



**BACKCOUNTRY
HUNTERS & ANGLERS**
CALIFORNIA



AMERICAN
Whitewater

December 20, 2022

Mr. Chuck Bonham, Director
California Department of Fish & Wildlife
715 P Street
Sacramento, CA 95814

Re: Truckee River Access and Navigable Waters

Dear Director Bonham,

With great respect for our CDFW wardens and the commendable work they do, we seek to clarify a public access question with regard to navigable waters in the State of California related to an incident on the Truckee River.

It was brought to our attention that on the morning of November 20, 2022 two anglers accompanied by a licensed guide were confronted by a CDFW warden while attempting to access the Truckee River near the Hirschdale Bridge. During the interaction, the question arose of whether the Truckee River was a navigable waterway accessible up to the mean high-water mark as set forth by California state law. The warden maintained that it was not, noting he had confirmed this with his agency and Lieutenant that the only waterways considered navigable in California are those that are listed in the Harbors and Navigation Code (HN), sections 100-107.

In subsequent conversations and written exchanges with the warden and his lieutenant, these CDFW agents again stated that the Truckee River corridor is not legally navigable water and accessing the river bottom and/or the land up to the high-water mark would constitute trespass against the adjacent property owners.

We disagree and seek to briefly present our interpretation of State law and statutes, which demonstrate that the Truckee River is a navigable water and should therefore be accessible to the public.

The Constitution of the State of California, and numerous cases interpreting it, establish that "the people shall have the right to fish upon and from the public lands of the state and in the waters thereof...and no land owned by the state shall ever be sold or transferred without reserving in the people the absolute right to fish thereupon."¹ Indeed, California makes it illegal to prevent people

¹ California's "Bill of Rights," Article 1, section 25

from using navigable waters. “To obstruct navigation on any navigable lake, river, bay, stream, canal or basin is a public nuisance and made unlawful by Civil Code section 3479, Penal Code section 370, and Harbors and Navigation Code section 131.” In addition, Section 4 of Article 10 of the California Constitution specifically requires the State Legislature to liberally construct any navigable waters law “so that access to the navigable waters of this state shall be always attainable for the people thereof.”

Finally, in *People ex rel. Baker v. Mack*, the California Court of Appeal held that the public had the right to fish navigable water. “It hardly needs citation of authority that the rule is that a navigable stream may be used by the public for boating, swimming, fishing, hunting and all recreational purposes.”²

Under at least California law, the Truckee River is navigable. In *Baker v Mack*, the court defined navigability as it applies to waters in California, stating that “members of the public have the right to navigate and to exercise the incidence of navigation in a lawful manner at any point below high water mark on waters of this state which are capable of being navigated by oar or motor propelled small craft.”³ This definition includes canoes, rafts, kayaks, and other vessels, so essentially if you can float the waterway you have a right to use it for navigation and recreational purposes. A number of other cases have applied and validated this same test for navigability.⁴ The State Lands Commission has expressly published this same definition for public access to navigable waters in their publication “A legal guide to the public’s rights to access and use California’s navigable waters,”⁵ and in their *Public Access Brochure*.

Notably, the *Mack* case cites many decisions showing that even waterways with minimal depth (from 8 inches to 2.5 feet) were navigable because small craft like row boats could use those waters. Numerous public sources show that rafters and others regularly use the relevant section of the Truckee River, demonstrating it is navigable under California law.⁶

Further, in direct contradiction to the warden’s statement, the law is clear that it does not matter that the California legislature has not specifically designated the Truckee as navigable. “The failure of the Legislature to designate Fall River in the list of navigable waters in Harbors and Navigation Code, sections 101-106, is of no consequence. . . . The Legislature’s failure to include a water course

²*People ex rel. Baker v. Mack*, 19 Cal. App. 3d 1040, 1045, (Ct. App. 1971).

³ *Mack*, 19 Cal. App. 3d at 1050.

⁴ See, e.g., *Bohn v. Albertson*, 107 Cal. App. 2d 738 (1951); *Hitchings v. Del Rio Woods Recreation and Park District*, 55 Cal. App. 3d 560 (1976); *Younger v. County of El Dorado*, 96 Cal. App. 3d 403, 406 (1979); *Kern River Public Access Committee v. City of Bakersfield*, 170 Cal. App. 3d 1205 (1985).

⁵ <https://www.slc.ca.gov/wp-content/uploads/2018/11/2017-PublicAccessGuide.pdf>

⁶ See, e.g., [American Whitewater’s National Whitewater Inventory: Truckee River \(Floriston Run\)](https://cacrecks.com/truckee.htm), <https://cacrecks.com/truckee.htm>, https://tmwa.com/wp-content/uploads/docs/your_water/2007_truckee_river_rec_map.pdf, <https://www.sierrasun.com/news/community-discusses-concerns-regarding-truckee-river-access/>

within its listing of waterways did not and cannot cede such waterways into private ownership. The state acquired title by its sovereignty upon its creation in 1850.”⁷ Further, the State of Nevada has legislatively declared the same Truckee River a navigable waterway just a few river miles across the border from the area at issue here.

Regarding the legality of public access from the road to the Truckee River, the appeals court in *People v. Sweetser* ruled that a public highway easement “grants access to the river as an incident to the use of the highway.”⁸ Notably, Nevada County is planning to build a public access way at the new Hirschdale bridge that is slated for development.

Given our understanding of the law as briefly stated above, we seek to understand the formal position of the CDFW regarding the status of the Truckee River with regards to navigability and public access to hunt, fish, and recreate. Specifically, we respectfully request clarification from CDFW law enforcement regarding its position on the following question:

What is CDFW's basis for asserting to members of the public that they do not have the right -- and are subject to citation for trespass -- when accessing the Truckee River using public highway easements, or traveling along the Truckee River in the area at issue?

The Truckee River is an iconic river and a staple of the local community that has been used by the public for fishing and other river-based recreation – including the river reach in question per the incident referenced above – for decades without any previous assertion that this use constituted trespass. According to state and federal laws the Truckee River passes all benchmarks for navigability and therefore must be accessible to the public via legal rights of way.

We would appreciate a timely response to this inquiry as this stretch of river is heavily used by anglers, boaters, floaters, and swimmers from across the state, locals and tourists alike.

Sincerely,

Eric Hanson,
Co-Chair, California Chapter
Backcountry Hunters & Anglers

Mark Hennelly
Vice President, Legislative Affairs and Public Policy
California Waterfowl

Theresa Lorejo-Simsiman
California Stewardship Director
American Whitewater

⁷ *Mack*, 19 Cal. App. 3d at 1048-1049.

⁸ *People v. Sweetser*, 72 Cal.App.3d 278, 284 (Cal. Ct. App. 1977).