

**UTAH NAVIGABILITY LEGAL DECISIONS AND
US SUPREME COURT DEFINING “NAVIGABLE FOR TITLE” AT STATEHOOD**

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UTAH CONSTITUTION: Article 1, Section 22: “Private Property Shall Not be Taken or Damaged for Public Use Without Just Compensation.”

CERTAINTY OF TITLE: AMERICAN LAND CO vs ZEISS (US Supreme Court 1911): It is the responsibility of governments to ensure certainty of title because “the general welfare of society is at stake”.

UTAH ROLLERCOASTER RIDE

2000: Morgan County Justice Court finds Kevin & Jodi Conatser guilty of criminal trespass on the lower Weber River.

2008: Utah Supreme Court reverses lower Court in Conatser, making “our own rule” stating: “There is a public easement on Utah streams since the water belongs to the public.” Including the right to walk on private streambeds. Rep. Kay Mccliff (Attorney & 6th District Court Judge) noted: “Policy is the responsibility of the elected legislature, not the Courts.”

2010: Utah Legislature passes HB 141 Recreational Use of Public Water on Private Land sponsored by Rep. Kay Mccliff. Utah Code 73-29-201 Public Waters Access Act (PWAA) recognizes the public’s right as defined in J.J.N.P (Utah Supreme Court – 1982): “A right to float on the state’s water regardless of who owns the land.” While privately owned stream beds and banks are protected from public access and trespass allowing only “incidental touching.”

2015: Fourth District Judge Derek Pullan (USAC vs Victory Ranch) said “the people of Utah are constitutionally entitled to have public lands, including the public’s easement in state waters flowing over private lands.”

2017: Utah Supreme Court (USAC vs Orange Street Development) finds on the upper Weber River, a one-mile stretch was used for floating railroad ties (commerce without travel) before statehood meeting the navigable for title standard. The High Court said: “We interpret the PWAA to incorporate the federal standard of navigability.”

2021: On remand the Utah Supreme Court asks Judge Pullan: “were there actual easements at statehood?” In his reversal, Pullan declares: “The public has no right to walk on or touch the bottoms of streams crossing private property.” Because there are no formal easements to non-navigable streams in Utah.

2023: Offenses Against Property Utah Code 76-6-206.6 includes as criminal trespass “the bed or bank” of privately owned non-navigable, freshwater streambeds.

2023: Utah Supreme Court (USAC vs Victory Ranch): The State High Court weighed 19th century pioneers’ use and a present-day easement, finding “no Constitutional protection for the public’s right to touch privately owned streambeds underlying state waters.” The Court concluded that further policy considerations “are better directed to the legislature.”

SUPREME COURT OF THE UNITED STATES

NAVIGABLE FOR TITLE:

DANIEL BALL (1870): Rivers “are navigable in fact when they are used, or susceptible of being used, in their ordinary condition, as highways of commerce, over which trade and travel are or may be conducted in customary modes of trade and travel over water.”

OKLAHOMA vs TEXAS (1922): To establish a public easement, “water must be used or susceptible of use in its natural and ordinary condition as a highway for commerce.” Use for transportation confined to irregular and short periods of temporary high water is not navigable. A greater capacity for practical and beneficial use is essential to establish navigability.

UNITED STATES VS HOLT STATE BANK (1926): Because “uniformity” is needed when federal, state and local interests are at stake, navigability is “necessarily a question of federal law.”

UNITED STATES VS UTAH (1931): Those Rivers must be regarded as public navigable rivers in law which are navigable in fact. The question of navigability “is one of fact as to the capacity of rivers in their ordinary condition to meet the needs of commerce.” Once the equal footing doctrine vested title in a riverbed at the time of statehood, the force of the doctrine was spent.

PPL MONTANA vs MONTANA (2012): The state claimed all the streambeds based on the Equal Footing Doctrine. “It is well settled law and is based on a segment-by-segment determination to establish navigability for title.” The 9-0 decision pointed out - In customary modes of travel at statehood, not present-day motorized craft as Montana claimed.

DEFINITIONS

EQUAL FOOTING DOCTRINE: US Constitution (Article IV, Section 3, Clause 1) New states may be admitted to the Union and shall enter on an equal footing with the original 13 states.

PUBLIC TRUST DOCTRINE: Ancient origin and Old English Law. The public is the beneficiary of certain resources, and the government has the responsibility to ensure they are used for public use, not personal use.