

A golden scale of justice is positioned on the right side of the image, set against a blue gradient background. The scale's beam is tilted upwards, and its two pans are empty. The text is overlaid on the left side of the scale.

Evaluating the line of State Ownership in Moses Lake

Moses Lake is Navigable

- “Moses Lake is an inland body of fresh water some 15 miles long in a northerly and southerly direction, is of an average width of about one-half mile, is at present from 10 to 30 feet deep, and is navigable.”
- State ex rel. Ham, Yearsley & Ryrie v. Superior Court of Grant County, 70 Wash. 442, 126 P. 945 (1912)

Washington Constitution

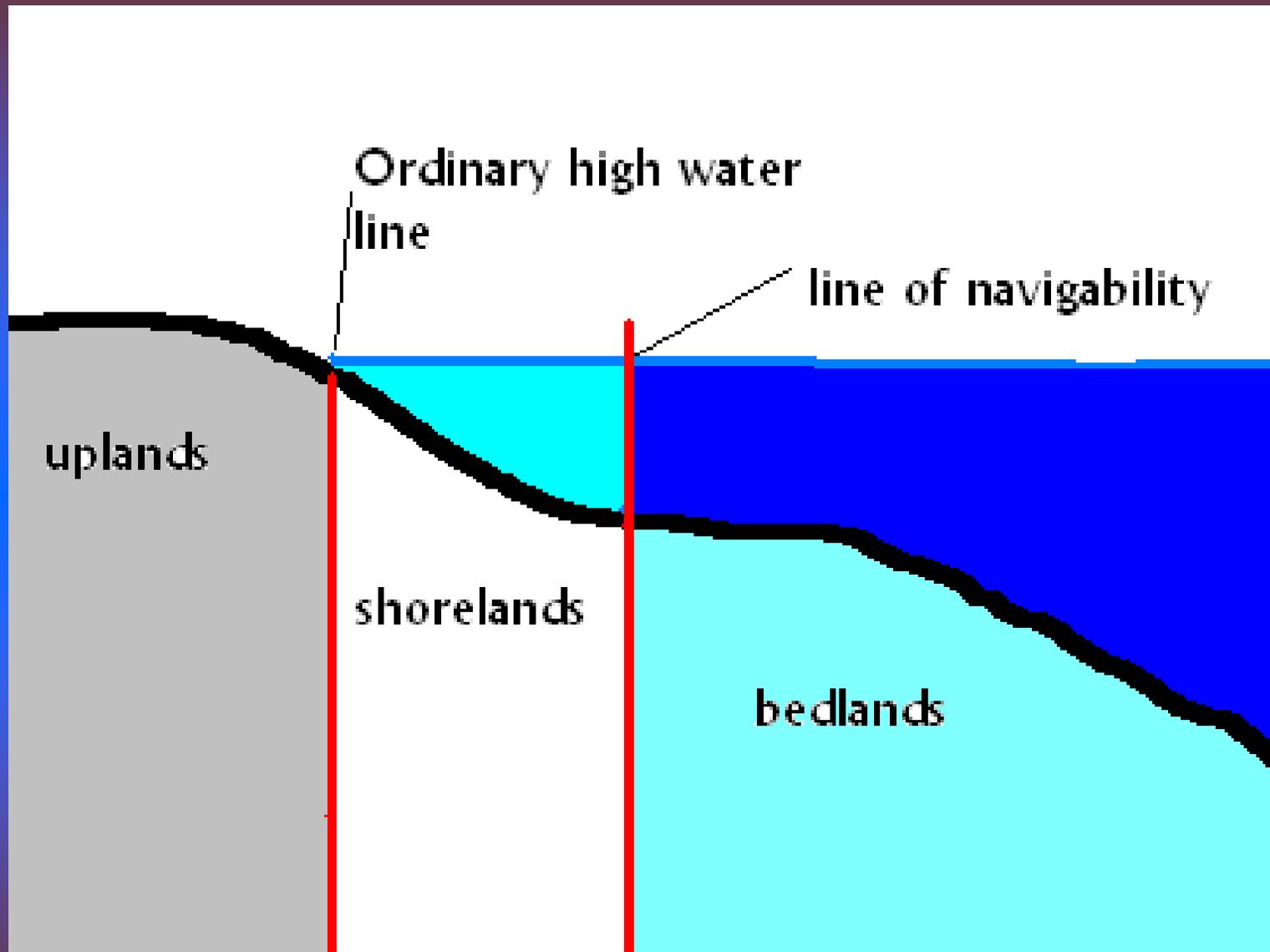
- **ARTICLE XVII TIDE LANDS**
- **SECTION 1 DECLARATION OF STATE OWNERSHIP.**
The state of Washington asserts its ownership to the beds and shores of all navigable waters in the state up to and including the line of ordinary high tide, in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes: Provided, that this Section shall not be construed so as to debar any person from asserting his claim to vested rights in the courts of the state.

State vs. Federal ownership of navigable waters

- The individual states hold title to land under navigable waters and manage uses of the water column over those lands
 - In the U.S. Constitution, the states granted to the federal government limited powers over navigable waters such as
 - the power to regulate commerce
 - the power to police the high seas for piracy
 - the power to maintain a navy
 - States exercise all other aspects of ownership

Navigable freshwaters

- There are two basic categories of freshwaters:
 - Shorelands, defined as those land between the line of ordinary high water, extending out in the water to the line of navigability.
 - Bedlands, defined as those lands below the line of navigability.



- WAC 332-30-106
- (33) "Line of navigability" means a measured line at that depth sufficient for ordinary navigation as determined by the board of natural resources for the body of water in question.
- (48) "Ordinary high water" means, for the purpose of asserting state ownership, the line of permanent upland vegetation along the shores of nontidal navigable waters. In the absence of vegetation, it is the line of mean high water.

- Line of navigability can be at different depths at different places within one lake, depending on the unique physical circumstances of the various bays, coves, and inlets around the lake. Davidson v. State, 116 Wn.2d 13, 24-25, 802 P.2d 1374 (1991).

- For those places where shorelands were sold by the State, shorelands usually described in the state deed as fronting a government lot, with price set by the length of the shoreline of that government lot.

Moving Boundary Rule

- (1) "Accretion" means the natural buildup of shoreline through the gradual deposit of alluvium. The general principle of common law applicable is that a riparian or littoral owner gains by accretion and reliction, and loses by erosion. Boundary lines generally will change with accretion.
- (8) "Avulsion" means a sudden and perceptible change in the shoreline of a body of water. Generally no change in boundary lines occurs.
WAC 332-30-106

- State's ownership of Moses Lake as of 1889: Line of ordinary high water
- If the line of ordinary high water slowly shifted after 1889, State ownership would have followed it.
- In 1904 the level of Moses Lake dropped suddenly.
- The ordinary high water line as it existed before the avulsive event became fixed as the line of State ownership.
- DNR has treated 1048' as the line of state ownership.

Washington Constitution

- **ARTICLE XVII TIDE LANDS**
- **Section 2 DISCLAIMER OF CERTAIN LANDS.** The state of Washington disclaims all title in and claim to all tide, swamp and overflowed lands, patented by the United States: Provided, the same is not impeached for fraud.

- Northern Pacific Railroad Company (later Northern Pacific Railway Company) acquired lands near Moses Lake through 19 different federal Patents dating from 1896 to 1931.
- DNR is reviewing those patents and determining whether any of them would qualify as “pre-statehood” patents.

- Some cases have interpreted Art. 17 § 2 on lakes and Puget Sound as allowing pre-statehood patent of government lots to claim ownership out to the meander line, even if it is waterward of the line of ordinary high water/tide.
- Other cases have stated that does not apply to rivers due to shifting nature of river boundaries – government lots take to line of ordinary high water only, regardless of location of meander line.

- DNR is reviewing all superior court materials, all Supreme Court briefs, and all Supreme Court rulings from the extensive litigation between the Railroad/Pettigrew/Grant Realty versus Ham Yearsley & Ryrie.
- Seeking information about the lake level just prior to the 1904 event.
- Seeking information about ownership and title of government lots on the lake.

DNR's ownership vs. water rights

- Legislature has created two completely independent branches of law:
- Ownership of aquatic lands under waters, which includes the authority to manage uses of those lands and uses of the water column over those lands.
- Right to remove the waters for use in irrigation/domestic/industrial applications.

- State hydraulic engineer granted “water rights” and described the scope of those rights both by reference to acre feet, and by reference to lake levels. NOTHING TO DO WITH STATE OWNERSHIP OF AQUATIC LANDS.
- If person with water rights wishes to store those waters, needs to obtain “overflow rights” from the landowners to overflow lands with those stored waters.

- DNR is reviewing all historic grants of overflow rights and searching for original documents regarding those grants.

Questions?