

UTAH STATE LEGISLATURE 2023
HB 208 Criminal Trespass Amendments
Representative Scott Chew

REVIEW OF NON-NAVIGABLE, PRIVATE STREAMBED TRESPASS ROLLER COASTER

2000: Morgan County Justice Court finds Kevin & Jodi Conatser guilty of criminal trespass on the Weber River. Utah Supreme Court hears the case on appeal.

2008: Utah Supreme Court overrules lower courts concluding “there is a public easement on Utah streams since the water belongs to the public.” Including the right to walk on private streambeds.

2010: Utah Legislature passes HB 141 Recreational Use of Public Water on Private Land. (Rep. Kay McIff) Utah Code 73-29-201 Public Waters Access Act 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.”

2012: United States Supreme Court (PPL Montana vs Montana) Unanimously rules against the state’s claim to all the streambeds based on the Equal Footing Doctrine. SCOTUS states “this is well settled law and is based on a segment-by-segment determination to establish navigability for title.”

2015: Fourth District Judge Derek Pullan (USAC vs Victory Ranch) invoked the Public Trust Doctrine on the upper Provo River striking down the Public Waters Access Act, providing recreational access to private streambeds.

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) before statehood meeting the standard established in PPL Montana vs Montana.

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. Therefore, the Provo River is not navigable for title.”

2023: Pending Utah Supreme Court (USAC vs Victory Ranch): The High Court is weighing the question of whether 19th century pioneer settlers’ custom of accessing Utah streambeds established a present-day easement that is grounded in the Utah Constitution?

DEFINITIONS

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

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.

NAVIGABLE FOR TITLE: (Clarified in PPL Montana vs Montana) Navigability for Title is established on a segment-by-segment claim based on usefulness for trade and travel at statehood.