

No Expansion of Public Trust Doctrine in Iowa – Big Implications for Agriculture

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Overview

I wrote last fall about a legal theory that could have significant negative implications for private property rights in general and agricultural production activities in particular. I was writing about the “public trust” doctrine and you can read last fall’s article

here: <https://lawprofessors.typepad.com/agriculturallaw/2020/10/the-public-trust-doctrine-a-camels-nose-under-agricultures-tent.html>.

I mentioned in last fall’s article that some activist groups and academics are pushing the courts to expand the public trust doctrine beyond its historic application to accomplish certain environmental and conservation objectives. But as I mentioned then, any judicial expansion of the public trust doctrine will result in curtailing vested property rights. That’s a big deal for agriculture because of agriculture’s use of natural resources such as land, air, water, minerals and the like. Expanding the public trust doctrine also takes the power away from citizens and their elected officials to determine environmental and conservation policy.

Recently, the Iowa Supreme Court refused to expand the doctrine to apply to farming practices in the state concluding that the issues involved were political ones that should be left up to the legislature.

The public trust doctrine and a recent Iowa Supreme Court decision – it’s the topic of today’s post.

Background

As I noted last fall, the public trust doctrine is not new. It derives from the seas being viewed as the common property of the public that cannot be privately used or owned. They are held in “public trust.” This concept from England ultimately became part of the U.S. common law and has its primary application to the access of the seashore and intertidal waters.

The U.S. Supreme Court’s first application of the public trust doctrine was in 1842 in *Martin v. Lessee of Waddell*, 41 U.S.367 (1842). In the case, the issue was who had the right to submerged land and oyster harvesting off the coast of New Jersey. The Court, largely based on the language in the charter granted by the King to a Duke to establish a colony and for policy and economic reasons, determined that the land area in issue belonged to the state of New Jersey for the benefit of the people of the state. The Court dealt with the issue again in 1892 in a case involving a railroad that had been granted a large amount of the Chicago harbor. *Illinois Central Railroad Company v. Illinois*, 146 U.S. 387 (1892). The Court determined that the government cannot alienate (interfere with) the public’s right to access land under waters that are navigable in fact except for situations where the land involved wouldn’t interfere with the public’s ability to access the water or impair navigation.

As generally applied in the United States (although there are differences among the states), an oceanfront property owner can exclude the public below the mean high tide (water) line. See e.g., *Gunderson v. State*, 90 N.E. 3d 1171 (Ind. 2018). That’s the line of intersection of the land with the water’s surface at the maximum height reached by a rising tide (e.g., high water mark). Basically, it’s the debris line or the line



where you would find fine shells. However, traceable to the mid-1600s, Massachusetts and Maine recognize private property rights to the mean low tide line even though they do allow the public to have access to the shore between the low and high tide lines for "fishing, fowling and navigation." In addition, in Maine, the public can cross private shoreline property for scuba diving purposes. [McGarvey v. Whittredge, 28 A.3d 620 \(Me. 2011\).](#)

Other applications of the public trust doctrine involve the preservation of oil resources, fish stocks and crustacean beds. Also, many lakes and navigable streams are maintained via the public trust doctrine for purposes of drinking water and recreation. But, whether the doctrine applies in such situations is a matter of state law. That's where the recent Iowa Supreme Court decision comes into play.

Iowa Citizens for Community Improvement, et al. v. State

A long-standing battle in Iowa over the level of nitrates and phosphorous in an Iowa waterway and farm filed runoff came to a head in *Iowa Citizens for Community Improvement, et al. v. State*,

No. 19-1644, 2021 Iowa Sup. LEXIS 84 (Jun. 18, 2021). For approximately the past decade activist groups and certain academics have sought more regulatory control over farming practices that they deem contribute to excessive nutrients in an Iowa river and higher drinking water prices in Des Moines and elsewhere. They have sought to remove from the state legislature the power to make these decisions and have also sought more federal control.

The plaintiffs, two social justice organizations, sued the State of Iowa and state officials and agencies associated with agriculture and the environment claiming that the public trust doctrine required them to enact legislation and rules forcing farmers to adopt farming practices that would significantly reduce levels of nitrogen and phosphorous runoff into the Raccoon River. The plaintiffs claimed that such a requirement would improve members' feelings by enhancing aesthetics and recreational uses of the river and by reducing members' water bills (at least in the Des Moines area). They sought declaratory and injunctive relief.

In response, the State argued that the plaintiffs lacked standing to sue and that the issue was nonjusticiable (i.e., not capable of being decided by a court). After the trial court denied the defendants' motion to dismiss, the defendants sought an interlocutory appeal (i.e., an appeal of the trial court's ruling while other aspects of the case proceeded).

On review, the state Supreme Court first noted that the scope of the public trust doctrine in Iowa is narrow, and that the doctrine should not be overextended. The Supreme Court noted that for a party to have standing to sue, they must have a specific personal or legal interest in the litigation and be "injuriously affected." For a party to be injuriously affected, the Supreme Court stated that the injury complained of must be likely to be redressed by the court's favorable decision. On that point, the Supreme Court determined that it would be speculative that a favorable court decision would result in a more aesthetically pleasing river or lower water rates.

Further, the Supreme Court determined the injunctive relief was not appropriate and that what the plaintiffs were seeking could only be accomplished through legislation. The Supreme Court pointed out that the plaintiffs admitted that the defendants lacked authority to require limits for nitrogen and phosphorous from agricultural nonpoint sources – the matter was up to the legislature. As a result, the Supreme Court determined the plaintiffs' claims must be dismissed due to lack of standing.

The plaintiffs also claimed that constitutional due process rights were at stake and the Court should address them. The Supreme Court disagreed, pointing out that the plaintiffs' own arguments cut against the Court being able to address such a claim. Because the plaintiffs were asking the Court to broaden the application of the public trust doctrine, the plaintiffs were essentially asking the Court to inject itself into political matters



where there would be a lack of judicially discoverable and manageable standards. As the Supreme Court pointed out, “different uses matter in different degrees to different people.” Publicly elected policy makers decide these matters. Not the courts.

Consequently, the Court determined that granting any meaningful relief to the plaintiffs would result in the judicial branch asserting superiority over the legislature. An impermissible outcome under the co-equal system of government.

Conclusion

The push for an expansion of the public trust doctrine is not likely to subside. Activists that are unable to win at the ballot box have long tried to use the judicial system to do their policy work for them. Many agricultural activities and uses of natural resources on private property remain at risk of an expanded doctrine. State legislators and all citizens should be aware of the court battles going on over the public use doctrine and what an expansion of the doctrine would do to limit property rights (without compensation).

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