

**28<sup>th</sup> International Submerged Lands Management Conference**  
**Webinar Series**  
**Session: The Evolving Public Trust Doctrine**  
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The “Public Trust Doctrine” should be both bedrock and polestar for the submerged lands manager. In what ways has the Doctrine evolved or stagnated in recent legal decisions? Are the courts protecting or vitiating the Doctrine? What do upcoming decisions herald? This session will provide a thorough review of the last ten years of judicial decisions honing the concept of the public trust in the United States before examining *Florida Department of Environmental Protection v. Stop the Beach Renourishment, Inc.*, 998 So. 2d 1102 (2008), wherein the Florida Supreme Court the upheld state ownership of renourished beaches. The case found the Florida Beach and Shore Protection Act (BSPA) to be facially constitutional in reasonably balancing the rights of the public and private littoral owners. Further, the court found that, like upland littoral owners, the State also had the right to reclaim property submerged by an avulsive event, such as the hurricane that contributed to the migration of the beaches in the case. The court found no “taking” of the property owner’s right to accretion because 1) the right to accretion is a contingent right and 2) it is inapplicable in the context of the BSPA. Finally, the court found that there is no independent littoral right to “contact with the water.” The court’s unusual approach in upholding the BSPA left many questions about the future application of the Act and left the decision open to further challenge in the U.S. Supreme Court. The U.S. Supreme Court has accepted cert. in the case to address the question of whether the Florida Supreme Court’s decision changed property law in Florida to the extent that it was “judicial taking” of property. The presentation will discuss how the STBR decision affects the public trust and public access, and the potential impact of the U.S. Supreme Court case on jurisdictions other than Florida.

Additionally, the session will explore whether the public trust doctrine can provide a unifying concept for U.S. federal ocean governance. Since today the public trust doctrine is integral to the protection of coastal ecosystems and beach access in many states and has even made its way into state constitutions, it would be simple, and seemingly logical, to assume that the same fiduciary responsibility of states to protect public trust uses of their waters extends to all marine resources within the United States’ 200-mile Exclusive Economic Zone (EEZ). However, an artificial line has been drawn around state waters, and the legal authority and responsibility of the U.S. government to protect public trust resources in the vast space of its EEZ have never been fully and expressly established. Securing the place of the public trust doctrine in U.S. federal oceans management would be valuable, given the immense pressure to exploit EEZ resources, the failure of the current regulatory approach, improved scientific understanding of the interconnected nature of ocean ecosystems, and the growing demand for sustainable management of ocean resources.

Speakers

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David C. Slade graduated from Lewis & Clarke School of Law, Portland, Oregon, in 1982, earning a Certificate of Excellence in Environmental Law. Prior to Law School he received his Masters Degree in Marine Biology from the University of Puget Sound in 1978. In 1999 Mr. Slade received the Distinguished Environmental Lawyer award from Lewis & Clarke School of Law.

A member of the U.S. Supreme Court bar since 1986, Mr. Slade has been involved with several constitutional law cases before the Court, including the landmark Public Trust Doctrine decision of *Phillips Petroleum v. Mississippi*. Mr. Slade was the Counsel of Record for the Thirteen Original States in support of Mississippi. The Court, citing the 13 States brief, affirmed the original states' claim that all lands washed by the ebb and flow of the tide – regardless of navigability – were held by the State in trust for the benefit of the public, substantiating Mississippi's claim to her tidelands. The *Phillips Petroleum v. Mississippi* decision also affirmed that each state that joined the union also received her trust lands under the Equal Footing Doctrine.

Mr. Slade served in the General Counsel Office of the U.S. Department of Commerce, as Chief Counsel to the National Advisory Committee on Oceans and Atmosphere, and as General Counsel and Director of the Coastal States Organization in Washington, D.C, representing the views of the 35 governors of the coastal States, Territories and Commonwealths of the United States. He has testified before the United States Senate and House of Representatives on topics ranging from fisheries, environmental law, constitutional law and international affairs.

During his tenure with the Coastal States Organization, following up on the *Phillips Petroleum v. Mississippi* decision, Mr. Slade was the Project Manager for the National Public Trust Study. This culminated in the first edition of Putting the Public Trust Doctrine to Work, published by the CSO in 1990. In 1997, CSO hired Mr. Slade to produce the second edition of Putting the Public Trust Doctrine to Work. His current book, *The Public Trust Doctrine In Motion*, builds on these previous editions, covering the Public Trust Doctrine cases from 1997 up to the current time.

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Professor Christie is the Elizabeth C. and Clyde W. Atkinson Professor of Law and the Associate Dean for International Programs at the Florida State University College of Law. Professor Christie is best known for her work in ocean and coastal management law. She is a co-author of the leading casebook in the field, COASTAL AND OCEAN LAW (West) as well as the author of numerous articles and reports exploring ocean policy, fisheries management and coastal resources management. Professor Christie been involved in ocean policy development at the state level for Florida as well as at the national level as an author of the REVIEW OF U.S. OCEAN AND COASTAL LAW (APPENDIX 6), prepared for the U.S. Commission on Ocean Policy. She has served as Chair of the AALS section on Natural Resources Law and the section on Ocean and Maritime

Law. She has been an elected member of the American Law Institute since 1995. She teaches Law of the Sea, International Environmental Law, Coastal and Ocean Law, Natural Resources Law, and Property Law. Professor Christie graduated from the University of Georgia in 1969 with a specialized B.S. degree in Chemistry. She received her J.D. degree from the University of Georgia School of Law and also attended The Hague Academy of International Law. From 1978-1980 was a Postdoctoral Fellow in the Marine Policy and Ocean Management Program at Woods Hole Oceanographic Institution.

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Mary Turnipseed is a Ph.D. student in Ecology at the Nicholas School of the Environment, Duke University, with major research interests in ocean conservation ecology and policy. She obtained her M.A. in Biology from the College of William and Mary and her B.S. in Biology from Haverford College. She is the author or co-author of numerous publications in the fields of ocean policy, fisheries, and deep-sea ecology. In her spare time, she is a deejay at WXDU Durham and a volunteer with Durham Inner-City Gardeners.