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The Preservation of Florida's Public Trust Doctrine

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Abstract

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KEYWORDS: trust, doctrine, public

The Preservation of Florida's Public Trust Doctrine

I. Introduction

In recent years, the State of Florida found itself "embroiled in what has become the most massive sovereignty lands dispute in [its] history."[1] The dispute emerged in *Coastal Petroleum Co. v. American Cyanamid*,[2] a consolidation of three cases[3] whose issues have been contested for over a decade. These issues involved legislative and judicial doctrine, including the application of the Marketable Record Title Act[4] and legal estoppel to sovereignty lands[5] contained within deeds of swamp and overflowed lands.[6] These doctrines were applied in ways which effectively challenged ownership of one of Florida's most treasured assets, its waterways.

The following background is necessary to understand the significance of the Florida Supreme Court's decision in *Coastal Petroleum*. In the 1880's, the Trustees of the Internal Improvement Trust Fund[7]

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1. FINAL REPORT AND RECOMMENDATIONS OF THE MARKETABLE RECORD TITLE ACT STUDY COMMISSION 113 (Feb. 15, 1986).
2. 492 So. 2d 339 (Fla. 1986).
3. Board of Trustees v. Mobil Oil, 455 So. 2d 412 (Fla. 2d Dist. Ct. App. 1984); Coastal Petroleum Co. v. American Cyanamid, 454 So. 2d 6 (Fla. 2d Dist. Ct. App. 1984) (a consolidation of two cases).
4. FLA. STAT. ch. 712 (1985).
5. Sovereignty lands are those lands under navigable waters, including the shore on lands between ordinary high and low water marks, conveyed by law to the state by virtue of its admission "into the Union on equal footing with the original states." State *ex rel.* Ellis v. Gerbing, 56 Fla. 603, 605, 47 So. 353, 355 (1908).
6.
> [S]wamp lands, as distinguished from overflowed lands, are such as require drainage to dispose of needless water or moisture on or in the lands, in order to make them fit for successful and useful cultivation. Overflowed lands are those that are covered by non- navigable waters, or are subject to such periodical or frequent overflows of water . . . (not including lands between high and low water marks of navigable streams or bodies of water, nor land covered and uncovered by the ordinary daily ebb and flow of normal tides of navigable waters) as to require drainage or levees or embankments to keep out the water and thereby render lands suitable for successful cultivation.

Id. at 607, 47 So. at 357.
7. The Trustees are made up of the Governor and members of his cabinet. F.

(hereinafter referred to as Trustees), authorized by the Swamp and Overflowed Lands Act of 1850,[8] conveyed to plaintiffs' predecessors in title, swamp and overflowed lands.[9] Some of these deeds seem to convey sovereignty lands without any reservation of right, title or interest.[10] Relying on their paper title, the plaintiffs actively mined the riverbeds within their boundaries.[11] In 1946, Coastal Petroleum leased these same riverbeds from the state for mineral, gas, and oil exploration.[12] Mobil Oil and American Cyanamid sought to resolve competing claims of riverbed ownership by this quiet title action.[13]

In this litigation, the State and Coastal Petroleum (its lessee) were in a fight against American Cyanamid and Mobil Oil over the title to tens of thousands of acres of land in west central Florida along the Peace and Alafia Rivers.[14] Together, the State and Coastal Petroleum claimed money damages of more than three billion dollars.[15] This claim was based on the allegation that the phosphate companies had unlawfully converted phosphate for many years, through their mining operation near and in the Peace and Alafia Rivers and their tributaries.[16] The State alleged these phosphate companies mined state-owned sovereignty lands.[17] However, the phosphate companies contended they had a right to the lands and minerals based on record title originating from swamp and overflowed lands deeds.[18]

The Florida Supreme Court resolved these issues in favor of the Trustees and Coastal Petroleum by determining that the Marketable Record Title Act and legal estoppel were inapplicable to sovereignty lands.[19] This may have important ramifications with regard to title se-

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MALONEY, S. PLAGER, R. AUSNESS & D. CANTER, FLORIDA WATER LAW 683-84 (1980); *see* Ch. 610 § 2, 1855 Fla. Laws.

8. Ch. 610 §§ 1, 2, 1855 Fla. Laws.
9. *Coastal Petroleum*, 492 So. 2d at 341.
10. *Id.*
11. *Coastal Petroleum*, 454 So. 2d 6 (Fla. 2d Dist. Ct. App. 1984).
12. *Id. See also* FINAL REPORT AND RECOMMENDATIONS OF THE MARKETABLE RECORD TITLE ACT STUDY COMMISSION 113 (Feb. 15, 1986).
13. *Coastal Petroleum*, 492 So. 2d at 341.
14. FINAL REPORT AND RECOMMENDATIONS OF THE MARKETABLE RECORD TITLE ACT STUDY COMMISSION 113 (Feb. 15, 1986).
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. *Coastal Petroleum*, 492 So. 2d at 344.

curity as well as the preservation of Florida's public trust doctrine.[20]

The purpose of this case comment is to examine the effect of *Coastal Petroleum* on title security and the public trust doctrine. It will focus on the inevitable problems created, those questions left unresolved, and provide a recommendation identifying the branch of government in the best position to decide those unresolved questions. A brief overview of the relevant legal theories including the public trust doctrine, the Marketable Record Title Act, and estoppel, are necessary to an understanding of this important decision.

II. The Public Trust Doctrine

Under English common law, the crown held title and authority over the beds of tidal waters in trust for the people to use for fishing, navigation, and other rights allowed by law.[21] The same applied to the English colonies in America.[22] After the American Revolution, these rights vested in the original thirteen states subject to the United States Constitution.[23] Sovereignty lands include not only those influenced by the tide, but those nontidal waters which were "navigable in fact."[24]

Although the United States Supreme Court began to establish federal law on submerged bed ownership in *Martin v. Waddel*,[25] the "navigability in fact" standard originated in 1870 in the case of *The Daniel Ball*.[26] In the latter case, the issue of navigability was presented to the Court when the owner of a transport steamer refused to purchase a license alleging the Grand River in Michigan was not a navigable body of water. The Supreme Court stated:

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20. *See generally* Note, *Conveyances of Sovereign Lands Under the Public Trust Doctrine: When Are They in the Public Interest*? 24 U. FLA. L. REV. 285 (1972); Note, *Florida's Sovereignty Submerged Lands: What Are They, Who Owns Them, and Where is the Boundary*, 1 FLA. ST. U.L. REV. 596 (1973); Comment, *The Public Trust Doctrine and Ownership of Florida's Navigable Lands*, 29 U. FLA. L. REV. 730 (1977); Stevens, *Public Trust: A Sovereign's Ancient Prerogative Becomes the People's Environmental Right*, 14 U.C. DAVIS L. REV. 195 (1980); F. MALONEY, S. PLAGER, R. AUSNESS & D. CANTER, *supra* note 7, at 674-712 (1980).

21. Shively v. Bowlby, 152 U.S. 1, 11 (1894); *see also* Broward v. Mabry, 58 Fla. 398, 407, 50 So. 826, 829 (1909).

22. *Shively*, 152 U.S. at 14; *see also Broward*, 58 Fla. at 407, 50 So. at 829.

23. *Shively*, 152 U.S. at 14; *see also Broward*, 58 Fla. at 407, 50 So. at 829.

24. *Shively*, 152 U.S. at 16; *see also Broward*, 58 Fla. at 407, 50 So. at 829.

25. 41 U.S. (16 Pet.) 367 (1870).

26. 77 U.S. (10 Wall.) 557 (1870).

> Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.[27]

Another doctrine merges into this analysis, the equal footing doctrine.[28] In *Pollard's Lessee*,[29] the United States Supreme Court held that all states admitted into the Union have the same title to submerged lands below navigable waters as the original thirteen states.

The federal definition of navigability controls which submerged lands passed into state ownership upon statehood.[30] Once the lands pass to the states, the states are free to enact their own laws regarding those lands.[31] According to the Supreme Court in *Oregon v. Corvallis Sand and Gravel Company*:[32]

> Once the equal footing doctrine had vested title to the riverbed in [the state] as of the time of its admission to the Union, the force of that doctrine was spent, [second,] it did not operate after that date to determine what effect on title the movement of the water might have.

Control over the property and revenues of the State is vested in that state's legislature.[33] The legislature may dispose of state property, including navigable waters, in any way which will promote the public interest,[34] subject to the condition that lands under navigable waters may not be disposed of if the public interest is impaired in the remaining lands and waters.[35] The United States Supreme Court determined the validity of legislative grants of navigable waters beneath the ordi-

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27. *Id.* at 558.
28. Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 212 (1845).
29. *Id.* at 230.
30. *E.g.*, Brewer Elliot Oil & Gas Co. v. United States, 260 U.S. 77 (1922); United States v. Holt State Bank, 270 U.S. 49 (1926); United States v. Oregon, 295 U.S. 1 (1935).
31. *See* Oregon v. Corvallis Sand & Gravel Co., 429 U.S. 363 (1977).
32. *Id.* at 371.
33. Illinois Central R.R. v. Illinois, 146 U.S. 387, 454 (1892).
34. *Id.*
35. *See* State v. Black River Phosphate Co., 32 Fla. 82, 87, 13 So. 640, 645 (1893); *Illinois Central R.R.*, 146 U.S. at 387.

nary high-water mark[36] in *Illinois Central R.R. v. Illinois*.[37] In that case the Court held:

> A grant of all the lands under the navigable waters of a State had never been adjudged to be within the legislative power; and any attempted grant of the kind would be held, if not absolutely void on its face, as subject to revocation. . . . So with trusts connected with public property, or property of a special character, like lands under navigable waters, they cannot be placed entirely beyond the direction and control of the State.[38]

Therefore, although the state has some control over sovereignty lands, federal law prohibits the state from relinquishing its trust over entire properties in which the people have an interest.[39]

A. *Florida Title*

In Florida, modern titles may be traced to one of four sources.[40] One source is Spanish grants made before January 24, 1818, the commencement of Spanish-United States negotiations.[41] The Treaty of Cession with Spain in 1821 conceded to the United States all Florida lands with the exception of those lands granted prior to January 24, 1818.[42] The second source is the United States grant of lands to private individuals, the Territory of Florida, or State of Florida.[43] The third source of title consists of conveyances to private owners by the State of lands which were granted to the State under various acts of Congress.[44] The fourth source of title is a grant by the state of land under navigable bodies of water which the State owns by virtue of its admission into

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36. The ordinary high-water mark, also referred to as the ordinary high-water line (OWHL) "is the boundary between privately-owned riparian uplands and publically-owned sovereignty lands beneath non-tidal navigable waters." F. MALONEY, S. PLAGER, R. AUSNESS & D. CANTER, FLORIDA WATER LAW 707 (1980).

37. *Illinois Central R.R.*, 146 U.S. at 453-54.

38. *Id.*

39. *Id.*

40. *See generally* F. MALONEY, S. PLAGER, R. AUSNESS & D. CANTER, FLORIDA WATER LAW 6 (1980).

41. *Id.* at 675.

42. Broward v. Mabry, 58 Fla. 398, 409, 50 So. 826, 830 (1909).

43. MALONEY, PLAGER, AUSNESS & CANTER, *supra* note 40, at 675.

44. *Id.* at 675.

the Union.[45] Title is held on equal footing with the original states.[46]

Upon Florida's admission into the Union in 1845, all lands under navigable waters were granted to the state according to the equal footing doctrine.[47] However, it was not until 1850 that the swamp and overflowed lands were granted to Florida by the United States under the Swamp and Overflowed Lands Act.[48] Under the Act, lands below navigable waters were not included in the swamp and overflowed lands.[49] Title to the swamp and overflowed lands were vested in the Trustees under state law "for the purpose of assuring a proper application of . . . lands and all the funds arising from the sale thereof. . . ."[50] The Trustees had almost limitless authority to convey swamp and overflowed lands to private individuals.[51] However, the Act did not authorize the Trustees to convey title to lands under navigable water.[52]

This leads us to the first issue certified by the Florida Supreme Court in *Coastal Petroleum*: "Do the 1883 swamp and overflowed lands deeds issued by the trustees include sovereignty lands below the ordinary high-water mark of navigable rivers?"[53] There are two reasons that this should be answered in the negative. First, the supreme court held that "conveyances of swamp and overflowed lands [did] not convey sovereignty lands encompassed therein."[54] Under the Swamp and Overflowed Lands Act, the Trustees only had the authority to convey swamp and overflowed lands.[55] An enduring rule of Anglo-American jurisprudence is embodied in the following: *nemo plus juris ad alium transferre potest quam ipse habet* — "No one can transfer more right to another than he has himself."[56] Since title to sovereignty land was not vested in the Trustees, they could not convey sovereignty land. Consequently, any conveyances by the Trustees of sovereignty lands

45. *Broward*, 58 Fla. at 408, 50 So. at 829.
46. *Pollard's Lessee*, 44 U.S. (3 How.) at 212.
47. *Id. See also* Shively v. Bowlby, 152 U.S. 1 (1894).
48. 43 U.S.C. § 982 (effective Sept. 28, 1850); *see also* Martin v. Busch, 93 Fla. 535, 545, 112 So. 274, 284 (1927); Pierce v. Warren, 47 So. 2d 857, 858 (Fla. 1950).
49. *State v. Gerbing*, 56 Fla. 603, 47 So. 353 (1908); *Pierce*, 47 So. 2d at 858.
50. Ch. 610 §§ 1, 2, 1855 Fla. Laws.
51. F. Maloney, S. Plager, R. Ausness & D. Canter, *supra*, note 40, at 683-84.
52. *Gerbing*, 56 Fla. at 606, 47 So. at 356.
53. *Coastal Petroleum*, 492 So. 2d at 341.
54. *Id.* at 344.
55. *Gerbing*, 56 Fla. at 607, 47 So. at 357; *Martin*, 93 Fla. at 573, 112 So. at 286-87.
56. Black's Law Dictionary 936 (5th ed. 1979).

"are ineffectual for lack of authority from the state[s]."[57] In addition, "a grant in derogation of sovereignty must be strictly construed in favor of the sovereign."[58]

Second, there is no presumption that the non-meandering[59] of navigable rivers in official surveys constitutes an official determination that such lands are swamp and overflowed and their waters non-navigable.[60] The official surveys came about as a result of the Swamp and Overflowed Lands Act of 1850.[61] Title to sovereignty lands had already been vested in the State by virtue of the equal footing doctrine.[62] Since the United States no longer had title to sovereignty lands, any subsequent official surveys conducted to establish title to swamp and overflowed lands could not change their character or even establish that they had always been swampland.[63]

To preserve Florida's public trust doctrine, there should be no presumption of non-navigability for nonmeandered rivers, lakes, or streams. Dean Maloney rebutted this presumption:

> Curiously, only about 190 of Florida's estimated 30,000 named lakes were in fact meandered . . . . [T]he process of meandering in Florida was often an extremely difficult one. Shorelines were generally swampy and infested with dangerous snake and other hazards . . . .
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> . . . The *Florida Supreme Court has held that meandering on the original state survey is evidence of navigability, although the final test is still whether the watercourse is navigable in fact.* The presumption of navigability raised by the fact of meandering can be rebutted: 'if a meandered arm of the lake is not in fact naviga-

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57. *Martin*, 93 Fla. at 572, 112 So. at 285.

58. Trustees of Internal Improvement Fund v. Claughten, 86 So. 2d 775, 786 (Fla. 1956) (This case has been familiarly cited as Board of Trustees v. Claughten).

59. Meandering is a process whereby the surveyor would walk the shoreline of a waterbody to establish a line, called a meander line, which followed the sinuosities of the waterbody. This was done when the surveyors determined that a lake or stream was navigable. F. MALONEY, S. PLAGER & F. BALDWIN, WATER LAW & ADMINISTRATION — THE FLORIDA EXPERIENCE 40-41 (1968).

60. *Coastal Petroleum*, 492 So. 2d at 349 (Boyd, C.J., dissenting); *see also* Odom v. Deltona Corp., 341 So. 2d 977 (Fla. 1977) (majority opinion also written by Boyd, J.).

61. *Martin*, 93 Fla. at 571, 112 So. at 284; *Pierce*, 47 So. 2d at 858.

62. *Broward*, 58 Fla. at 408, 50 So. at 829; *accord* Shively v. Bowlby, 152 U.S. 1 (1894), and *Pollard's Lessee*, 44 U.S. (3 How.) 212 (1845).

63. Borax Consol. Ltd. v. City of Los Angeles, 296 U.S. 10, 16 (1935); *Martin*, 93 Fla. at 545, 112 So. at 284.

> ble for useful public purposes, the public has no right of access to that area.'
>
> *Failure of the original surveyors to meander a waterbody simply leaves the determination of navigability to be established by other competent evidence.* The Supreme Court of Florida early held that the fact that a stream was not meandered and that lines of survey were projected over the bed of the stream did not determine or change the navigable character of the stream.[64]

Therefore, the contention that the non-meandering of navigable rivers in official surveys constitutes an official determination of its non-sovereign nature[65] is effectively rebutted. Fortunately, the majority in *Coastal Petroleum*[66] did not change its position with regard to the meander line and continued to recognize it as a rebuttable presumption to navigability at the time of Florida's entry into the Union under the equal footing doctrine.[67]

B. *The Florida Navigability Issue*

The Florida Supreme Court first considered the question of navigability in *Bucki v. Cone*,[68] a decision pertaining to the Suwa- nee River. The court considered all rivers in Florida, which may be conveniently used by commercial water craft as navigable, and determined:

> [W]hat constitutes a navigable river, free to the public, is a question of fact, to be determined by the natural conditions in each case. A stream of sufficient capacity and volume of water to float to market the products of the country will answer the conditions of navigability . . . . [I]t is not essential . . . that the stream should be continuously, at all seasons of the year, in a state suited to such floatage.[69]

Later, the court in *Broward v. Mabry*[70] added that the potential

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64. F. MALONEY, S. PLAGER & F. BALDWIN, *supra*, note 59, at 40-41 (footnotes omitted, emphasis added).

65. *Coastal Petroleum*, 492 So. 2d at 349 (Boyd, C.J., dissenting); *see also Odom*, 341 So. 2d at 977 (majority opinion also written by Boyd, J.).

66. 492 So. 2d at 339.

67. *Id.* at 342 n.1.

68. 25 Fla. 1, 6 So. 160 (1889).

69. *Id.* at 2-3, 6 So. at 161-62.

70. 58 Fla. at 398, 50 So. at 826.

use for commerce instead of its commercial history would determine navigability. "Whether the lake has been used for commercial purposes or not is immaterial, if it may be made useful for any considerable navigation or commercial intercourse between people of a large area."[71]

The inclination of the federal and state courts to concentrate on the potential for commercial use, rather than actual use, widens the idea of navigability and dispenses with the burden of proving that a waterbody was used on the date of statehood for commercial trade.[72] Arguably, a waterbody is navigable if the minimum standard of navigability established in earlier decisions can be demonstrated.[73] Moreover, once a court or a legislature determines that a waterbody is navigable, that waterbody will remain navigable.[74]

In Florida, the beds of navigable bodies of water are owned by the state and may be used by the general public.[75] However, if a body of water is not navigable, it can be privately owned, and its use restricted to the private owners and their invitees.[76] The fact that only 190 out of the 30,000 named lakes were meandered demonstrates the magnitude of public loss if navigability were conclusively established by the existence of meander lines.[77] Consequently, the ability to prove navigability and protect the public's interest is a primary concern.

III. Estoppel

The doctrine of estoppel is not applied against the state of Florida as freely as against an individual.[78] However, it may be applied against the State when needed to prevent an unmistakeable injustice to private parties and with the restriction that its application does not interfere

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71. *Id.* at 412, 50 So. at 831.

72. F. MALONEY, S. PLAGER, R. AUSNESS & D. CANTER, FLORIDA WATER LAW 700 (1980); *accord Odom*, 341 So. 2d at 988 (the Florida Supreme Court stated that "Florida's test for navigability is similar, if not identical, to the federal title test." *Id*).

73. F. MALONEY, S. PLAGER, R. AUSNESS & D. CANTER, FLORIDA WATER LAW 700 (1980).

74. 78 AM. JUR. 2D *Waters* § 71 (1975).

75. *See* State v Black River Phosphate Co., 32 Fla. 82, 88, 13 So. 640, 646 (1893); *see supra* text accompanying note 23.

76. Osceola County v. Triple-E Dev. Co., 90 So. 2d 600 (Fla. 1956).

77. F. MALONEY, S. PLAGER & F. BALDWIN, WATER LAW & ADMINISTRATION — THE FLORIDA EXPERIENCE 40-41 (1968) (rebuttal for the presumption that non-meandering of navigable bodies of water constitutes an official determination of its non-sovereign nature).

78. Board of Trustees v. Claughten, 86 So. 2d 775, 789-90 (Fla. 1956).

with the exercise of governmental power.[79]

Legal estoppel applies where the grantor acquires an estate or land already conveyed in a deed, which he did not own at the time of the conveyance.[80] At that point, the subsequently obtained estate or land passes to the grantee by estoppel.[81] The intent of the parties as expressed in the deed determines whether legal estoppel may be applied.[82]

The distinction becomes clear upon reviewing *Coastal Petroleum*,[83] where the deeds made pursuant to the Swamp and Overflowed Lands Act[84] were in issue. These deeds did not convey more than swamp and overflowed lands.[85] Since the intent of all parties involved at the time of the conveyance was expressed in the deeds, legal estoppel was inapplicable.

In contrast, equitable estoppel may deny the legal effect of the deed.[86] It is the conduct of the parties which determines the applicability of the doctrine, not their expressed intent.[87] The Florida Supreme Court has said:

> An equitable estoppel, as affecting land titles, is a doctrine by which a party is prevented from setting up his legal title because he has through his act, words, or silence led another to take a position in which the assertion of the legal title would be contrary to equity and good conscience.[88]

Again, the Trustees were not estopped. With the conveyance of swamp and overflowed lands, the grantee takes with notice that sovereignty lands are not included in law.[89] The Trustees had no authority to convey sovereignty lands.[90] In the case of *Coastal Petroleum*,[91] the eq-

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79. *Claughten*, 86 So. 2d at 775; Trustees of Internal Improvement Fund v. Lobean, 127 So. 2d 98, 102 (Fla. 1961) (This case has been familiarly cited as Board of Trustees v. Lobean).
80. *Lobean*, 127 So. 2d at 102.
81. *Id.*
82. *Id.*
83. 492 So. 2d at 339.
84. 43 U.S.C. § 982 (1982) (effective Sept. 28, 1850).
85. *Coastal Petroleum*, 492 So. 2d at 339.
86. *Lobean*, 127 So. 2d at 102.
87. *Id.*
88. *Id.* (quoting Florida Land Inv. Co. v. Williams, 98 Fla. 1258, 116 So. 642, 643 (1928)).
89. *Martin*, 93 Fla. at 569, 112 So. at 285.
90. *Gerbing*, 56 Fla. at 607, 47 So. at 357.
91. 492 So. 2d at 339.

uities were balanced in favor of the Trustees. Not only did all grantees take with notice that sovereignty lands were not included in conveyances of swamp and overflowed lands,[92] but the Peace and Alafia Rivers (the two bodies of water in issue) are obviously "navigable in fact."[93] Therefore, for the court to conclude that legal title was vested in the Trustees would hardly be "contrary to equity and good conscience."[94]

The supreme court in *Coastal Petroleum* determined that the issue as to whether "the doctrine of legal estoppel or estoppel by deed applies to 1883 swamp and overflowed deeds barring the trustees' assertion of title to sovereignty lands" had already been addressed in *Martin v. Busch*.[95] The court held that conveyances of swamp and overflowed lands "without exemption of sovereignty lands do not legally estop the state from asserting title to sovereignty lands . . . ."[96] Sovereignty lands must be conveyed with "clear intent and authority, and conveyances, where authorized and intended, must retain public use of the waters."[97] The court relied upon the following language:

> The State Trustee defendants cannot, by allegation, averment or admission in pleadings or otherwise affect the legal status of or the State's title to sovereignty, swamp and overflowed or other lands held by the Trustees under different statutes for distinct and definite purposes. . . . The subsequent vesting of title to sovereignty lands in the Trustees for State purposes under the Acts of 1919 or other statutes does not make the title to sovereignty land inure to claimants under a previous conveyance of swamp and overflowed lands by the State Trustees who then had no authority to convey such sovereignty lands and did not attempt or intend to convey sovereignty lands.[98]

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92. *Martin*, 93 Fla. at 569, 112 So. at 285.

93. Even though those rivers were not meandered, they have been used for commercial purposes in the latter part of the nineteenth century. A. BLAKELY, THE FLORIDA PHOSPHATE INDUSTRY: A HISTORY OF THE DEVELOPMENT AND USE OF A VITAL MINERAL 18, 39-42 (1973).

94. *Lobean*, 127 So. 2d at 102 (quoting Florida Land Inv. Co. v. Williams, 98 Fla. 1258, 116 So. 642, 643 (1928)).

95. *Coastal Petroleum*, 492 So. 2d at 343; *see* Martin, 93 Fla. at 569-73, 112 So. at 285-87.

96. *Coastal Petroleum*, 492 So. 2d at 344.

97. *Id.* at 343.

98. *Martin*, 93 Fla. at 573, 112 So. at 286-87.

It is clear that neither legal nor equitable estoppel are suitable to claims for use in connection with sovereignty lands.

IV. The Marketable Record Title Act

The final issue considered in *Coastal Petroleum* was whether "the Marketable Record Title Act operate[d] to divest the Trustees of title to sovereignty lands below the ordinary highwater mark of navigable rivers?"[99] The Marketable Record Title Act (hereinafter referred to as MRTA) was enacted to "simplify and facilitate land title transactions by allowing persons to rely on a record title."[100] Anyone with legal capacity to own real property may hold a marketable record title to an estate in land if that person, or his/her predecessors in title, has been vested with the estate through a recorded title transaction[101] for at least 30 years.[102] The estate claimed must be the estate actually created.[103] Any estate or interest, with certain expressed exceptions[104] is proclaimed "null and void"[105] if it predates the root of title.[106] Save for one of the expressed exceptions, any claim following the root of title is also cleared.[107]

MRTA, held constitutional in *City of Miami v. St. Joe Paper Co.*,[108] performs several functions, including that of a curative act, statute of limitations, and recording act.[109] MRTA performs as a curative

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99. *Coastal Petroleum*, 492 So. 2d at 341.

100. FLA. STAT. ch. 712 (1985); *see generally* Comment, *Unfinished Business — Protecting Public Rights to State Lands From Being Lost Under Florida's Marketable Record Title Act*, 13 FLA. ST. U.L. REV. 599 (1985).

101. A "title transaction" is "any recorded instrument or court proceeding which affects title to any estate or interest in land." FLA. STAT. § 712.01(3) (1985).

102. FLA. STAT. § 712.02 (1985).

103. *Id.*

104. *Id.* § 712.03.

105. *Id.* § 712.04.

106. A "root of title" is

> any title transaction purporting to create or transfer the estate claimed by any person which is the last title transaction to have been recorded at least 30 years prior to the time where marketability is being determined. The effective date of the root of title is the date on which it was recorded.

FLA. STAT. § 712.01(2) (1985).

107. *Id.* ch. 712 states that a "marketable record title . . . shall be free and clear of *all* claims except the matters set forth as exceptions to marketability." (emphasis added). *Id.* § 712.02.

108. 364 So. 2d 439, 449 (Fla. 1978).

109. *Id.* at 442. *See also* Sawyer v. Modrall, 286 So. 2d 610 (Fla. 4th Dist. Ct.

act because it may relate back to past defective conveyances which would otherwise be invalid and makes them complete.[110]

Since MRTA will abolish old claims unless asserted within a certain period of time, it resembles a statute of limitations.[111] However, MRTA operates against all interests whether vested or contingent, present or future.[112] The usual statute of limitations only bars vested, present interests.[113]

Finally, because MRTA requires periodic rerecording of claims for their preservation, it is similar to a recording law.[114] An owner may easily preserve an existing old interest by rerecording.[115]

The judicial application of MRTA to extinguish state claims to sovereignty lands[116] prompted the legislature to create another exception. That exception states: "Such marketable record title shall not affect or extinguish the . . . [s]tate title to lands beneath navigable waters acquired by virtue of sovereignty."[117]

The majority in *Coastal Petroleum* concluded that "MRTA, as originally enacted and subsequently amended in 1978, is not applicable to sovereignty lands."[118] After considering the issue as "two prong[ed],"[119] the court first determined that the legislature did not intend to "overturn the well-established law that prior conveyances to private interests did not convey sovereignty lands encompassed with swamp and overflowed lands being conveyed" unless that intent expressly appeared in the deed.[120] Since the court decided that the legislature did not intend to make sovereignty lands subject to MRTA, the second prong of the issue was not addressed.[121] That prong pertained to the constitutionality of making "an ex post facto divestment of sover-

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App. 1973), *cert. denied*, 297 So. 2d 56 (Fla. 1974).

110. *St. Joe Paper Co.*, 364 So. 2d at 442.
111. *Id.*
112. *Id.* at 443.
113. *Id.*
114. *St. Joe Paper Co.*, 364 So. 2d at 442.
115. *Id.*
116. The possibility first became apparent in Sawyer v. Modrall, 286 So. 2d 610 (Fla. 4th Dist. Ct. App. 1973), *cert. denied*, 297 So. 2d 56 (Fla. 1974), and was later endorsed by the Florida Supreme Court in Odom v. Deltona Corp., 341 So. 2d 977 (Fla. 1977).
117. FLA. STAT. § 712.03(7) (1985).
118. *Coastal Petroleum*, 492 So. 2d at 344.
119. *Id.*
120. *Id.*
121. *Id.*

eignty lands without explicitly basing it on the public interest."[122] Therefore, since no ex post facto divestment of rights was made, there was no taking.

V. Case Analysis

In the 1880's, the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida conveyed certain lands as swamp and overflowed lands to the plaintiffs' predecessors in title.[123] Within the physical boundaries of the land conveyed were areas of a riverbed.[124] In the original deeds, the Trustees did not reserve any right, title or interest.[125] Title to sovereignty lands did not vest in the Trustees until 1969, by force of the state legislature, and then the Trustees received only limited authority to convey them.[126] In *Coastal Petroleum*, the plaintiffs sought to quiet title to these lands.[127] The competing interests of the Trustees and Coastal Petroleum Co. (the lessee from the Trustees) on one side, and Mobil Oil and American Cyanamid Co. (the successors to the 1880's grantees) on the other, over the title to tens of thousands of acres of land,[128] gave rise to the following three issues:

> I. Do the 1883 swamp and overflowed lands deeds issued by the trustees include sovereignty lands below the ordinary high-water mark of navigable rivers?
> II. Does the doctrine of legal estoppel or estoppel by deed apply to 1883 swamp and overflowed deeds barring the trustees' assertion of title to sovereignty lands?
> III. Does the Marketable Record Title Act, chapter 712, Florida Statutes, operate to divest the trustees of title to sovereignty lands below the ordinary high-water mark of navigable rivers?[129]

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122. *Id.*
123. *Id.* at 341. *See also* Board of Trustees v. Mobil Oil, 455 So. 2d 412 (Fla. 2d Dist. Ct. App. 1984), and Coastal Petroleum Co. v. American Cyanamid, 454 So. 2d 6 (Fla. 2d Dist. Ct. App. 1984).
124. *Coastal Petroleum*, 492 So. 2d at 341.
125. *Id.*
126. FLA. STAT. § 253.12 (1975) (effective 1969).
127. *Coastal Petroleum*, 492 So. 2d at 341.
128. FINAL REPORT AND RECOMMENDATIONS OF THE MARKETABLE RECORD TITLE ACT STUDY COMMISSION 113 (Feb. 15, 1986).
129. *Coastal Petroleum*, 492 So. 2d at 341.

The Florida Supreme Court answered all three questions in the negative.[130] In so doing, the supreme court reversed the Second District Court of Appeal and remanded the case.[131] This decision was significant for two reasons. First, it reversed the apparent direction of the law. After *Odom v. Deltona Corp.*[132] and *Graham v. Estuary Property, Inc.*,[133] the Florida courts appeared to treat state proprietary interests the same as individual state property rights.[134] Not only was the individual private property owner subject to the doctrine of legal estoppel and the Marketable Record Title Act, but so was the state. *Coastal Petroleum*[135] changed that.

Instead of treating *Odom* as reflective of a trend, which the present court would change, this court relied on legislative interpretation as well as on *Martin v. Busch*,[136] *Broward v. Mabry*,[137] and *State ex rel. Ellis v. Gerbing*[138] as precedent. *Odom*[139] was factually distinguished since "no navigable waterbeds [were] at issue."[140] All discussions relating to MRTA in *Odom* were rendered dicta and this court determined that the applicability of MRTA to sovereignty lands was a case of first impression.[141]

The decision was equally important with regard to the serious implications it had upon title security, since over two thirds of Florida's land may be subject to disputes as a result of deeds containing sovereignty lands.[142] This could result in thousands of lawsuits which may

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130. *Id.* at 342-45.

131. *Id.* at 344-45. Although not explicitly stated, on remand the court will need to determine whether the Peace and Alafia Rivers were navigable-in-fact. This should not be difficult since there is evidence that both rivers were used for commercial navigation by the phosphate industry in the nineteenth century. *See* A. BLAKELY, THE FLORIDA PHOSPHATE INDUSTRY: A HISTORY OF THE DEVELOPMENT AND USE OF A VITAL MINERAL 18, 39-42 (1973).

132. 341 So. 2d 977 (Fla. 1977).

133. 399 So. 2d 1374 (Fla. 1981).

134. *See* Rosen, *Public and Private Ownership in Lands Under Navigable Waters: The Governmental/Proprietary Distinction*, 34 U. FLA. L. REV. 561 (1982).

135. 492 So. 2d 339 (Fla. 1986).

136. 93 Fla. 535, 112 So. 274 (1927).

137. 58 Fla. 298, 50 So. 826 (1909).

138. 56 Fla. 603, 47 So. 353 (1908).

139. 341 So. 2d at 977.

140. *Coastal Petroleum*, 492 So. 2d at 344.

141. *Id.*

142. FINAL REPORT AND RECOMMENDATIONS OF THE MARKETABLE RECORD TITLE ACT STUDY COMMISSION 145 (Feb. 15, 1986).

cost the taxpayers hundreds of millions of dollars.[143] Based on this case, the state can reclaim sovereignty land which it had allegedly conveyed over one hundred years ago. Since the state had not claimed title subsequent to the conveyance, this might prejudice the grantee who has detrimentally relied on that silence without just compensation. Where a river or stream is obviously navigable at the time of statehood, as in *Coastal Petroleum*,[144] so as to give notice to its sovereign nature, the grantee would not be innocent in relying on the state's silence. The court leaves for later resolution issues pertaining to lakes, rivers or streams not obviously navigable and where the grantee did rely on the state's silence to his detriment.

One way to equitably solve a problem such as that would be to distinguish *Coastal Petroleum*,[145] where the waterbody was obviously navigable, from the case where the waterbody was not obviously navigable. The court could then give the grantee legal title and reserve those property interests inherent to the public trust in sovereignty lands. By reserving the public's interest in those lands, the public trust doctrine would be preserved, and the taking issue would be foreclosed since the grantee would retain legal title.[146]

Where title remains in the state in trust for the public as in *Coastal Petroleum*, the state's ability to preserve all public interests in those lands is assured. Due to the tremendous number of potentially navigable waterbodies, the state would be unable to secure the public's interest through the police power alone.[147] If fee simple absolute ownership of sovereignty lands were vested in private individuals, clearly those owners would possess a bundle of property rights.[148] These include the right to build,[149] the right to mine,[150] and the right to exclude

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143. *Id.*

144. On remand, both rivers will most likely be found to be "navigable in fact" since they have been used for commercial navigation towards the end of the nineteenth century. *See* A. BLAKELY, *supra* note 131, at 18, 39-42.

145. 492 So. 2d 339 (Fla. 1986).

146. *See generally* Rosen, *Public and Private Ownership in Lands Under Navigable Waters: The Governmental/Proprietary Distinction*, 34 U. FLA. L. REV. 561 (1982).

147. F. MALONEY, S. PLAGER & F. BALDWIN, WATER LAW & ADMINISTRATION — THE FLORIDA EXPERIENCE 40-41 (1968).

148. *See* F. MALONEY, S. PLAGER, R. AUSNESS & D. CANTER, FLORIDA WATER LAW 706 (1980); *see also* Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 MICH. L. REV. 471, 548 (1970).

149. Zabel v. Pinellas County Water & Navigation Control Auth., 171 So. 2d 376 (Fla. 1965).

150. Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922).

others.[151] At some point, regulation may reduce private rights so as to constitute a taking.[152] As examples, the refusal of the right to mine privately owned submerged land,[153] denial of the application to fill the privately owned bottom lands of navigable rivers,[154] as well as governmental mandates to guarantee public access[155] all involve a public taking.

Another method which could be used to equitably solve a problem where property owners relied on their paper title to develop their property was used by the California Supreme Court in *City of Berkeley v. Superior Court*.[156] That court held: "[T]he interests of the public are paramount in property that is still physically adaptable for public trust uses, whereas the interest of the grantees and their successors should prevail insofar as the tidelands have been rendered substantially valueless for those purposes."[157]

The grantees in *Coastal Petroleum* face monetary losses "in excess of three billion dollars" for making proprietary uses of the sovereignty lands by past mining operations.[158] If the court in *Coastal Petroleum* applied the principles utilized by the California Supreme Court, *Coastal Petroleum's* result could have been less extreme. As it stands, Mobil Oil and American Cynamid could lose money earned as well as taxes paid beyond the running of the statute of limitations. The court did not address this possibility, although it most likely considered it, as evidenced by the dissent's discussion.[159] Several inferences may be drawn. One plausible inference is that since the Peace and Alafia Rivers are obviously navigable,[160] the grantees had notice that the riverbeds were sovereignty lands. Because the Trustees did not have title to sovereignty lands at the time of the conveyance, clearly they could not have conveyed any title or interest. Mobil Oil and American Cyanamid

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151. Kaiser Aetna v. United States, 444 U.S. 164 (1979).
152. *Mahon*, 260 U.S. at 415.
153. *Id.* at 414.
154. *Zabel*, 171 So. 2d at 376.
155. *Kaiser Aetna*, 444 U.S. at 164.
156. 26 Cal. 3d 515, 606 P.2d 362, 162 Cal. Rptr. 327 (1980).
157. *Id.* at 534, 606 P.2d at 373, 162 Cal. Rptr. at 338.
158. FINAL REPORT AND RECOMMENDATIONS OF THE MARKETABLE RECORD TITLE ACT STUDY COMMISSION 113 (Feb. 15, 1986).
159. *See supra* text accompanying note 151. The court does not hint at how these issues could be resolved.
160. This will need to be proven on remand.

chose to gamble on the outcome of prospective litigation and opted to keep all proceeds from their mining activities. An unfavorable court judgment would not be inequitable since the grantees chose to take that risk. On the other hand, the court could decide to let all parties involved start anew, minimizing everyone's loss.[161]

Justice Boyd, dissenting, addressed the unlitigated practical concerns facing the parties.

> Contrary to the various suggestions that the present cases pertain to issues of environmental protection, it should be made known that what these cases involve is money. If the Board of Trustees is able on remand to succeed in showing the rivers in question to have been in fact navigable in 1845, then the [Trustees'] . . . leases to Coastal Petroleum may be held valid. Contrary to suggestions of ecological concern, there is no showing that if the board [*i.e.*, Trustees] prevails, mining will cease.[162]

One might wonder why Coastal Petroleum spent over a decade as well as so much money fighting this case if it did not think it would be able to mine the riverbeds. One potential reason is the underlying conversion issue.[163] If the Peace and Alafia Rivers were found navigable and Coastal's lease valid, all money previously earned from Mobil Oil and American Cyanamid's mining operations would be owed to Coastal Petroleum and the state would garner the royalties.[164] Fortunately for the public, Coastal's lease was modified in approximately 1976 to temporarily prevent the mining of the riverbeds.[165] However, that does not foreclose future mining of the riverbeds if large deposits are found along the banks.[166] If the riverbeds are mined, the public trust may be in jeopardy because phosphate mining effectively precludes public

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161. If Coastal Petroleum's main interest in this litigation is the underlying conversion issue where Coastal wants the money from past mining operations, then starting with a clean slate would not be beneficial to Coastal. This is especially true considering their lease was modified in approximately 1976 to prohibit mining of the riverbeds. Telephone interview with Kevin Crowley, General Counsel, Department of Natural Resources (Aug. 1, 1986).

162. *Coastal Petroleum*, 492 So. 2d at 349 (Boyd, C.J., dissenting).

163. Telephone interview with Kevin Crowley, General Counsel, Department of Natural Resources (Aug. 1, 1986).

164. *Id.*

165. *Id.*

166. *Id.*

swimming, fishing, boating or environmental protection.[167] Hopefully, state administrative agencies such as the Department of Natural Resources would be able to prevent the mining of the riverbeds. However, if those administrative agencies are unsuccessful, is there recourse for the public trust?

At common law, the public trust doctrine imposes three types of restrictions on the government's use of sovereignty lands: (1) the sovereignty lands must be usable by the general public for a public purpose; (2) the sale is prohibited; and (3) the property must be upheld for either traditional uses — *i.e.*, navigation, recreation, or fishing — or used in a way that is natural to that property.[168]

As the following case illustrates, private citizens can look to the judiciary for protection by bringing an action against administrative agencies as beneficiaries of the public trust.[169] In *Gould v. Greylock Reservation Commission*,[170] the Greylock Reservation Commission and the Tramway Authority were to lease 4,000 acres of a reservation to a corporation which was to build and manage a ski development in exchange for forty percent of the profits. A statute enacted by the legislature that year had authorized the Commission to lease to the Authority "any portion of the Mount Greylock reservation."[171] The court responded:

> The profit sharing feature and some aspects of the project itself strongly suggest a commercial enterprise. In addition to the absence of any clear or express statutory authorization of as broad a delegation of responsibility by the Authority as is given by the management agreement, we find no express grant to the Authority of power to permit use of public lands and the Authority's borrowed funds for what seems, in part at least, a commercial venture for private profit.[172]

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167. Phosphate mining has been associated with radon which accounts for 5,000-30,000 deaths per year from lung cancer in this country. Radon, a by-product of uranium decomposition, is a naturally produced, invisible gas, found in small quantities in soil and rock, but in large quantities in phosphate, granite, and shale. Radon has been detected in the phosphate mining areas of Florida. Galen, *Lawyers Grapple with Radon Issue*, NAT'L L.J., July 21, 1986, at 1.

168. *See* Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 MICH. L. REV. 473, 477 (1970).

169. *Id.* at 493.

170. 350 Mass. 410, 215 N.E.2d 114 (1966).

171. *Id.* at 415, 215 N.E.2d at 119.

172. *Id.* at 426, 215 N.E.2d at 126.

Thus, the court created the presumption that the state would not intend to use trust properties in such a way as to lessen public uses.[173]

Gould illustrates how questionable projects may receive endorsement of legislative and administrative agencies.[174] More importantly, that decision underscores the court's role in preserving the public trust and affording a successful means of dealing with that type of litigation.[175] In Massachusetts, courts relying on *Gould* have forced agencies to carry the burden of procuring open approval of proposed uses which encroach on the public trust.[176]

The judiciary has a responsibility to review the legislative action both for its conformance to the sphere of regulatory power and for its harmony with the state's particular duty to maintain the public trust.[177] The role of the courts is therefore defined. In satisfying their role, courts may require that records be made and data collected to satisfy the court that all important interests were sufficiently considered.[178] Alternatively, a court may require an open and express legislative decision so the proposal will come before an informed public.[179] As a third alternative, a court may find that public benefits are inherently unclear in the project and will not advance the project unless it is demonstrated that the project is actually pressing or pleasing to the public's interest.[180]

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173. *See* Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 MICH. L. REV. 473, 494 (1970).

174. *Id.* at 496.

175. *Id.*

176. *Id.* at 498. *See, e.g.*, Sacco v. Department of Pub. Works, 352 Mass. 670, 227 N.E.2d 478 (1967); Robbins v. Department of Pub. Works, 355 Mass. 328, 244 N.E.2d 577 (1969).

177. Sax, *supra* note 173, at 511.

178. *Id.* at 514.

179. *Id.*

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> [T]he Wisconsin Supreme Court adopted the last of these approaches. Its opinions . . . can be taken as a form of notice to the legislature and the agencies that when the public interest of a project is unclear, its proponents will have the burden of justifying the project and will not be allowed to rely on traditional presumptions of legislative propriety or administrative discretion. In adopting this position, the court does not seek a confrontation with the legislature nor does it attempt to substitute itself as an ultimate judge of the public good. Rather, it tries to identify and correct those situations in which it is most likely that there has been an inequality of access to, and influence with, decision makers so that there is a grave danger that the democratic processes are not working effectively.

In Florida, the Trustees are limited by statute in selling sovereignty lands.[181] They can sell sovereignty lands only if the conveyance is:

> determined by the board [*i.e.*, Trustees] to be in the public interest, upon such prices, terms, and conditions as it sees fit. However, prior to consummating any such sale, the board shall determine to what extent . . . ownership by private persons . . . would interfere with the conservation of fish, marine and other wildlife, or other natural resources . . . and if so, in what respect and to what extent, and it shall consider any other factors affecting the public interests.[182]

Therefore, if the Trustees are required by statute to protect the public trust when selling sovereignty lands, the courts could infer the same legislative intent in dealing with leases of sovereignty lands. If Coastal Petroleum were given the approval to mine the riverbeds, private citizens could successfully seek judicial aid.

Although the court's decision in *Coastal Petroleum*[183] to make the Marketable Record Title Act and legal estoppel inapplicable to sovereignty lands may create serious problems for those who have relied to their detriment on their paper title, those problems may be resolved in future court decisions. On the other hand, if the court had applied MRTA and legal estoppel to sovereignty lands, the public trust doctrine in Florida would have been effectively destroyed. The preservation of our public trust doctrine is important to the people of Florida. Even though the possibility exists that Coastal Petroleum will mine the riverbeds, thereby invading the public trust, private citizens have legal recourse available to protect their interests.

VI. Conclusion

The navigability of a body of water determines the public ownership of submerged land under it.[184] The public trust doctrine applies once a waterbody is found navigable through the selected navigability

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Id.

181. FLA. STAT. § 253.12(2) (1975) (effective 1969).

182. *Id.*

183. 492 So. 2d 339 (Fla. 1986).

184. F. MALONEY, S. PLAGER, R. AUSNESS & D. CANTER, FLORIDA WATER LAW 676 (1980).

test.[185] In essence, the public trust doctrine establishes the rights and responsibilities associated with public ownership of lands under navigable bodies of water.[186] Lands under navigable waters are not capable of being cultivated or improved in the same way as lands above the ordinary high-water mark, because they are of great public importance for commerce, navigation, fishing, and recreation.[187] When private individuals are allowed to improve submerged lands, it is incidental or secondary to the public use and right.[188] For that reason, title of submerged lands is vested in the sovereign for the benefit of everyone.[189]

The importance for the state to have dominion and control over navigable waters is first demonstrated by the necessity of title to these lands to pass to the states by virtue of its admission to the Union as a constitutional right.[190] Secondly, the legislature has no power to strip the state of its sovereignty so that jurisdiction over navigable waters is impaired.[191]

Since the majority of Florida's waterbodies were unmeandered, ownership of those submerged lands could be the subject of litigation if it has not already been judicially determined.[192] There are currently approximately one dozen quiet title or conversion cases pending which are similar to *Coastal Petroleum*.[193] If the Florida Supreme Court in *Coastal Petroleum*[194] had applied the Marketable Record Title Act[195] or legal estoppel[196] to sovereignty lands, the public trust doctrine would have been limited to the 190 meandered lands and not to the remaining 29,810.[197] The people would have lost all rights to swim, fish, boat, or

185. *Id.* at 677.

186. *Id.*

187. Shively v. Bowlby, 152 U.S. 1, 57 (1984).

188. *Id.*

189. *Id.*

190. *E.g.*, Oregon v. Corvallis Sand & Gravel Co., 429 U.S. 363 (1977); Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 212, 228-30 (1843).

191. *See generally* Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 MICH. L. REV. 473 (1970).

192. F. MALONEY, S. PLAGER & F. BALDWIN, WATER LAW & ADMINISTRATION — THE FLORIDA EXPERIENCE 40-41 (1968).

193. Telephone interview with Kevin Crowley, General Counsel, Department of Natural Resources (Aug. 1, 1986).

194. 492 So. 2d 339 (Fla. 1986).

195. *See supra* text accompanying note 129.

196. *See supra* text accompanying note 95.

197. F. MALONEY, S. PLAGER, R. AUSNESS & D. CANTER, *supra* note 192.

use the majority of Florida's waterways.[198] In light of the fact that approximately 38 million people visit Florida each year and approximately 530,000 pleasure boats and 29,000 commercial vessels are usually registered,[199] the public's ability to use Florida's natural resources presents a substantial economic opportunity for the state. Where tourism is important to the economy, so is recreation. Therefore, the destruction of the public trust doctrine would seriously impede Florida's economic future, not to mention the personal effect it would have on its citizens.

Even though the decision not to apply the Marketable Record Title Act or legal estoppel to sovereignty lands will have a negative impact on a great number of people, on an individual level as well as on the phosphate mining industry,[200] the interests of the people as a whole are protected. Moreover, any problems which may arise from this decision may be resolved through the judiciary.[201] There is an equitable resolution to the problem where property owners relied on their paper title to develop their property. If the lake, river, or stream was not obviously navigable, the court could distinguish that fact from *Coastal Petroleum*[202] where the waterbody was obviously navigable, and give the grantee legal title reserving those property interests inherent to the public trust in sovereignty lands. Thus, while this court's decision does not foreclose equitable solutions where a grantee has relied to his detriment, it does preserve a substantial state asset — Florida's public trust doctrine.

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198. Osceola County v. Triple-E Dev. Co., 90 So. 2d 600 (Fla. 1956).

199. 1985 FLA. STATISTICAL ABSTRACT 450-453 (19th ed. Florida Department of Commerce).

200. A. BLAKELY, THE FLORIDA PHOSPHATE INDUSTRY: A HISTORY OF THE DEVELOPMENT AND USE OF A VITAL MINERAL 17 (1973).

201. *See supra* text accompanying notes 145, 156-57, 169-82.

202. 492 So. 2d 339 (Fla. 1986).