitat as well as benefit the public for fishing opportunities. Is this a form of Commerce? It certainly enhances opportunities for access to areas below Mean High Water Line on all of those State Waterways.

The US Congress has created many Laws that oversee the waters of our states. One of them is the Clean Waters Act. Over 400 Waterways in this State are or were under their oversight. Nevada has agreed legally to abide by this law. Each and every one of those Waterways is by FACT considered Legally Navigable by the US and in enforcement by the Army Corps of Engineers (ACE). ANY project that was too possibly in any way affect any of those 400 plus Waterways required a ACE permit with drawings, engineering and a printed plan to be approved. Again every one of those 400 plus Waterways was deemed Navigable in Fact and any possible disturbance to said Waterways required a permit to limit pollution of them and OUR waters. Since its passage of the Clean Water Act every permit issued to any project in Nevada was an acknowledgement of that Waterway as being in FACT Navigable. Surely this and other stated aspects listed above speaks as to why Nevada Departments must ask for an Attorney General's Opinion on our Waters being indeed Navigable in fact.

I have in my possession many Guide Books, legal books and letters from other paddlers who have spent days paddling on our currently not considered Navigable Waters. Very glad to share them with any of you. Boxes and bags full of info that should be part of any discussion about our Waters and Navigability of them.

Another opportunity for Nevada with a change in Navigable Status for our States Waterways would be the possibility of having many of our States Waterways being declared Wild and Scenic on some of their sections. The Bruneau, Jarbidge, Owyhee and Amargosa have sections in other states that are Wild and Scenic. In a state that only has one National Park do you think it might benefit Tourism and Outdoor Recreation in Nevada to have a few Wild and Scenic Rivers? They cannot exist if they are Non Navigable as they are now. Remember it is 2021 NOT 1864.

I have much more that I could say that further supports our view of Nevada's Waters but I think I have covered enough. I would GLADLY meet with any of you that wish to entertain a positive view of our States future. My info will be listed below.

AS you and I both know our world has changed greatly with CoVid and the public closures of your Offices. I still intend to deliver this note along with some Legal Rulings that support our quest to get a 2021 view of Nevada's Waterways. Our Governor and many of your Departments are very challenged by CoVid and meeting folks like me from the public and there is also this latest challenge to our government that we all must live with now. I still will attempt to delivery this to each of your Offices and the addressed Officials. Your efforts to continue to do what needs to be done to manage our states needs are appreciated greatly. Especially those of our Governor. His job has become unimaginable.

So who am I the person writing all this? I am part of a greater group of paddling recreation seekers who see a bigger picture for Nevada's future. My name is Charles Albright and I have been paddling since childhood but especially kayak and canoeing since 1971. I moved to Nevada in 1972 and started exploring rivers and lakes then. Living in Carson and Tahoe at the time gave me access to the East Sierras and all of its creeks, rivers and lakes. I moved to Reno in 1976 and quickly began creating a paddling community there and nearby. I taught paddling for 21 years for free and taught thousands of folks the basics for well past that. I am the reason there is a White Water Park in Reno and by example

one in Sparks as well. It took our group 8 years of efforts to get it created. I have fought many battles with folks for river issues. I finally got Sierra Pacific Power to work with us for safety and signage at their dams and continue to work with TMWA for the benefit of river and shore users. One of SPPCO's Dams was ILLEAGGLY built with no permits what so ever at Chalk Bluff on the Truckee River. When they created a Low Head Dam which have killed hundreds of people across this country I raised a big stink and they had to come back in and "make it safer" but it still is a major hazard. I had "battles" with Reno PD who claimed they could remove paddlers and make law with regards to the river like they owned a "Legally Navigable River". We several times were confronted by officers who said we could not paddle that it was illegal. One time they kicked 4 friends off the river and loaded them in a paddy wagon and drove their shuttle for them. After a rather spirited conversation with the head officer that day I contacted many state and local officials like NDOW, Governor, AG's, County and Reno Officials and low and behold it was NO LONGER a problem. I put on races at Wingfield Park for years and still assist with the River Festival each Year. I have led hundreds of paddling trips on this states waterways. I was a founding member of One Truckee River and still work with Iris on many issues. I have led hundreds of River Clean ups on the Truckee River. I have been working for years to solve the issue of Homeless Camps along our River. I have a great working relationship with our Mayor, Parks Department and Fire Department. Reno Fire asked me to PLEASE assist with getting the many Homeless Camp issues solved. I have promoted several river paddles to take officials, news and others to witness the problem first hand from water level. I am also working with Grant Denton who is the official Homeless Liaison for Reno, Washoe and Sparks for the Homeless Issues. Grant has become a great friend and I am now working on getting him and his clean up crews more higher quality trash bags for their efforts to clean up the shoreline and river channel. There is much more but I will end with the facts that I have been a numerous US Teams, competed in Europe and Canada numerous times and also been a National Champion several times and finished in 4th place and 6th several times representing the US in International Competition. So I hope that you folks do not see me as some kind of Wacko. I want what will be best for our STATE and its PUBLIC!

Sincerely,

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I hope you folks have a view towards this states future that includes its waters.

Please consider these legal Rulings and Opinions as part of my request for all of the waters of Nevada to be owned by the public and therefore useable by the public for all manner of recreation.

Public Trust Doctrine: Legal Opinion since 1842. As a Territory Nevada the public was granted free access to all waters and that right was to continue as a state. "State has the duty as the Trustee to hold all navigable waterways in trust for the benefit of the Public." The Public owns up to where water usually ends. This is called the "Mean High Water Mark". Navigable Waters are common highways and forever free.

Freedom to Roam: Right of the Public to access wilderness. Property Clause of Article IV, Section 111 of the US Constitution: Use of US Property with out limitations.

US Law Lakes and Navigable in fact streams are maintained for Drinking and Recreation Purposes under Public Trust Doctrine. Right of Common Passage. Public Trust Doctrine has been applied to provide environmental protection to Natural Resources in order to uphold human rights.

Public Trust Doctrine is a principle that the Sovereign holds in Trust for Public use some resources such as shoreline between the high and low tides regardless of private property ownership. Right of way includes use of waterways. Common law for fishing, food gathering, hunting and right of common passage.

All of Nevada's Waters were used by Native Americans since their arrival. They lived by waters. It was their Habitat where they lived, breed, died and survived on what the waters of this state gave them for life in our harsh environment. It was their "Commerce". Native Americans were followed into our area by Fur Trappers. Again a fact that they used Nevada's Waterways for the Commerce of their lives. This is still true of both Native Americans and Fur Trappers that still ply Nevada's waters for their needs. Nevada still has many Fur Trappers that pay yearly fees to be able to collect furs. Is that NOT Commerce?

Many State, Federal and Conservation groups spend millions of dollars each year doing habitat restoration of our State lands and most waterways to benefit fish, plants, trees, and animals. Those groups include USFWS, BLM, B of Rec, USFS, NRA, WMA, NWR, NPS, Indian Reservations, State Parks, NDOW, EPA, State Lands, DCNR, Outdoor Recreation, Tourism, Nature Conservancy, Sierra Club, Trout Unlimited, Ducks Unlimited and many other groups. Hiker, bikers, paddlers, power boat users, climbers, OHV all do their share. Is this NOT Commerce? Public monies and funds to make our waters and lands better for public use as well as all the plants, fish, animals better off.

How can anyone deny this is Commerce?

Walker River Chronology January 1996: During the Third Session of the Territorial Legislature in 1864 a Franchise was granted to float logs and timbers on the West Fork Walker for 5 years. Territorial Lawmakers included a disclaimer with that franchise that provided that "nothing in this Act shall be so construed as to constitute said river a Navigable Stream." There was an opinion by Robert Stewart that the disclaimer was possibly a stated Territorial idea that "no law shall be passed interfering with the primary disposal of the soil." By definition, designation of Navigability would have assigned ownership of the Walker River's bed and banks of the Territory of Nevada. Transport of logs was deemed Commerce in the ruling of State of Nevada vs Bunkowski. It states that the Carson River was indeed Navigable due to floating logs and timbers. Topaz as well as Bridgeport Reservoirs have waters from both the East Fork and West Forks now are used as waters that allow recreation in all manner of boats. That is Navigation also on the Walker's water. Then there is the creation of a State Park on the East Fork where the State Parks promotes paddling, ie Navigation on the parks waters. BUT!!! According to the State Park you can get in at the upper end of the park and then paddle to a section of private property that spans both sides of the river. Where you MUST get out then travel to

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My Community Involvement

- Part of a greater group of paddling recreation seekers who see a bigger picture for Nevada's future. I moved to Nevada in 1972 and started exploring rivers and lakes then. Living in Carson and Tahoe at the time gave me access to the East Sierras and all of its creeks, rivers and lakes. I moved to Reno in 1976 and quickly began creating a paddling community there and nearby.
- Founding member of One Truckee River, a collaborative group that put together the One Truckee River Management Plan adopted by the City of Reno in 2016.
- Instrumental in the creation of the White Water Park in Reno. Our group spent 8 years on this effort. It was the example used for the creation of the Sparks Water Park.
- Taught safe paddling at Reno, Sparks and other local area pools for over 21 years, for free, to thousands of people.
- Led hundreds of paddling trips on Nevada's waterways.
- Facilitate the local White Water Group and manage the local Reno Kayakers Meetup Group, which has around 400 members.
- Active advocate and activist for safe rivers. Worked with Sierra Pacific Power to get signage for safety at their dams and continue to work with Truckee Meadows Water Authority (TMWA) for the benefit of river and shore users. For example, the Chalk Bluff Dam on the Truckee River, built by Sierra Pacific was a low head dam, which is an unsafe design for kayakers and has killed hundreds of people across the county. I was instrumental in the retrofit to make the dam safer for kayakers.
- Raising awareness on the Truckee River for allowable river use by kayakers. In the past, the Reno Police Department incorrectly assumed kayakers were not allowed on the river through town and would require kayakers to exit the river. Those misunderstandings have been resolved and kayakers can now enjoy the full length of the River.
- Led River Cleanups on the Truckee River for many years with hundreds of volunteers.
- Assist with the Reno River Festival and organize races at Wingfield Park.
- Working to help solve the issue of Homeless Camps along the Truckee River. I have a great working relationship with the Reno Mayor, Parks Department and Fire Department as well as the Community Liaison.
- Competed on numerous US Kayak Teams in the US, Europe and Canada, including being a National Champion several times and finishing in 4th place and 6th several times, representing the US in International Competition.

Nevada's Outdoor Recreation Economy Generates



**\$12.6
BILLION**

IN ANNUAL CONSUMER SPENDING¹

87,000

JOBS STATEWIDE

America's Outdoor Recreation Economy Generates

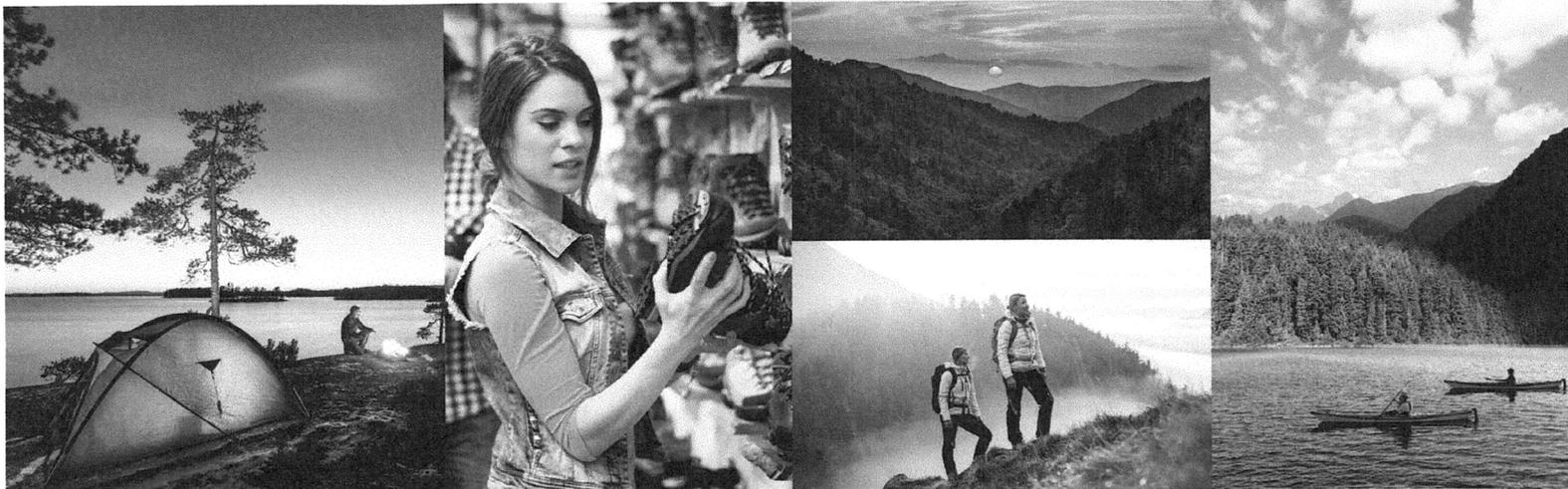


**\$887
BILLION**

IN ANNUAL CONSUMER SPENDING

7.6 MILLION

AMERICAN JOBS



GET INVOLVED

- 1 Visit the OIA Advocacy Center at [outdoorindustry.org/advocacy](https://www.outdoorindustry.org/advocacy) to learn more about the issues and actions affecting outdoor recreation.
- 2 Recognize outdoor recreation's role in creating healthy economies and healthy communities, and support policies that promote your outdoor recreation economy.
- 3 Go outside and enjoy the public lands and waters that are our nation's treasures. They belong to you.

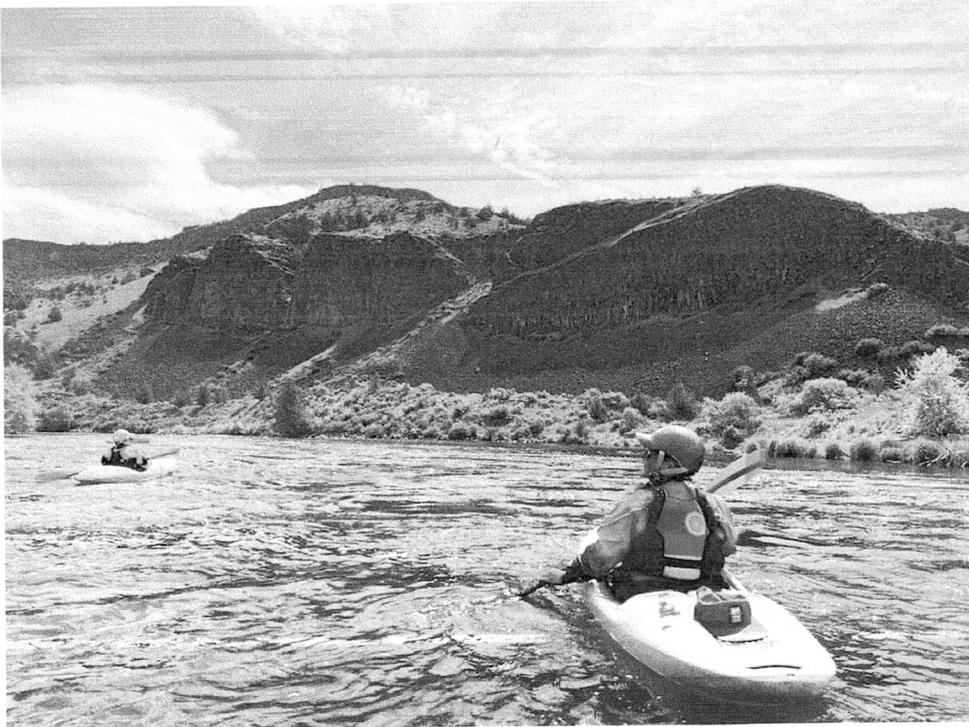
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TOGETHER WE ARE A FORCE™

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[OUTDOORINDUSTRY.ORG](https://www.outdoorindustry.org)

These results report the economic contributions to the respective statewide economies from the outdoor recreation participants who reside within each congressional district. They do not represent the economic contributions that occur within any given district as a result of outdoor recreation.

¹Estimates are based on where outdoor recreation participants reside, not where the activity or spending occurred. Totals for district data and state data may differ. Estimates do not include spending by international visitors, nor by those who do not participate in outdoor recreation.



New Clean Water Act Rule Released, Rivers Benefit

Posted: 01/04/2023

By: Kevin Colburn

Last week the Environmental Protection Agency released a [new final rule](#) governing which streams and wetlands will be covered by the Clean Water Act. If this sounds familiar, it is for good reason: this issue has been the subject of perennial debate and changes made by various administrations and courts for at least the past two decades. But, for today, for rivers, it is time to celebrate! The new rule, which will likely take effect in 60 days, will

restore protections for many of America's wetlands and streams that had lost protection under the previous version of the rule. Desert rivers are particularly big winners under the new rule, as protections for many of these rivers were lost under the prior rule and will now return.

At issue is which water bodies are considered "waters of the united states," or WOTUS for short, which is just legislative shorthand for waters covered by the Clean Water Act. The Clean Water Act is responsible for the incredible recovery of our nation's rivers, from a time when pollution was poorly regulated or not regulated at all, and the impacts on fish, recreation, and property were significant. The new rule seems reasonable at first blush, as it relies on science that is familiar to all paddlers, and tests that have enough flexibility to work across our hydrologically diverse nation, to determine which streams and wetlands are likely to carry pollutants downstream and thus require Clean Water Act coverage.

Of course, the rule could get hung up in new court challenges, or even undercut by a pending supreme court case that is considering the bounds of Clean Water Act coverage. American Whitewater is among many groups who [joined an Amicus Brief](#) on that case, *Sackett v. EPA*, in support of Clean Water Act coverage. American Whitewater also was a panelist in an EPA roundtable on the subject last year to speak up for the recreational and public health benefits of clean rivers. Hopefully, you - the reader - submitted a public comment on the draft rule. Our organization has a consistent track record of supporting a broad, science-based approach to the implementation of the Clean Water Act to benefit the rivers we enjoy and also protect our members and communities from the impacts of excessive pollution.

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