

**Mississippi Supplement to  
PUTTING THE  
PUBLIC TRUST DOCTRINE  
TO WORK**

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**Second Edition**

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**January, 1998**

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Mississippi Law Research Institute  
Mississippi-Alabama Sea Grant Legal Program**

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**For the Second Edition of PUTTING THE PUBLIC TRUST DOCTRINE TO WORK**, the editors conducted a national survey of developments in public trust law between 1990 and 1995. The survey responses provided the content for the second edition by updating issues and cases addressed in the first edition as well as providing practical analyses of the application of the public trust doctrine to coastal zone management.

The information provided in the Mississippi Supplement represents an update of Mississippi public trust law since 1990 including a comprehensive analysis of changes in public trust law in Mississippi and the application of the trust doctrine.

Part I provides a chapter by chapter update of cases and statutes reported in the 1990 edition. It also includes questions and answers relating to practice-oriented concepts, incorporated into the 1997 edition, including common law and statutory law pertaining to the Mississippi Public Trust Doctrine. Part II provides tables of cases and statutes.

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- Page 356, Section C

# **PART I.**

## **Mississippi Statutory & Common Law Update**



## CHAPTER II

# LANDS, WATERS, AND LIVING RESOURCES SUBJECT TO THE PUBLIC TRUST DOCTRINE

### Chapter II, Section 1

#### Land, Waters, and Living Resources Generally Recognized as Subject to the Public Trust Doctrine

#### Page 18, Note 16:

MS: In reaction to *Phillips Petroleum v. Mississippi*, 484 U.S. 469 (1988), the Mississippi legislature enacted the Public Trust Tidelands Act to “resolve the uncertainty and disputes which have arisen as to the location of the boundary between the state’s public trust tidelands and the upland property . . . .” MISS. CODE ANN. § 29-15-3(2) (1997).

#### Page 20, Section 1(A)(3):

#### *Does Mississippi recognize waters subject to recreational boating as navigable waters?*

*Ryals v. Pigott*, 580 So.2d 1140 (Miss. 1990), *reh’g denied, reaff’d*, 1991 Miss. LEXIS 362 (Miss. 1991), *cert. denied*, 502 U.S. 940 (1991). The court found that navigable waters are those waters which are navigable in fact; navigable in fact includes those waters which are navigable by loggers, fishermen, and pleasure boaters.

*But see Dycus v. Sillers*, 57 So.2d 486 (Miss. 1990). The record titleholders to water bottoms were entitled to exclude others from fishing in a navigable crevasse even though it was connected to a public lake

by a chute. The chute was made navigable only by dredging operations by the U.S. Army Corps of Engineers and, thus, the public lake and crevasse were separate bodies of water.

**Page 25, Notes 53, 56, 57:**

MS: *Ryals v. Pigott*, 580 So.2d 1140 (Miss. 1990), *reh'g denied, reaff'd*, 1991 Miss. LEXIS 362 (Miss. 1991), *cert. denied*, 502 U.S. 940 (1991) (navigable waters are those which are navigable by loggers, fishermen, and pleasure boaters).

**Page 28, Note 74:**

MS: The Mississippi Sound is known as historical inland waters, granting Mississippi title to the submerged lands three miles past its barrier islands, rather than merely three miles from its mean high tide line on shore.

**Page 30, Note 88:**

MS: *Ryals v. Pigott*, 580 So.2d 1140 (Miss. 1990), *reh'g denied, reaff'd*, 1991 Miss. LEXIS 362 (Miss. 1991), *cert. denied*, 502 U.S. 940 (1991) (navigable waters, defined under Mississippi Code § 51-1-1, are those which are navigable in fact, and which are navigable by loggers, fishermen, and pleasure boaters).

**Chapter II, Section 2**  
**Upper Boundaries of Public Trust Shorelands**

**Page 69, Note 8:**

MS: *See Watts v. Lawrence*, 690 S.2d 1162 (Miss. 1997) (owners of property adjacent to the mean high water line possess littoral rights and may build certain structures subject to the Bureau of Marine Resources restrictions).

**Page 69, Note 17:**

MS: *See Public Trust Tidelands Act*, MISS. CODE ANN. § 29-15-1(c) (1997) (mean high water line means the intersection of the tidal datum plane of mean high water with the shore).

**Page 70, in text, at Note 23 :**

Mississippi Public Trust Tidelands Act: MISS. CODE ANN. §§ 29-15-1 to 29-15-23 (1997).

The Mississippi legislature established the boundary line for

- (1) filled tidelands: determinable mean high water line nearest the effective date of the Coastal Wetlands Protection Act of 1973; and
- (2) unfilled tidelands: high mean water mark.

**Page 73, Section II (C)(2):**

*Does Mississippi employ a specific methodology for determining the location of the Public Trust boundary on*

***coastal and inland waters, and filled lands? If so, what is the methodology? Has the methodology for boundary determination been subject to legal challenge?***

In 1989, the Mississippi legislature passed the Public Trust Tidelands Act defining trust tidelands as "those lands which are daily covered and uncovered by water by the action of the tides, up to the mean line of the ordinary high tides." MISS. CODE ANN. § 29-15-1(g) (1997). The Act required the Secretary of State to prepare a Map of Public Trust Tidelands to (1) depict the boundary as the current mean high water line where the shoreline is undeveloped; and (2) depict the boundary as the determinable mean high water line nearest the effective date of the Coastal Wetlands Protection Act of 1973 for developed areas or where there have been encroachments. MISS. CODE ANN. § 29-15-7(1) (1997).

The Act provided that the Preliminary Map be drawn as it existed on July 1, 1973, giving all interested parties including adjacent landowners, the public, and the Secretary of State, sixty days to submit comments which could be used to adjust the final map. MISS. CODE ANN. § 29-15-7(4) (1997).

The methodology adopted under the Tidelands Act was challenged in *Secretary of State v. Wiesenberg*, 633 So.2d 983 (Miss. 1994), *reh'g denied*, 1994 Miss. LEXIS 175 (Miss. 1994) as a violation of the Mississippi Constitution. The court ruled that the Act did not violate Article 4, Section 95, of the Mississippi Constitution which prohibits a donation of public trust property because it was a legislative effort to deal with uncertainty regarding public land ownership and resulted from a legislative enactment for a higher public purpose.

***At what point in time is the boundary set?***

The boundary for filled lands is set at July 1, 1973, the effective date of the Coastal Wetlands Protection Act. MISS. CODE ANN. § 29-15-7(1) (1997).

**Chapter II, Section 3**  
**Boundaries, and the Additions and Losses of Public Trust Land**  
**and Waters due to Natural and Man-Induced Changes**

**Page 108, Note 6:**

MS: But, the Secretary of State, acting as Land Commissioner, may have the authority to exchange public trust lands for more valuable lands under his authority as trustee over public lands. See MISS. CODE ANN. § 29-15-1 (1997); MISS. CODE ANN. § 91-9-101 (1997); MISS. CODE ANN. § 7-11-11 (1997).

**Page 108, Section A(2):**

*How is the distinction between erosion and avulsion made in Mississippi? Does a series of storms constitute erosion or avulsion? Does the stability of the subject lands influence how the event is treated?*

Neither Mississippi statute nor caselaw distinguishes between erosion and avulsion.

*Does your State have a mechanism to recognize (acknowledge/preserve) prior boundaries as a result of the loss or addition of areas due to avulsion?*

Lands brought within the ebb and flow of the tide by avulsion or by artificial or nonnatural means are owned by their private titleholders. *Cinque Bambini Partnership v. State*, 491 So.2d 508 (Miss. 1986), *aff'd*, *Phillips Petroleum v. Mississippi*, 484 U.S. 469 (1988). See also *Secretary of State v. Wiesenberg*, 633 So.2d 983 (Miss. 1994), *reh'g denied*,

1994 Miss. LEXIS 175 (Miss. 1994), which states:

Section 29-15-7(2) of the [Tidelands] Act recognizes that the public trust tidelands are ambulatory in nature, and that the boundaries will change with the natural conditions. This section explicitly state that the common law doctrines pertaining to tidelands such as natural accretion and reliction continue to be applicable. The owner of water bounded lands is entitled to any accretions, including the gradual deposit of alluvial soil upon margin of water or gradual recession of waters. In the alternative, a private landowner may lose title to lands via reliction. Where the forces of nature - gradually and imperceptibly - have operated to expand or enlarge the inland reach of the ebb and flow of the tide, the new tidelands so affected accrete to the trust.

*Id.* at 992, citing *Cinque Bambini*, 491 So.2d at 591, 520.

See also *Mississippi State Highway Commission v. Gilich*, 609 So.2d 367 (Miss. 1992) (doctrine of accretion must yield to command of Mississippi Constitution).

**Page 110, Section B:**

***Does the littoral owner have the right to fix the mean high water line to halt the movement of the Public Trust boundary by erosion, reliction, or sea level rise? (i.e., construct a seawall, bulkhead, or place fill)***

Yes, subject to regulations and permitting discretion of the Bureau of Marine Resources. Regulations include an analysis of whether such constructions will inhibit the public trust rights. MISSISSIPPI COASTAL PROGRAM, Ch. VIII, Section 2, Part I.A at 8 (1988).

**Page 110, Page 114, Notes 15, 42:**

*MS: Mississippi State Highway Commission v. Gilich*, 609 So.2d 367 (Miss. 1992) (Mississippi Supreme Court overruled *Harrison County v. Guice*; the doctrine of artificial accretion does not apply so as to render lands private which were once part of the public trust by action of the government in artificially recovering such lands by fill).

**Page 111, Section 3(B)(3):**

***Has Mississippi limited the scope of the Public Trust interest in filled lands to those filled after a certain date, or has it used any other method to limit its scope?***

The Public Trust Tidelands Act distinguishes between those lands filled prior to the 1973 enactment of the Coastal Wetlands Protection Act and those filled after its enactment. MISS. CODE ANN. § 29-15-7 (1997). Tidelands filled prior to 1973 do not contribute to the public trust purpose and may be alienated without legislative enactment as long as the alienation meets a higher public purpose.

**Page 111, Section 3(B)(3):**

***Has the Public Trust interest in developed filled lands been distinguished from that in undeveloped filled lands? How?***

Filled lands do not contribute to the purpose of the Mississippi public trust for tidelands. For this reason, the Secretary, as trustee, may divest the trust of filled lands. Unfilled lands contribute to the purpose of the trust and can only be alienated by legislative enactment and a higher public purpose. *Secretary of State v. Wiesenberg*, 633 So.2d 983 (Miss. 1994), *reh'g denied*, 1994 Miss. LEXIS 175 (Miss. 1994).

**Page 112, Section 3(B)(3)(a):**

***In what ways, if any, are private uses of filled lands limited to those which are appropriate to the Public Trust interest? By what methods does Mississippi promote public trust interests in filled lands?***

Permits are limited so as not to permanently alienate public trust rights or purposes. MISSISSIPPI COASTAL PROGRAM, Ch. VIII, Section 2, Part I.A at 8 (1988). When the Bureau of Marine Resources considers granting permits, it must consider the "higher public interest in compliance with the public purposes of the public trust." MISS. CODE ANN. § 49-27-3 (1997).

**Page 114, Section 3 (B)(3)(c):**

***What is the effect on the Public Trust interest of the filling of lands due to the establishment of harbor lines?***

When harbor lines are established, jurisdiction for reclamation, use, and disposition is granted to local Port Commissions. MISS. CODE ANN. § 59-1-17 (1997). Port Commissions have the option to dredge and fill harbors as long as the activities do not interfere with normal navigation. MISS. CODE ANN. § 59-9-67 (1997). *See also* MISS. CODE ANN. § 59-9-21 (1997) (Port Commission has authority to rebuild beach).

***Does Mississippi recognize harbor lines as a grant to fill out?***

Not necessarily. But, the Secretary of State can convey lands to the Port Commission who can fill as long as it leaves normal navigation. MISS. CODE ANN. § 59-9-67 (1997).



***Does Mississippi recognize a remainder interest in lands filled behind harbor lines?***

Yes; Section 59-9-67 allows limited leases but leases must promote the public interest. MISS. CODE ANN. § 59-9-67 (1997). *But see* Miss. Code Ann. §§ 59-5-1 to 59-5-69 (1997) (provides authority over ports to Department of Economy and Community Development, County Board of Supervisors, and County Port Authority (County Development Commission)).

***Has Mississippi distinguished the effect of harbor lines established by the State as opposed to harbor lines established by the federal government?***

No. Mississippi does not distinguish between harbor lines.

***Does Mississippi recognize the extinguishment of Public Trust interests in lands where the Corps of Engineers has abandoned the navigational servitude?***

No. The Mississippi Code maintains the public trust in navigation for ports. MISS. CODE ANN. § 59-9-67 (1997).

**Page 116, Section 3(C):**

***What procedure, if any, does Mississippi have for vesting title in filled lands?***

The Secretary of State, as trustee over public trust tidelands, may sell tidelands which are filled because they do not contribute to the purpose of the trust. *Secretary of State v. Wiesenberg*, 633 So.2d 983 (Miss. 1994), *reh'g denied*, 1994 Miss. LEXIS 175 (Miss. 1994).

In addition, the Public Trust Tidelands Act authorizes the Secretary of State to negotiate a boundary settlement agreement regarding property filled prior to 1973, coinciding with the enactment of the Coastal Wetlands Protection Act. MISS. CODE ANN. § 29-15-3(4) (1997).

## **Chapter II, Section 5 Exceptions to the Public Trust Doctrine**

### **Page 160, Note 7:**

MS: *Cinque Bambini* was upheld by the U.S. Supreme Court in *Phillips Petroleum v. Mississippi*, 484 U.S. 469 (1988).

### **Page 162, Note 16:**

MS: *But see Gast v. Ederer*, 600 So.2d 204 (Miss. 1992) (any structure erected above or within the area below the mean high watermark is subject to the restrictive covenants of the lands above that riparian zone because any right that a property owner has to use the tidelands adjacent to her home has its source in the ownership of the property).

### **Page 162, Note 17:**

MS: *Dycus v. Sillers*, 57 So.2d 486 (Miss. 1990) (record titleholders to waterbottoms were entitled to exclude other from fishing on crevasse even though the crevasse was connected to a public lake by chute because the chute was made navigable only by the dredging operation of the Corps of Engineers).

## CHAPTER III

### PROTECTED USES OF THE PUBLIC TRUST DOCTRINE

**Page 173, Note 41:**

MS: The court in *Cinque Bambini* listed the following public purposes: navigation, transportation, and commerce (citing *Rouse v. Saucier's Heirs*, 146 So. 291 (Miss. 1933)); bathing, swimming and other recreational activities (citing *Treuting v. Bridge and Park Commission of City of Biloxi*, 199 So.2d 627 (Miss. 1967)); environmental protection and preservation (MISS. CODE ANN. §§ 49-27-3 and -5(a) (Supp. 1985)); the enhancement of aquatic, avarian, and marine life, and sea agriculture (citing *Marks v. Whitney*, 491 P.2d 374 (Cal. 1971). *Cinque Bambini Partnership v. State*, 491 So.2d 508, 512 (Miss. 1986), *aff'd*, *Phillips Petroleum v. Mississippi*, 484 U.S. 469 (1988).

## CHAPTER IV

### THE PUBLIC TRUST DOCTRINE AND ACCESS TO TRUST LANDS AND WATERS

**Page 213, Note 29:**

MS: *Ryals v. Pigott*, 580 So.2d 1140 (Miss. 1990), *reh'g denied, reaff'd*, 1991 Miss. LEXIS 362 (Miss. 1991), *cert. denied*, 502 U.S. 940 (1991) (the court found that the Bogue Chitto River is a public waterway because it is navigable in fact and was designated by the state so riparian landowners have no rights in the surface or the waters other than those of the general public).

## CHAPTER V

### THE CONVEYANCE OF PUBLIC TRUST LAND AND THE NATURE OF THE REMAINING SERVITUDE

#### Page 231, Note 6:

MS: *Secretary of State v. Wiesenberg*, 633 So.2d 983 (Miss. 1994), *reh'g denied*, 1994 Miss. LEXIS 175 (Miss. 1994) (once land is held by the state in trust properties are committed to the public purpose trust and may be alienated from the state only upon authority of legislative enactment and then only consistent with public purposes of the trust).

#### Page 231, Note 10:

MS: Mississippi Constitution, Article 4, Section 95 specifically provides: "lands belonging to or under the control of the state, shall never be donated directly or indirectly, to private corporations or individuals, or to railroad companies." MISS. CONST. art IV, § 95.

#### Page 231, Section A(3)(b):

*What, if any, test does Mississippi have for assessing whether an alienation of Public Trust lands satisfies the public purpose requirement?*

Mississippi has no such test but requires a "higher public purpose." The Mississippi Supreme Court found that the Mississippi legislature has declared specific objectives to meet the standard of "higher public purpose." *Secretary of State v. Wiesenberg*, 633 So.2d 983 (Miss. 1994), *reh'g denied*, 1994 Miss. LEXIS 175 (Miss. 1994). These objec-

tives include: establishing a management plan for the resolution of land disputes to more exactly protect the public interest and bring peace of mind to adjacent private landowners; spawning economic growth and new development; and encouraging tourism to generate funds which may be used for the protection of the tidelands areas. See MISS. CODE ANN. § 29-15-1 (Editor's Note) (1997).

**Page 232, Note 11:**

MS: *Secretary of State v. Wiesenberg*, 633 So.2d 983 (Miss. 1994), *reh'g denied*, 1994 Miss. LEXIS 175 (Miss. 1994) (only way public trust lands can be disposed of is if it is done pursuant to a higher public purpose, while at the same time not being detrimental to the general public).

**Page 235, Section A(3)(c):**

***By what standard, if any, does Mississippi determine whether Public Trust resources or uses may be substantially impaired?***

Mississippi does not have a set standard to determine substantial impairment but decisions regarding the use and disposal of public trust property depend on the existence of a higher public purpose which may include those found in Mississippi common law or those deemed so by the legislature. See *Cinque Bambini Partnership v. State*, 491 So.2d 508, 512 (Miss. 1986), *aff'd*, *Phillips Petroleum v. Mississippi*, 484 U.S. 469 (1988), (listing as possible public purposes the following: navigation, transportation, and commerce (*Rouse v. Saucier's Heirs*, 146 So. 291 (Miss. 1933)); bathing, swimming and other recreational activities (*Treuting v. Bridge and Park Commission of City of Biloxi*, 199 So.2d 627 (Miss. 1967)); environmental protection and preservation (MISS. CODE ANN. §§ 49-27-3 and -5(a) (Supp. 1985)); the enhancement of aquatic, avarian, and marine life, sea agriculture (*Marks v. Whitney*, 491 P.2d

374 (Cal. 1971)). See MISS. CODE ANN. § 29-15-3 (1997) declaring:

It is hereby declared to be a higher public purpose of this state and the public tidelands trust to resolve the uncertainty and disputes which have arisen as to the location of the boundary between the state's public trust tidelands and the upland property and to confirm the mean high water boundary line as determined by the Mississippi Supreme Court, the laws of this state and this chapter.

**Page 239, Note 74:**

MS: *Morrow v. Vinson*, 666 So.2d 802 (Miss. 1995) (Mississippi's delay in asserting dominion over trust lands does not rise to estoppel; state cannot lose title via adverse possession, limitations, or laches).

**Page 240, Note 91:**

MS: *Harrison County v. Guice* was overruled on other grounds. *State Highway Commission v. Gilich*, 609 So.2d 367 (Miss. 1992).

## CHAPTER VI

# STATE POWERS, DUTIES, LIMITATIONS AND PROHIBITIONS UNDER THE PUBLIC TRUST DOCTRINE

Page 279, Section B:

*Does Mississippi delegate administration of Public Trust lands to local governments? What safeguards are in place to ensure the local governments fulfill the responsibility to protect the Public Trust interest?*

Mississippi does not delegate administration of public trust tidelands to local governments. The Mississippi Secretary of State administers the public trust tidelands. *But see* MISS. CODE ANN. § 29-1-1 (1997) (Mississippi provides school boards administering authority over leases of non-tideland public trust lands called sixteenth section lands).

Page 279, Section B:

*Has Mississippi transferred jurisdiction of Public Trust lands from the traditional State land management agency to an agency with a specific Public Trust focus, such as, environmental protection, public recreation, or economic development?*

In 1980, the Mississippi Legislature abolished the Office of the Land Commissioner and transferred administration of the public trust lands to the Secretary of State. Within the Secretary of State's office, the Public Lands Division administers the trust but does not have a specific focus such as environmental, recreation, or development.

## CHAPTER VII

# THE CONFLUENCE OF RIPARIAN RIGHTS AND THE PUBLIC TRUST DOCTRINE

Page 291-292, Section B:

*What riparian rights are recognized in Mississippi? Have riparian rights been codified?*

The Mississippi Code recognizes riparian rights in its Coastal Waters Protection Act by stating:

The exercise of riparian rights by the owner of the riparian rights, if the construction and maintenance of piers, boathouses and similar structures are constructed on pilings that permit a reasonably unobstructed ebb and flow of the tide. The riparian owner may reasonably alter the wetland at the end of his pier in order to allow docking of his vessels.

MISS. CODE ANN. § 49-27-7(e) (1997). *See also* MISS. CODE ANN. § 29-15-5 (1997) (refers to common law and statutory rights under the Coastal Wetlands Protection Act); and MISS. CODE ANN. § 49-15-9 (1997) (riparian right to plant oyster beds).

In addition, the Mississippi Supreme Court found in *Ryals v. Pigott* that a navigable stream is in effect public property but a nonnavigable stream belongs to the owner of the lands through which it flows. *Ryals v. Pigott*, 580 So.2d 1140 (Miss. 1990), *reh'g denied, reaff'd*, 1991 Miss. LEXIS 362 (Miss. 1991), *cert. denied*, 502 U.S. 940 (1991). Also *see Cinque Bambini Partnership v. State*, 491 So.2d 508 (Miss. 1986), *aff'd*, *Phillips Petroleum v. Mississippi*, 484 U.S. 469 (1988) (The court built



on its decision in *Cinque Bambini* which held that the state owns the property between the mean low watermark and the mean high watermark in trust for all citizens); and *Watts v. Lawrence*, 690 So.2d 1162 (Miss. 1997) (ruling that any property adjacent to the mean high water line, not mean low water line, possesses littoral rights).

***What is the reach of riparian rights out into the water and in terms of permissible uses? What resulting limitations are placed on public rights?***

Generally, riparian rights extend not more than 750 yards from the shore, measuring from the average low water mark. These rights are subjected to restrictions and permitting discretion by the Bureau of Marine Resources because littoral rights are merely licenses to use property granted by the state and not full-fledged property rights. See *Mississippi State Highway Commission v. Gilich*, 609 So.2d 367 (Miss. 1992).

**Page 293, Section C:**

***Has Mississippi established requirements or criteria for protecting Public Trust rights which must be met in order for riparian rights to be exercised?***

The Bureau of Marine Resources conducts a review of the public trust interests when considering the granting of permits. MISSISSIPPI COASTAL PROGRAM, Chapter VIII, Section II, Part I.B. (1988); and see MISS. CODE ANN. § 49-27-3 (1997).

The Mississippi Supreme Court has ruled that "the privilege or license is necessarily subject to the superior right of the state to impose an additional public use upon such property already set aside for a public purpose, without requiring the payment of compensation for it. *Crary v. State Highway Commission*, 68 So.2d 468, 471 (Miss. 1953).

***May riparian rights be severed from the upland estate?  
If so, how? What is the effect on Public Trust rights?***

Riparian rights may be severed from the upland estate. Since 1908, the Mississippi Supreme Court has held littoral rights to be something other than real property rights; they are more akin to privileges or licenses, lending itself to the proposition that such rights may be severed. *Mississippi State Highway Commission v. Gilich*, 609 So.2d 367 (Miss. 1992) (citing *Catchot v. Zeigler*, 45 So. 707 (1908)). But, there are no instances where riparian rights have been severed without compensation.

***Do riparians have a statutory right of first refusal on third party applications for leases of submerged lands?  
Do riparians have a right to be notified of lease applications prior to issuance?***

No statutory right of first refusal exists for Mississippi riparians. But, the Tidelands Act of 1989 grants adjacent landowners, including those with littoral rights, the right to notice of lease applications during the permit stage and prior to issuance. MISS. CODE ANN. § 29-15-7(4), (5) (1997).

***Does Mississippi still recognize a common law action against purpresture, encroachments upon public rights or easements by appropriation for private use? Who may exercise such action?***

The Mississippi Code recognizes a common law right of action in two sections. First, it grants a remedy against intruders on lands of the state but appears to be aimed at timber lands. MISS. CODE ANN. § 11-45-7 (1997). Second, the Tidelands Act provides a right of action. MISS.

CODE ANN. § 29-15-7 (1997).

The Attorney General of Mississippi may bring actions. See Miss. CODE ANN. § 7-5-51 (Attorney General has right to institute, conduct, and maintain all suits necessary for the enforcement of the laws of the state, preservation of order and protection of public rights, applying to all matter of statewide public interest); and *State ex rel. Rice v. Stewart*, 184 So. 44 (Miss. 1938) (jurisdiction over tidewater lands to sustain an action to recover for removal of sand and gravel is vested in the State Attorney General).

In special circumstances, the Secretary of State, acting as the Land Commissioner, may also bring actions to defend public lands. Miss. CODE ANN. §29-1-7 (1997) (in suits for or on behalf of public lands, “the land commissioner may prosecute suits in the name of the state, concerning the public lands, through the attorney general, a district attorney, or some attorney at law employed by him for that purpose, with the consent of the governor”).

## CHAPTER IX

### THE PUBLIC TRUST DOCTRINE AND COASTAL RESOURCE MANAGEMENT

**Page 329, Section 1 (A)(2):**

*Is there any legislation addressing Public Trust issues which has been enacted, proposed, introduced, or currently pending since 1990?*

Public Trust Tidelands Act of 1989, MISS. CODE ANN. 29-15-1 to 29-15-23 (1997).

**Page 330, in text, after Note 21:**

Mississippi's Coastal Wetlands Protection Act and the Bureau of Marine Resources regulations require the Bureau to undergo a public trust analysis before granting fill permits for tidelands. MISSISSIPPI COASTAL PROGRAM, Ch. VIII, Section 2, Part I.A at 8 (1988); and MISS. CODE ANN. § 49-27-3 (1997).

## CHAPTER X

### AGENCY CONSIDERATIONS WHEN APPLYING THE PUBLIC TRUST DOCTRINE

Page 356, Section C:

*How have management actions undertaken pursuant to the Public Trust Doctrine been adjudicated under the "takings" clause of the U.S. and Mississippi Constitutions?*

Mississippi has not experienced many takings challenges to its management of the public lands. But the Mississippi Supreme Court held that a non-navigable stream in fact could not be taken for public use without compensation to the riparian landowner, simply by legislative enactment that it was a public waterway. *Ryals v. Pigott*, 580 So.2d 1140 (Miss. 1990), *reh'g denied, reaff'd*, 1991 Miss. LEXIS 362 (Miss. 1991), *cert. denied*, 502 U.S. 940 (1991) (citing *Downes v. Crosby Chemicals*, 234 So.2d 916 (Miss. 1970)). More recently, however, the court struck down a takings challenge that a management decision to build an interstate constituted a taking by denying access and view of a beach to the riparian land because the state was found to own the beach in trust for the people. *Mississippi State Highway Commission v. Gilich*, 609 So.2d 367 (Miss. 1992).

*See also Xidus, et ux. v. City of Gulfport, et. al*, 72 So.2d 153 (Miss. 1954) (the use of the land underlying waters of the Mississippi Sound by the City for the purpose of improving and enlarging port did not constitute a taking of private property for public use without compensation within the meaning of constitutional prohibition, even though construction of such improvements would deprive property owners of their littoral rights); and *Crary v. State Highway Commission*, 68 So.2d 468, 471 (Miss. 1953) (where State constructed bridge across Bay of St.

Louis, which traversed part of area extending 500 yards from shore in which riparian owners, by statute, had been granted privileges, exercise of state power to impose an additional public use upon property already set aside for public purposes was not a taking of private property for which compensation must be made).

*Has a denial of a structure for access to navigable waters been challenged as a "taking" of the littoral or riparian right of access?*

No takings challenges have arisen out of denials of structures for access to navigable waters.



# **Part II.**

# **Appendix**

**TABLE OF CASES**  
**TABLE OF STATUTES**



## TABLE OF CASES

- Cinque Bambini Partnership v. State*, 491 So.2d 508 (Miss. 1986),  
*aff'd*, *Phillips Petroleum v. Mississippi*, 484 U.S. 469 (1988).
- Crary v. State Highway Commission*, 68 So.2d 468 (Miss. 1953).
- Dycus v. Sillers*, 57 So.2d 486 (Miss. 1990).
- Gast v. Ederer*, 600 So.2d 204 (Miss. 1992).
- Morrow v Vinson*, 666 So.2d 802 (Miss. 1995).
- Phillips Petroleum v. Mississippi*, 484 U.S. 469 (1988).
- Rouse v. Saucier's Heirs*, 146 So. 291 (Miss. 1933).
- Ryals v. Pigott*, 580 So.2d 1140 (Miss. 1990), *reh'g denied*, *reaff'd*,  
1991 Miss. LEXIS 362 (Miss. 1991), *cert. denied*, 502 U.S. 940  
(1991).
- Secretary of State v. Wiesenberg*, 633 So.2d 983 (Miss. 1994), *reh'g denied*,  
1994 Miss. LEXIS 175 (Miss. 1994).
- State ex rel. Rice v. Stewart*, 184 So. 44 (Miss. 1938).
- State Highway Commission v. Gilich*, 609 So.2d 367 (Miss. 1992).
- Treuting v. Bridge and Park Commission of City of Biloxi*, 199 So.2d  
627 (Miss. 1967).
- Watts v. Lawrence*, 690 So.2d 1162 (Miss. 1997).
- Xidus, et ux. v. City of Gulfport, et. al*, 72 So.2d 153 (Miss. 1954).

## **TABLE OF STATUTES**

**Public Lands Law, Miss. CODE ANN. §§ 29-1-1 to 29-1-131 (1997).**

**Public Trust Tidelands Act, Miss. CODE ANN. §§ 29-15-1 to 29-15-23 (1997).**

**Coastal Wetlands Protection Act, Miss. CODE ANN. §§ 49-27-1 to 49-27-69 (1997).**

**Water Resources Law, Miss. CODE ANN. §§ 51-1-1 to 51-1-11 (1997).**

**State Ports and Harbors Law, Miss. CODE ANN. §§ 59-5-1 to 59-5-69 (1997).**

