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### Summary of Lawrence v. Clark County, 127 Nev. Adv. Op. No. 32

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*Lawrence v. Clark County*, 127 Nev. Adv. Op. No. 32 (July 7, 2011)<sup>1</sup>  
PROPERTY LAW – PUBLIC TRUST DOCTRINE

**Summary**

Appeal from a district court ruling on the pleadings in a government land dispute action.

**Disposition/Outcome**

District Court’s ruling, that land once submerged in water is transferrable to Clark County, is remanded to determine whether the water that once covered the land was navigable at the time of Nevada’s statehood, how the land became dry, and whether the transfer comports with the public’s interest.

**Factual and Procedural History**

The Nevada Legislature originally enacted the Fort Mohave Valley Development Law (“FMVDL”)<sup>2</sup> to permit the Colorado River Commission (“CRC”), a state agency, to acquire federal land in the Fort Mojave Valley (“the Valley”), in Clark County. The Legislature recently amended the FMVDL to require the CRC to transfer its Valley land to Clark County.<sup>3</sup>

To effectuate the transfer, Nevada State Land Registrar James Lawrence (“Lawrence”) deeded to Clark County the CRC’s Valley interests, excluding 330 acres abutting the Colorado River he deemed nontransferable under the public trust doctrine. Clark County sought declaratory relief in District Court to mandate the transfer of the 330 acres to Clark County, and Clark County moved for judgment on the pleadings arguing the Legislature already determined the transfer was in the public’s interest. The District Court granted Clark County’s motion, and Lawrence appealed.

**Discussion**

*The development of the public trust doctrine in the United States*

Justice Saitta wrote for the unanimous Court, sitting en banc. Justice Saitta first looked to Illinois Central Railroad v. Illinois.<sup>4</sup> There, the Supreme Court held that when Congress admitted Illinois to the United States, it granted Illinois title to the navigable waters and the land under them.<sup>5</sup> However, Illinois could not freely alienate the waters and the land underneath because it possessed title in trust for the people of the state to use the waters for commerce.<sup>6</sup> Accordingly,

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<sup>1</sup> By Dan Hill.

<sup>2</sup> NEV. REV. STAT. 321.480-321.536 (2007).

<sup>3</sup> In the 74th Legislative Session, Senate Bill 301 amended NEV. REV. STAT. 321.335.

<sup>4</sup> Illinois Central Railroad v. Illinois, 146 U.S. 387 (1892).

<sup>5</sup> Id. at 434.

<sup>6</sup> Id. at 452.

the Illinois Legislature could not relinquish title to such trust property to the Illinois Central Railroad.<sup>7</sup>

### *The public trust doctrine in Nevada*

Three seminal cases have shaped the public trust doctrine in Nevada. When the owners of land abutting the dry Winnemucca Lake bed applied to drill a well in the bed, the Nevada Supreme Court noted that at the time Congress granted Nevada statehood, any water that was navigable became property of Nevada, and any water that was not navigable remained property of the United States.<sup>8</sup> The Court held in *Bunkowski* that Nevada owns such waters and land in trust for public use, and can alienate the property only after proper legislative determination.<sup>9</sup> Finally, Supreme Court of Nevada Justice Robert E. Rose issued a concurring opinion asserting that Nevada Revised Statute (NRS) § 533.025<sup>10</sup> codifies the public trust doctrine in Nevada.<sup>11</sup>

### *The sources of the public trust doctrine in Nevada*

#### *i. The Nevada Constitution*

Article 8 Section 9 of Nevada's Constitution prohibits the gift or loan of public funds and credit.<sup>12</sup> Under this so-called gift clause, transactions disbursing public funds must be struck down if not made for a public purpose.<sup>13</sup> The gift clause expressly limits the Legislature's ability to dispose of public resources.<sup>14</sup> The constitutional policy the gift clause contains infers the people's intent to constrain the Legislature's ability to alienate public trust lands as well as public funds.

#### *ii. Nevada Statutes*

NRS § 321.0005 provides "state lands must be used in the best interests of the residents of this State[]" and contemplates a fiduciary-type duty with regard to the state's administration of state lands. As noted above, NRS § 533.025 provides "[t]he water of all sources of water supply within the boundaries of the state either above or below the surface of the ground, belongs to the public." These two statutes require use of public land and waters to comport with the public's interest and effectively codify the public trust doctrine in Nevada.

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<sup>7</sup> *Id.* at 453.

<sup>8</sup> *State Engineer v. Cowles Bros., Inc.*, 86 NEV. 872, 874, 478 P.2d 159, 160 (1970).

<sup>9</sup> *State v. Bunkowski*, 88 NEV. 623, 634, 503 P.2d 1231, 1238 (1972).

<sup>10</sup> "The water of all sources of water supply within the boundaries of the state either above or below the surface of the ground, belongs to the public."

<sup>11</sup> *Mineral County v. State, Dept. of Conservation*, 117 NEV. 235, 247, 20 P.3d 800, 808 (2001).

<sup>12</sup> "The state shall not donate or loan money, or its credit, subscribe to or be, interested in the Stock of any company, association, or corporation, except corporations formed for educational or charitable purposes."

<sup>13</sup> *State ex rel. Brennan v. Bowman*, 89 NEV. 330, 332-334, 512 P.2d 1321, 1322-1323 (1973).

<sup>14</sup> *Id.*

### *iii. Limitations on the state's sovereign power*

Under *Illinois Central*, the state is may not dispose of public land and waters without comporting with the public's interest because the state holds such property in trust for public use.<sup>15</sup> The Legislature's power is to act as a fiduciary of the public in administering such trust property. Legislation cannot abrogate the public trust doctrine, which acts as an inseverable restraint on the state's sovereign power. Accordingly, any state legislation that conveys public trust lands in Nevada is subject to judicial review.

### *Determining if land is public trust land*

#### *i. Was the land submerged beneath navigable waters?*

Nevada holds land in trust for the public if it was submerged under navigable waters when Nevada became a state on October 31, 1864.<sup>16</sup> The navigability of the water can be determined by “expert testimony, historical surveys, and news clippings from the relevant time[.]”<sup>17</sup>

#### *ii. How did the land become dry?*

When reliction—the gradual and imperceptible exposure of land—dries a bed, title to the bed passes to the joining shoreland owners even when the reliction occurred artificially.<sup>18</sup> However, when avulsion—sudden changes in the course of a stream whether natural or artificial—changes a bed, title does not pass and Nevada holds the land in trust for the public.<sup>19</sup> This distinction operates as a disincentive to artificially diverting water to increase landholdings.<sup>20</sup>

#### *iii. Is the public trust land transferrable?*

Arizona's approach to determining whether public trust land is transferrable is instructive both because Arizona's Constitution contains a gift clause similar to Nevada's and because Arizona shares Nevada's desert climate and shifting urban population.<sup>21</sup> Accordingly, when assessing dispensations of public land, Nevada courts must consider (1) whether the dispensation was made for a public purpose; (2) whether the state received fair consideration for the dispensation; and (3) whether the dispensation satisfies “the state's special obligation to maintain

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<sup>15</sup> *Illinois Central*, 146 U.S. at 187.

<sup>16</sup> *Bunkowski*, 88 NEV. at 628, 503 P.2d at 1234.

<sup>17</sup> *Ariz. Center for Law v. Hassell*, 837 P.2d 158, 164-64 (ARIZ. CT. APP. 1991).

<sup>18</sup> *Cowles*, 86 NEV. at 875, 478 P.2d at 161.

<sup>19</sup> *Peterson v. Morton*, 465 F.Supp 986 at 997 (D. NEV. 1979).

<sup>20</sup> *Cowles*, 86 NEV. at 875, 478 P.2d at 161.

<sup>21</sup> Tracey Dickman Zobenica, THE PUBLIC TRUST DOCTRINE IN ARIZONA'S STREAMBEDS, 38 ARIZ. L. REV. 1053, 1054 (1996).

the trust for the use and enjoyment of present and future generations.”<sup>22</sup> Courts will grant the Legislature deference when it has found that a dispensation satisfies the public interest.

### **Conclusion**

The public trust doctrine is expressly adopted in Nevada. Any navigable waters or lands submerged by navigable water on October 31, 1864 and dried by reliction are held in trust for the public. Dispensation of such lands is subject to judicial review, whereupon the court will determine if the dispensation comports with the public’s interest.

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<sup>22</sup> *Hassell*, 837 P.2d at 170.