

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 or 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 use 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 they 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!

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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.

Nevada's Outdoor Recreation Economy Generates

**\$12.6
BILLION**

IN ANNUAL CONSUMER SPENDING¹

87,000
JOBS STATEWIDE

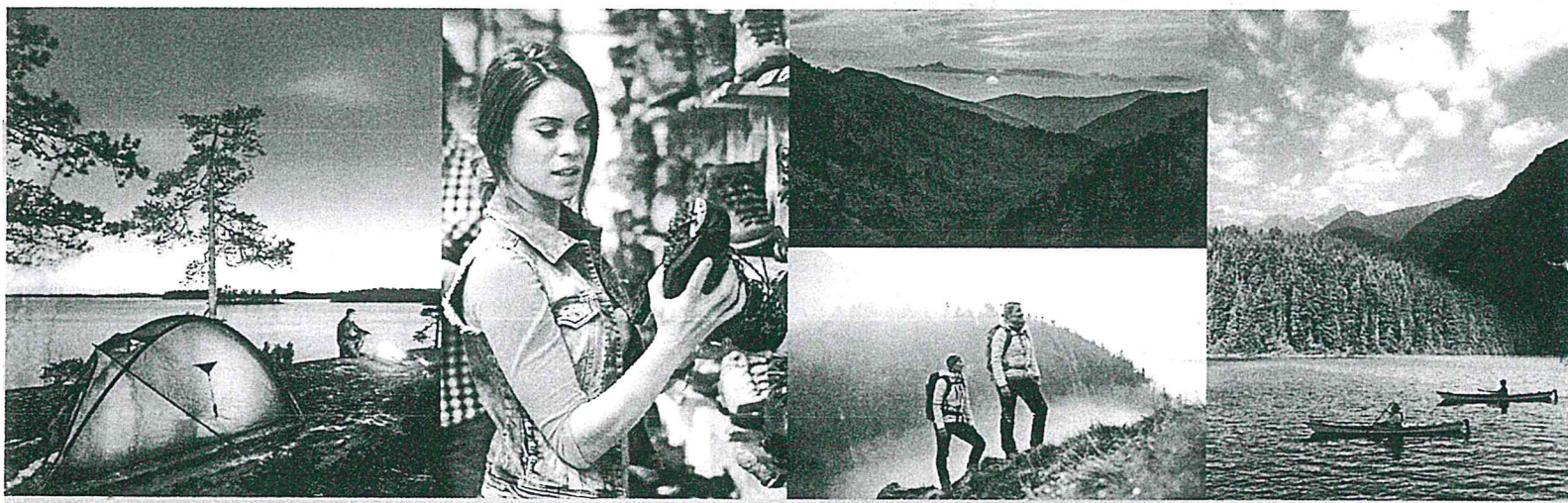
America's Outdoor Recreation Economy Generates

**\$887
BILLION**

IN ANNUAL CONSUMER SPENDING

7.6 MILLION
AMERICAN JOBS

Handwritten note:
2
\$887-557-59
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GET INVOLVED

- 1 Visit the OIA Advocacy Center at 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.

**OUTDOOR
INDUSTRY
ASSOCIATION**
TOGETHER WE ARE A FORCE.™

2580 55TH STREET
SUITE 101
BOULDER, CO 80301

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.

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.

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. Hamstrunged 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 Generals 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 you 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 ILLEGALLY 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.

1 December 17, 2020

2 Aaron Ford, Attorney General, 100 North Carson Street, Carson City, Nevada 89701-4717

3
4 re: Public Rights to use Public Streams and Rivers of Nevada

5 Dear Mr. Attorney General:

6
7 I, in a concerted effort with several members of the boating community here in Nevada, am
8 requesting a legal opinion from your office confirming that the public in Nevada may pursue
9 their lawful rights to enjoy **all** navigable rivers and streams within Nevada, even those running
10 across private land, without being turned away with misinformation from state government
11 officials and/or harassment from uneducated landowners and law enforcement officers; knowing
12 that Federal law supersedes State law on the designation of the term “navigable” and asking what
13 can be done to assure those rights? In short, we are asking for enforcement in protection of our
14 rights to paddle, fish, and otherwise recreate within the maximum high water line for **every river
or stream in Nevada that is navigable, per Federal law, perhaps by designating all navigable
rivers in Nevada, by Federal definition as navigable, with Nevada law.**

15 We in Nevada, have hundreds, if not thousands of paddling enthusiasts. The local Reno Kayaker
16 Meet Up Group has close to 400 members. Many whitewater river enthusiasts run Nevada rivers
17 that are not in the group. Thousands of our citizens tube and raft the Truckee River alone,
18 utilizing the 3 commercial guiding companies in operation. Sierra Adventures puts hundreds of
19 folks on the local runs each year. The Carson and Walker Rivers get used by many hundreds of
20 river runners and countless fishermen and people walking the banks for enjoyment. The East
21 Fork of the Carson, Markleeville to Gardnerville, host thousands coming from inside and outside
22 Nevada each floating season. Rivers like the Bruneau, Jarbidge and Owyhee get hundreds of
23 commercial river runners and thousands of private users each year. Rivers like the Humbolt,
24 Quinn, Reese, Walker also get usage every year. Nevada residents flock to our Nevada rivers,
25 especially during the spring and summer months, extending into fall.

26 State laws cannot deny public rights on the navigable rivers of the nation, due to the Commerce
27 Clause and the Supremacy Clause of the U.S. Constitution. Nevada has approximately 141,796
28 miles of river, but no designated wild & scenic rivers and only 4 designated navigable rivers by
the State. *Chapter 537 - Navigable Waters*

29 The State of Nevada was admitted into the Union on October 31, 1864 (13 Stat. 30, approved
30 March 21, 1864), and under the constitutional principle of equality among the several states, the
31 title to the bed of the Carson River then passed to the State, if the river was navigable, and if the
32 bed had not already been disposed of by the United States. *United States v. Holt Bank, supra,*
33 *270 U.S. at 55, 46 S. Ct. 197.*

1 Most importantly and basic to the issue of title to the Carson River bed, the following statement
2 of the court in United States v. Holt Bank, *supra*, at 55-56, 46 S. Ct. at 199 must be fully
3 appreciated:

4 "Navigability, when asserted as the basis of a right arising under the Constitution of the United
5 States, is necessarily a question of federal law to be determined according to the general rule
6 recognized and applied in the federal courts. Brewer-Elliott Oil & Gas Co. v. United States,
7 *supra*, [260 U.S.] p. 87, [43 S. Ct. 60]. To treat the question as turning on the varying local rules
8 would give the Constitution a diversified operation where uniformity was intended."

9 To restate it, so that all states when admitted to the Union have equal standing a uniform federal
10 test to title of watercourse beds must be maintained. True it is that many states have adopted
11 varying and less stringent tests than the federal test in order to establish the right of public use in
12 certain watercourses. For example, in California it has been held in People v. Mack, 19 Cal. App.
13 3d 1040, 97 Cal. Rptr. 448, 454 (1971), that, "The streams of California are a vital recreational
14 resource of the state. The modern determinations of the California courts, as well as those of
15 several of the states, as to the test of navigability can well be restated as follows: Members of the
16 public have the right to navigate and to exercise the incidents of navigation in a lawful manner at
17 any point below high water mark on waters of this state which are capable of being navigated by
18 oar or motor propelled small craft." See also State, by Burnquist v. Bollenbach, 241 Minn. 103,
19 63 N.W.2d 278, 287 (1954). Reference to People v. Mack, *supra*, which reviews a substantial
20 number of state navigability cases, illustrates most forcefully that the state courts have not
21 striven for uniformity. **For this reason, those state cases are not authority for the
22 determination of state ownership of navigable watercourse beds. Said determination must
23 be made by reference to the uniform federal "navigability for title" test.**

24 That test is stated by the court in United States v. Holt Bank, *supra*, 270 U.S. at 56, 46 S. Ct. at
25 199.

26 In the United States, the public trust doctrine has traditionally been applied to commerce and
27 fishing in navigable waters. The states have held the navigable waters and the beds beneath them
28 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).

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

6 Nevada courts have held that streams are navigable if used or susceptible to being used at
7 regularly-occurring times as highways for commerce over which trade and travel are or may be
8 conducted in customary modes of travel on water. *State v. Bunkowski*, 503 P.2d 1231, 1234 (Nev.
9 1972). Nevada courts have applied the federal title test and found that streams that were
10 historically used to drive logs to market satisfy the federal title test. *Bunkowski, Id. at 1233-36*.
11 This test vests title to the beds underlying these waters in the state. *Bunkowski, Id. at 1233*.
12 Navigability is not destroyed if the waterway is interrupted by occasional natural obstructions or
13 portages, and a stream need not be open all year to be considered navigable. *Bunkowski, Id. at*
14 *1235*. Neither the courts nor the statutes in Nevada have addressed the issue of whether the
15 public trust exists in streams that are too small to pass the federal title or commerce test.

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

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

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

26 “Members of the public have the right to navigate and to exercise the incidence of
27 navigation in a lawful manner at any point below high water mark on waters of this state
28 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:

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

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

20 In the opinion of the Attorney General of Nevada, the State Engineer, irrigation districts, the
21 Division of State Lands, local counties through their district attorneys, and the United States
22 have the authority to seek removal of structures that may encroach upon the natural channel of a
23 navigable river. *Op. Att’y Gen. 80-11 (Nev. 1980)*. Further, cities, counties, public districts such
24 as irrigation districts and flood control districts, and the United States have the authority to
25 improve a navigable river to maintain its water capacity or to avoid flood damage to adjoining
26 property.

27 Federal law already confirms that the rivers and creeks in al 50 states that are knee-deep and
28 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

1 state governments to permanently hold these rivers and creeks “in trust for the people of the
2 state, that they may enjoy the navigation of the waters, carry on commerce over them, and have
3 liberty of fishing therein, freed from the obstruction or interference of private parties.” (*Scranton*
4 *v. Wheeler*, 179 U.S. 141 (1900). *Illinois Central v. Illinois*, 146 U.S. 387 (1892).)

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

10 The facts are:

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

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

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

26 Public ownership of physically navigable rivers is the same in all states. It's a U.S. Supreme
27 Court standard, and it includes those rivers that are physically navigable by canoe, kayak, and
28 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,