

Public Trust Doctrine

An analysis of water rights and water law will surely lead to discussion about the public trust doctrine and its application to Georgia's waters. The committee received legal testimony from the Southern Environmental Law Center at its meetings to better inform the committee about this doctrine.

With roots in Roman civil law from the days of Justinian and, for American law purposes, its modern foundation in English common law pertaining to tidal waters, the public trust doctrine asserts that public trust waters (navigable waters), lands (the land beneath those waters up to the high-water mark), and living resources (wildlife) in a state are held by the state in trust.⁹ English common law was adopted in colonial America and by the 13 original states; each state, however, "had and continues to have, the authority to define the boundaries of the lands held in public trust as well as the authority to recognize private rights in its trust lands..."¹⁰

The common law foundation of the public trust doctrine and the provisions of the "equal-footing doctrine" have led to varying interpretations in each state¹¹ and the federal government.¹² The committee heard testimony about U.S. Supreme Court case law establishing the public trust doctrine through its 1842 ruling in *Martin v. Waddell* and its 1892 ruling in *Illinois Central Railroad Company v. Illinois*; these cases held that public trust doctrine resources are entrusted to the government to maintain for the public benefit.¹³ However, "[u]nder accepted principles of federalism, the [s]tates retain residual power to determine the scope of the public trust over waters within their borders, while federal law determines riverbed title under the equal-footing doctrine."¹⁴

The public trust doctrine attracted much discussion at the committee's meetings, focusing on both the ability of the state to manage resources along navigable waters under the doctrine's elements but also the evolutionary and sometimes uncertain side effects of expanded application of the doctrine that require a cautious approach to this issue. Senate Bill 115 stated that "the state procured ownership of all navigable stream beds within its jurisdiction upon statehood." Members of the agricultural industry representing cattlemen, foresters, and farmers voiced concerns that expansion of the public trust doctrine could invite litigation against private property owners.

⁹ <https://shoreline.noaa.gov/docs/8d5885.pdf>.

¹⁰ Slade, D., Kehoe, R. and Stahl, J., *Putting the Public Trust Doctrine to Work*, 13.

¹¹ "State and DOT Level Administration of Land Ownership Issues Across Navigable Waterways"
<https://rosap.ntl.bts.gov/view/dot/58472>.

¹² <https://nsglc.olemiss.edu/projects/waterresources/files/overview-of-the-public-trust-doctrine.pdf>.

¹³ <https://nationalaglawcenter.org/the-public-domain-basics-of-the-public-trust-doctrine/> (citing *Martin v. Waddell's Lessee*, 41 U.S. 367 (1842) and *Illinois Central Railroad Co. v. Illinois*, 146 U.S. 387 (1892)).

¹⁴ *PPL Montana, LLC v. Montana*, 565 U.S. 576 (2012).