

1 January 14, 2021

2 **To:** Aaron Ford, Attorney General, 100 North Carson Street, Carson City, Nevada 89701

3 **cc:** Steve Sisolak, Governor, 101 N. Carson Street, Carson City, Nevada 89701

4 **cc:** Bradley Crowell, Director, Jim Lawrence, Deputy Director, Dominique Etchegoyhen, Deputy
5 Director, Nevada Department of Conservation and Natural Resources, 901 S Stewart St, Carson
6 City, Nevada 89701

7 **cc:** Charlie Donohue, Administrator, Division of State Lands, 901 S. Stewart St., Carson City,
8 Nevada 89701

9 **cc:** Robert Mergell, Administrator, NV Division of State Parks, 901 S. Stewart St #5005, Carson
10 City, Nevada 89701

11 **cc:** Colin Robertson, Administrator, NV Division of Outdoor Recreation, 901 S Stewart St, Set.
12 1003, Carson City, Nevada 89701

13 **cc:** Adam Sullivan, Acting State Engineer, NV Division of Water Resources, 901 S Stewart St,
14 Suite 2002, Carson City, Nevada 89701

15 **cc:** Brenda Scolari, Director, NV Department of Tourism and Cultural Affairs, 401 N Carson St,
16 Carson City, Nevada 89701

17 **cc:** Tony Wasley, Director, Jack Robb, Deputy Director, Bonnie Long, Deputy Director, Nevada
18 Department of Wildlife, 901 S Stewart St, Carson City, Nevada 89701

19 **cc:** Kate Marshall, Lt. Governor, State Capitol Bldg., 101 N Carson St., Suite 2, Carson City,
20 Nevada 89701

21 **cc:** Greg Lovato, administrator NDEP, 901 S Stewart St, Suite 4001, Carson City, Nevada 89701

22 **cc:** John Busterud, administrator EPA region 9, 75 Hawthorne St, San Francisco, CA 94105

23 **re: Public Rights to use Public Streams and Rivers of Nevada**

24 Dear Mr. Attorney General:

25 I, in a concerted effort with several members of the boating community here in Nevada, am
26 requesting a legal opinion from your office confirming that the public in Nevada may pursue
27 their lawful rights to enjoy **all** navigable rivers and streams within Nevada, even those running
28 across private land, without being turned away with misinformation from state government
officials and/or harassment from uneducated landowners and law enforcement officers; knowing
that Federal law supersedes State law on the designation of the term “navigable” and asking what
can be done to assure those rights? In short, we are asking for enforcement in protection of our
rights to paddle, fish, and otherwise recreate within the mean 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.**

We in Nevada, have hundreds, if not thousands of paddling enthusiasts. The local Reno Kayaker
Meet Up Group has close to 400 members. Many whitewater river enthusiasts run Nevada rivers
that are not in the group. Thousands of our citizens tube and raft the Truckee River alone,

1 Nevada each floating season. Rivers like the Bruneau, Jarbidge and Owyhee get hundreds of
2 commercial river runners and thousands of private users each year. Rivers like the Humbolt,
3 Quinn, Reese, Walker also get usage every year. Nevada residents flock to our Nevada rivers,
4 especially during the spring and summer months, extending into fall.

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

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

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

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

22 To restate it, so that all states when admitted to the Union have equal standing a uniform federal
23 test to title of watercourse beds must be maintained. True it is that many states have adopted
24 varying and less stringent tests than the federal test in order to establish the right of public use in
25 certain watercourses. For example, in California it has been held in *People v. Mack, 19 Cal. App.*
26 *3d 1040, 97 Cal. Rptr. 448, 454 (1971),* that, "The streams of California are a vital recreational
27 resource of the state. The modern determinations of the California courts, as well as those of
28 several of the states, as to the test of navigability can well be restated as follows: Members of the
29 public have the right to navigate and to exercise the incidents of navigation in a lawful manner at
30 any point below high water mark on waters of this state which are capable of being navigated by
31 oar or motor propelled small craft." See also State, by *Burnquist v. Bollenbach, 241 Minn. 103,*
32 *63 N.W.2d 278, 287 (1954).* Reference to *People v. Mack, supra,* which reviews a substantial
33 number of state navigability cases, illustrates most forcefully that the state courts have not
34 striven for uniformity. ~~For this reason, these state cases are not authority for the~~
35 **determination of state navigability of navigable watercourse beds. Said determination must**
36 **be made by reference to the uniform federal "navigability for title" test.**

37 That test is stated by the court in *United States v. Holt Bank, supra, 270 U.S. at 56, 46 S. Ct. at*
38 *199.*

1
2 In the United States, the public trust doctrine has traditionally been applied to commerce and
3 fishing in navigable waters. The states have held the navigable waters and the beds beneath them
4 in trust for the citizens and ensured that the public's ability to engage in navigation, commerce,
5 and fishing on those waters was protected. The state of Nevada has traditionally recognized the
6 public trust doctrine. In 1970, the Nevada Supreme Court declared that "[w]hen a territory is
7 endowed with statehood one of the many items its sovereignty includes is the grant from the
8 federal government of all navigable bodies of water within the particular territory, whether they
9 be rives, lakes or streams." *State Eng'r v. Cowles Brothers, Inc.*, 86 Nev. 872, 874 (1970). In
10 2011, the same court formally adopted the public trust doctrine, noting that the doctrine was
11 rooted in Nevada's constitution, statutes, and the inherent limitations on the state's powers.
12 According to the court, "because the state holds such property in trust for the public's use, the
13 state is simply without power to dispose of public trust property when it is not in the public's
14 interest." *Lawrence v. Clark Cty.*, 127 Nev. 390, 400 (2011).

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

17 Nevada courts have held that streams are navigable if used or susceptible to being used at
18 regularly-occurring times as highways for commerce over which trade and travel are or may be
19 conducted in customary modes of travel on water. *State v. Bunkowski*, 503 P.2d 1231, 1234 (Nev.
20 1972). Nevada courts have applied the federal title test and found that streams that were
21 historically used to drive logs to market satisfy the federal title test. *Bunkowski, Id. at 1233-36*.
22 This test vests title to the beds underlying these waters in the state. *Bunkowski, Id. at 1233*.
23 Navigability is not destroyed if the waterway is interrupted by occasional natural obstructions or
24 portages, and a stream need not be open all year to be considered navigable. *Bunkowski, Id. at*
25 *1235*. Neither the courts nor the statutes in Nevada have addressed the issue of whether the
26 public trust exists in streams that are too small to pass the federal title or commerce test.

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

26 "Navigability, when asserted as the basis of a right arising under the constitution of the
27 United States, **is necessarily a question of federal law** to be determined according to the
28 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.

1
2 The Bunkowski also settles the rights of the public to navigate upon the rivers and streams of Nevada:

3 “Members of the public have the right to navigate and to exercise the incidence of
4 navigation in a lawful manner at any point below high water mark on waters of this state
5 which are keepable of being navigated by oar or motor propelled small craft.” Bunkowski
6 @503 P.2d @1236.

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

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

12 “. . . the court held that the public rights in public waters cannot be alienated or made
13 subject to easements except by legislative action: neither can the state’s right in public
14 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*.

15 Navigability is not destroyed if the waterway is interrupted by occasional natural obstructions or
16 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
17 is not exclusive and the issue of navigability remains a “judicial question”. Bunkowski 503 P.2d
18 @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.
19 Illinois, 201 U.S. 506 (1906). Public participation in river use has dramatically increased by
20 canoes, kayaks, rafts, stand up paddle boards, and any other manner of water craft invention
21 entering the public imagination. It has been argued that such uses are not commerce, but merely
22 recreation. The federal courts have fully rejected this theory stating “to deny that this use is
23 commercial because it relates to the recreation industry is to employ too narrow a view of
24 commercial activities”. Thus confirming that the use of rivers for such recreational trips are
25 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).

26 In the opinion of the Attorney General of Nevada, the State Engineer, irrigation districts, the
27 Division of State Lands, local counties through their district attorneys, and the United States
28 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

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

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

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

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

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

23 The facts are:

- 24 1. The river is navigable under federal law, for Commerce Clause purposes, because of its
25 historical and current usability. No official designation is needed, because rivers that are
26 navigable in fact are navigable in law.
- 27 2. Public rights on the river are not a “taking,” because the river has been public since time
28 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.

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

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

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

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

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

26 One might think that getting river law applied in actual practice on Nevada rivers would be a
27 relatively quick and simple court procedure. But the legal system is ponderous, and there are
28 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

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

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

8 **Real life situations include:**

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

21 —Tim from Wellington: “ The park ranger at the new East Walker River State Recreation
22 Park told me the river was non-navigable upstream of Pitchfork due to the private
23 landowning ranches. The rancher had his barbed wire fencing stretched across the river
24 to keep his cattle in. Is it not an irony that the public is barred from their legal right to
25 navigate the entire river instead of just a portion, while the State allows the private
26 landowner to ignore the ‘Clean Water Act’, allowing his cattle to trample the banks of the
27 river and cross over?” [**Violation to allow cattle to trample:** *Clean Water Act*, 33 U.S.
28 *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*,

1 22 U.S. 1 (124); *Navigable in fact are navigable in law: The Daniel Ball*, 77 U.S. 557
2 (1870).]

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

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

18 —Sarah, canoe enthusiast from Carson City: “My husband and I took a canoe from
19 Dayton to Fort Churchill on the Carson River. Our float was interrupted by an
20 uncomfortable encounter with either the landowner or an employee of his. From the
21 bank the guy yelled at us that we were on private property and to “get out of here”. What
22 could we do, but keep going and hope he wouldn’t do anything. We also had to portage
23 the dreaded “drowning machine” we had heard about, a headwall across the river that has
24 to be portaged unless one enjoys being sucked underwater by the turbulent sous hole it
25 creates.” [*Without obstruction or interference: Illinois Central v. Illinois*, 146 U.S. 387
26 (1892); *Public property of the nation: United States v. Rands*, 389 U.S. 121 (1967).]

27 In summary, these incidents are the impetus behind our request for opinion asking, WHY DOES
28 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,

1 Fred Atcheson, Esquire
2 contact person: Charles Albright, tel. (775) 324-5102; email: cralbright@juno.com

3 Additional citations:

4 **Federal law is supreme:** Supremacy Clause, U.S. Constitution, Article VI, Clause 2.

5 **Forever free:** Northwest Ordinance of 1787, chapter 8, 1 Stat. 50.

6 **U.S. Supreme Court regarding forever free public highways:** The Montello, 87 U.S. 430 (1874).

7 **Early fur-trading days:** Economy Light & Power, 256 U.S. 113 (1921).

8 **Floating out of logs:** United States v. Appalachian Electric, 311 U.S. 377 (1940). (rivers are navigable
9 even if they have been "out of use for a hundred years").

10 **Use by recreation industry use is indeed commercial:** Alaska v. Ahtna, 891 F.2d 1401 (9th Cir.
11 1989).

12 **Small, shallow river in Florida:** Goodman v. City of Crystal River, 669 F.Supp. 394 (M.D>Fla.
13 1987).

14 **Shallow, rocky river in Maine:** Swan Falls Corporation, 53 F.E.R.C. p 61,309 (1990).

15 **Small, shallow river in Indiana:** David Zinkie, 53 F.E.R.C. p 61,029 (1990).

16 **Shallow, rocky river in New York:** New York Sate Department of Conservation v. Federal Energy
17 Regulatory Commission and Niagara Mohawk Power Corporation, 954 F.2d 56 (2d Cir. 1992).

18 **Kayak and canoe classes on small, shallow, whitewater river are commerce:** Atlanta School of
19 Kayaking v. Douglasville County Water District, 981 F. Supp. 1469 (N.D.Ga 1997).

20 **Fur traders used smaller rivers and creeks than those used today:** The American Fur Trade of the
21 Far West by Hiram Martin Chittenden, Stanford University Press 1936 and 1954, page 762.

22 **Ankle-deep creeks are legally navigable:** Natural Resources Defense Council v. Callaway, 392
23 F.Supp. 685 (D.D.C. 1975) (regarding scope of federal navigability, 33 U.S.C. 1251-1387).

24 **Navigable in fact are navigable in law:** The Daniel Ball, 77 U.S. 557 (1870).

25 **No official designation needed:** The Montello, 87 U.S. 430 (1874).

26 **No historical record needed:** United States v. Utah, 283 U.S. 64 (1931). United States v. Appalachian
27 Electric, 311 U.S. 377 (1940)

28 **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.

1 Santa Cruz, 465 P.2d 50 (California 1970) (confirming state law “requiring municipalities to maintain
2 access to navigable waters” and “requiring the state to reserve convenient access to navigable waters.”)
3 **Public access from bridges:** Public Lands Access Association (PLAA) v. Board of Commissioners of
4 Madison County, 373 Montana 277, _P.3d_(Jan.2014).
5 **States cannot interfere with navigation:** Gibbons v. Ogden, 22 U.S. 1 (124).
6 **States are the guardians of free navigation:** Pollard v. Hagan, 44 U.S. 212 (1845).
7 **Paramount right of navigation:** Weber v. Board of Harbor Commissioners, 85 U.S. 57 (1842).
8 **Public property of the nation:** United States v. Rands, 389 U.S. 121 (1967).
9 **Paramount power to maintain the public easement:** Montana v. United States, 450 U.S. 544 (1981).
10 **Answers are determined by federal law, not state law:** Atlanta School of Kayaking v. Douglasville
11 County Water District, 81 F.Supp. 1469 (N.D.Ga.1997).
12 **State law cannot alter federal definitions, because they are “necessarily a question of federal law.”:**
13 United States v. Holt State Bank, 270 U.S. 49 (1926).
14 **State definitions cannot deny the public easement:** Weber v. Board of Harbor Commissioners, 85
15 U.S. 57 (1873).
16 **State authority is subject to the public’s “paramount right of navigation.”:** Hitchings v. Del Rio
17 Woods Recreation & Park District, 55 Cal. App 3d560, 127 Cal. Rptr. 830 (1st Dist. 1976).
18 **State becomes the owner of the beds of rivers:** Martin v. Waddell, 41 U.S. 367 (1842); Pollard v.
19 Hagan, 44 U.S. 212 (1845). PPL Montana v. Montana, 565 U.S., docket 10-218 (2012).
20 **Private ownership cannot impair public easement:** Illinois Central v. Illinois, 146 U.S. 387 (1892).
21 **Right of public to use waterway supersedes any claim of private ownership”:** United States v.
22 Cress, 243 U.S. 316 (1917).
23 **States can manage public use of rivers, for public health and safety, but they cannot deny
24 easement to use navigable rivers:** Younger v. County of El Dorado, 96 Cal. App. 3d 403 (1979).
25 **States can never abdicate the public trust:** Arizona Center for Law in the Public Interest v. Hassell,
26 837 P.2d 138 (Ariz. App. 1991).
27 **Usable for commercial recreation are navigable:** Alaska v. Ahtna, 891 F.2d 1401 (9th Cir. 1989).
28 **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).

1 **If usable for kayaking:** Atlanta School of Kayaking v. Douglasville County, 981 F.Supp. 1469
(N.D.Ga.1997).

2 **For rafting:** Alaska v. Ahtna, 891 F.2d 1401 (9th Cir.1989).

3 **For log drives:** United States v. Appalachian Electric, 311 U.S. 377 (1940).

4 **For lumber drives:** Puget Sound Power v. FERC, 644 F.2d 785 (9th Cir.1981).

5 **It is unlawful to block the public easement for “sports fishing and duck hunting.”:** Montana v.
6 United States, 450 U.S. 544 (1981). Atlanta School of Kayaking (cited above) (**public rights to use**
7 **rivers navigable in kayaks “are determined by federal law,” not state law.**) Public trust: Martin v.
8 Waddell, 41 U.S. 367 (1842).

9 **violation to allow cattle to trample:** Clean Water Act, 33 U.S.C. 1251 Sec. 101(a)(7) (confirming the
10 national goal of preventing “nonpoint source pollution” from entering rivers, such as runoff from
11 cattle.)
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Interstate Rivers

Colorado River Watershed

Colorado River – International Water terminates in the Sea of Cortez
 Virgin River & Tributaries (Muddy River, Meadow Valley Wash)

Columbia River Watershed – Snake River to Columbia terminates in the Pacific Ocean

Owyhee River, Bruneau River, Salmon Falls Creek, plus tributaries

Great Basin Watershed

Truckee River terminates in Pyramid Lake
 Carson River terminates in the Carson Sink (Stillwater)
 Walker River terminates in Walker Lake

From	To	Main	Plus Tributaries
CA	NV	Smoke Creek	Rush
		Truckee River	Dog, Sunrise
NV	CA	Truckee River	Bronco, Gray
CA	NV	WF Carson River	
		EF Carson River	
NV	CA	EF Carson River	Bryant
CA	NV	WF Walker	Desert,
		EF Walker	Rough, Bodie
NV	CA	Amargosa (Intermittent)	
OR	NV	Twelvemile	
NV	OR		Horse
OR	NV	Quinn	Kings, McDermitt, Sage
NV	ID	Owyhee	SF Owyhee, Little Owyhee
NV	ID	Bruneau	Sheep, Jarbidge River, Buck, Pole, Flat, Deer
NV	ID	Salmon Falls Creek	NF Salmon Falls
ID	NV		Shoshone, Chimney, Wilson, Shack, Bear
ID	NV	Goose	Piney, Trout, Jay
NV	UT		
UT	NV		Hardesty, Pole
NV	UT	Thousand Springs Creek	
NV	UT	Snake Creek, Big Wash, Lexington	
UT	NV	Beaver Dam Wash	
NV	UT		
UT	NV	Virgin River	
AZ	NV	Colorado River	
NV	CA		

Major Rivers	1 st Tributary	2 nd Tributary	3 rd Tributary
Humboldt River 290 miles HW: Jarbidge Mtns Term: Humboldt Sink	Bishop Creek Trout Blasingame	Burnt	
	Mary's River	West Mary's River EF Mary's River Short Chimney T Hanks Hot Springs	Currant Conner's
HW: East Humboldt Mtns	Starr Creek	Boulder, Herder	Ackler, Deering
	Winter Creek		
HW: Ruby Mtns	Lamoille Creek	Secret John Day Rabbit	Soldier
HW: Independence Mtns	NF Humboldt River	Peterson McAfee Fourmile Forman Pie Beaver	Walker, Dell Gance Cabin
HW: Ruby Mtns	SF Humboldt River	Tenmile Dixie Huntington	Spring Willow Cottonwood Smith, McCutcheon, Gilbert, Corral
HW: Independence Mtns	Susie Creek		
HW: Independence Mtns	Maggie Creek	Simon Cottonwood Jack Spring N Haskell Beaver	
HW: Cortez, Simpson Park, Sulphur Spring Range	Pine Creek	Trout Horse	
HW: Sheep Creek Range	Rock Creek	Willow	Nelson
HW: Santa Rosa Mtns	Little Humboldt River	Martin SF Little Humboldt NF Little Humboldt	Duck Stocks Groundhog Cottonwood
HW: Toiyabe Mtns	Reese River	Indian Stewart Clear Marysville Washington Big	

Truckee River 121 miles HW: Sierra NV Mtns Term: Pyramid Lake	Gray Bronco Sunrise Dog Hunter		
	Steamboat	Evans Thomas Whites Galena Browns Winters Ophir Franktown Musgrove McEwen	Jones
Carson River 131 miles HW: Sierra NV Mtns Term: Carson Sink	West Carson River East Carson River Clear Creek	Bryant Indian	
Walker River 152 miles HW: Sierra NV Mtns Term: Walker Lake	West Walker River East Walker River	Desert Sweetwater Rough	Green Bodie
Colorado River 1,450 miles HW: Rocky Mtns (CO) Term: Sea of Cortez Virgin River HW: Colorado Plateau Meadow Valley Wash HW: Wilson Creek Range Muddy River HW: Warm Springs Beaver Dam Wash HW: Clover Mtns Las Vegas Wash HW: Spring Mtns	Virgin River Muddy River Las Vegas Wash	Beaver Dam Wash Meadow Valley Wash Cold Deer	Camp Valley Clover

Rivers in NW NV			
Twelvemile HW: Warner Mtns (CA) Term: Greaser Res (OR)	NF Twelvemile (CA, OR) Fifteenmile (CA) Horse		
Quinn River HW: Trout Cr Mtns (OR) Santa Rosa Mtns Term: Black Rock Desert	McDermitt Kings EF Quinn Leonard	Sage	
Thousand Creek HW: Idaho Canyon Range Term: Continental Lake	Virgin Big Spring Rincon		
Mahogany Creek HW: Black Rock Range Term: Summit Lake	Pole		
Wall Canyon Creek HW: Badger Mtns	Cottonwood		
High Rock Creek HW: Massacre Range Term: High Rock Lake	Little High Rock Willow Mahogany		
Mud Meadow Creek HW: Black Roch Range Term: Mud Meadow Res.	Soldier Slumgullion Fly		
Smoke Creek HW: Cherry Mtn (CA) Term: Smoke Creek Desert	Rush Creek		
Rivers in NE NV			
Owyhee River HW: Tuscarora Mtns, Wild Horse Range Term: Snake, Columbia, Pacific Ocean	SF Owyhee Skull Fawn Slaughterhouse California Haystack Van Duzer Allegheny Badger Beaver Hendricks Penrod Deep Jacks, Clear, Hanks	Little Owyhee Bull Run Wilson Deep Big Cottonwood Cyn Hot Niagra Burns Harrington Taylor's Canon Indian Miller	Willow

Bruneau River HW: Bruneau Plateau & Jarbidge Mts Term: Snake, Columbia, Pacific Ocean	Sheep Jarbidge Deep McDonald Meadow Copper Seventysix Annie Willow	Merritt EF Jarbidge Buck Deer Bear Pine	Robinson
Salmon Falls Creek HW: Jarbidge Mtns Term: Snake, Columbia, Pacific Ocean	Shoshone Cottonwood Trout Meadow Jakes SF Salmon Falls NF Salmon Falls	Cedar Cow Dry Canyon Cottonwood Camp Sun Wilson Bear	Knoll Poll Chimney Shack
Goose Creek HW: Trout Cr Mtn (ID) Term: Little Goose Creek Reservoir (ID)	Piney Little Goose Spring Trout Jay Hardesty Bluff	Fall Pole	
Thousand Springs Creek HW: Snake Mtns Term: Dake Reservoir (UT)	Rock Spring		

Rivers in Central NV			
HW: Snake Range Term: Pruess Reservoir (UT)	Snake Big Wash Lexington		
Duck Creek HW: Schell Creek Range Term: Goshute Lake	Berry		
Steptoe Creek HW: Schell Creek Range Term: Steptoe Slough	Cave		
Illipah Creek HW: White Pine Range Term: Illipah Reservoir	Cottonwood		
White River HW: White Pine Range Term: Nesbitt Lake	Ellison Sunnyside Big Spring Wash		
Hot Creek HW: Hot Creek Range Term: Echo Canyon Reservoir	Fish Lake Valley Moore's Station Wash Tybo Twin Springs Slough		
Rivers in Southern NV			
Pahranagat Creek HW: Ash & Crystal Springs Term: Pahranagat Lake			
Amargosa River HW: Pahute Mesa Term: Death Valley (CA) Intermittent	Carson Slough (Ash Meadows)		