

TITLE 58
PUBLIC LANDS

CHAPTER 12
PUBLIC TRUST DOCTRINE

58-1201. FINDINGS. The legislature hereby finds and declares:

(1) Upon admission of the state of Idaho into the union, the title to the beds of navigable waters became state property, and subject to its jurisdiction and disposal under the equal footing doctrine. According to the United States supreme court's decision in *Shively v. Bowlby*, the state has the right to dispose of the beds of navigable waters, "in such manner as [it] might deem proper, . . . subject only to the paramount right of navigation and commerce." The state has the right to determine for itself "to what extent it will preserve its rights of ownership in them, or confer them on others," *Shively v. Bowlby*, 152 U.S. 1, 56 (1893); and

(2) Since the admission of the state of Idaho into the union, article XV of the constitution of the state of Idaho has governed the appropriation and use of the waters of Idaho. Pursuant to article XV of the constitution of the state of Idaho, the legislature of the state of Idaho has enacted a comprehensive system of laws for the appropriation, transfer and use of the waters of Idaho, which addresses the public interest therein; and

(3) Upon admission of the state of Idaho into the union, the state was granted certain lands by the United States government as an endowment for designated institutions. Article IX of the constitution of the state of Idaho, and laws enacted pursuant thereto, establish a comprehensive system of laws for the management of state endowment lands, which addresses the public interest therein; and

(4) The common law doctrine known as the public trust doctrine, adopted by inference in section [73-116](#), Idaho Code, has guided the alienation or encumbrance of the title to the beds of navigable waters held in trust by the state. The public trust doctrine has been cited in court decisions and pleadings in ways that have created confusion in the administration and management of the waters and endowment lands; and

(5) The public's interest in the environment is protected in other parts of Idaho's constitutional or statutory law; and

(6) The purpose of this act is to clarify the application of the public trust doctrine in the state of Idaho and to expressly declare the limits of this common law doctrine in accordance with the authority recognized in each state to define the extent of the common law.

[58-1201, added 1996, ch. 342, sec. 1, p. 1147.]

58-1202. DEFINITIONS. For the purposes of this chapter, the following definitions apply:

(1) "Beds of navigable waters" means those lands lying under or below the "natural or ordinary high water mark" of navigable waters.

(2) "Natural or ordinary high water mark" means the line that water impresses on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. When the soil, configuration of the surface, or vegetation has been altered by man's activity, the natural or ordinary high water mark shall be located where it would have been if no alteration had occurred.

(3) "Navigable waters" means those waters that were susceptible to being used, in their ordinary condition, as highways for commerce on the date of statehood, under the federal test of navigability.

(4) "Private property rights" means the property rights located above the beds of navigable waters.

(5) "Public trust doctrine" means the common law rule relating to the title to the beds of navigable waters adopted by inference in section [73-116](#), Idaho Code.

[58-1202, added 1996, ch. 342, sec. 1, p. 1148.]

58-1203. LIMITATIONS TO THE APPLICATION OF THE PUBLIC TRUST DOCTRINE. (1) The public trust doctrine as it is applied in the state of Idaho is solely a limitation on the power of the state to alienate or encumber the title to the beds of navigable waters as defined in this chapter. The state board of land commissioners may approve, modify or reject all activities involving the alienation or encumbrance of the beds of navigable waters in accordance with the public trust doctrine.

(2) The public trust doctrine shall not be applied to any purpose other than as provided in this chapter. Specifically, but without limitation, the public trust doctrine shall not apply to:

(a) The management or disposition of lands held for the benefit of the endowed institutions as set forth in article IX of the constitution of the state of Idaho;

(b) The appropriation or use of water, or the granting, transfer, administration, or adjudication of water or water rights as provided for in article XV of the constitution of the state of Idaho and [title 42](#), Idaho Code, or any other procedure or law applicable to water rights in the state of Idaho; or

(c) The protection or exercise of private property rights within the state of Idaho.

(3) Nothing in this chapter shall be construed as a limitation on the power of the state to authorize public or private use, encumbrance or alienation of the title to the beds of navigable waters held in public trust pursuant to this chapter for such purposes as navigation, commerce, recreation, agriculture, mining, forestry, or other uses, if, in the judgment of the state board of land commissioners, the grant for such use is made in accordance with the statutes and constitution of the state of Idaho.

(4) Nothing in this chapter shall be construed as repealing, limiting, or otherwise altering any statutory or constitutional provision of the state of Idaho including, but not limited to: [title 42](#), Idaho Code, concerning the appropriation, transfer and use of the waters of Idaho; [title 36](#), Idaho Code, concerning the regulation and management of fish and game and the right of public access on navigable waters; [title 58](#), Idaho Code, relating to state lands and navigational encroachments; or [chapter 43, title 67](#), Idaho Code, concerning the appropriation of waters in trust by the state of Idaho.

[58-1203, added 1996, ch. 342, sec. 1, p. 1148.]