

✖ The Nevada Supreme Court was the source of a pleasant surprise earlier this month, when it issued a decision formally “adopting” the public trust doctrine as Nevada law.

The opinion, [*Lawrence v. Clark County*](#), involved a proposed transfer of land in and adjacent to the Colorado River near Laughlin, Nevada to Clark County officials. Nevada state legislation directed the state land agency to acquire federal land within Clark County limits and then transfer it to the county. The Nevada State Land Registrar deeded most of the land to Clark County, but declined to transfer 330 acres of land adjacent to the Colorado River that he believed was sovereign land that was non-transferable under the public trust doctrine. Clark County officials sued in state court to compel transfer of those 330 acres.

The Nevada Supreme Court’s unanimous decision in *Lawrence* explicitly embraces public trust principles, although it leaves the ultimate fate of the disputed river shoreline areas in doubt. “[W]e clarify Nevada’s public trust doctrine jurisprudence by expressly adopting the doctrine and determining its application in Nevada, given the public’s interest in Nevada’s waters, and the law’s acknowledgment of that interest.” The court painstakingly traced the development of the public trust doctrine from the Roman Emperor Justinian, through the common law courts of England, to the United States in the nineteenth century. Critically, the justices held the doctrine embodied in the Nevada state constitution and statutes, and as arising “from the inherent limitations on the state’s sovereign power.”

The court remanded the case to the trial court to determine whether the disputed lands were in fact part of the beds and banks of the Colorado River at the time of Nevada’s achieved statehood. If so, the property would constitute state sovereign lands impressed with the public trust.

The key question is, what happens now? When state appellate courts in Arizona and Idaho similarly embraced the public trust doctrine as part of their jurisprudence, the legislatures of both states quickly enacted legislation to circumscribe the court rulings. And 30 years ago, immediately after the California Supreme Court confirmed the public trust’s applicability to the bed and banks of Lake Tahoe in that state, the Nevada legislature promptly responded with a law granting the state’s sovereign interest in the shoreline of the Nevada portion of the lake to private upland owners. Earlier this year (and as reported recently on *Legal Planet*), Nevada politicians enacted legislation that will withdraw Nevada from the bistate Tahoe Regional Compact unless California agrees to fundamental changes in the Compact that would facilitate development in the Lake Tahoe Basin that straddles the California-Nevada interstate boundary.

The Nevada Supreme Court’s *Lawrence* decision represents an important, positive

development in American public trust law. Whether it remains on the books, however, remains very much an open question.