

Senate Bill 74: Additional Pathway for Navigability Determinations



Senate Natural Resources & Wildfire

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What is Navigability about?

- Navigability is about **State ownership** of **real property** underlying **title-navigable waterways** (and tidally-submerged lands).
 - It is *not* about water rights.
 - It is *not* about the WOTUS (Waters of the United States) Rule. WOTUS is a water quality matter and a means of determining which areas are subject to federal jurisdiction under the federal Clean Water Act.
 - It is *not* about “taking” private property without just compensation, as shown on following Scenario slides.

Scenarios of Navigability

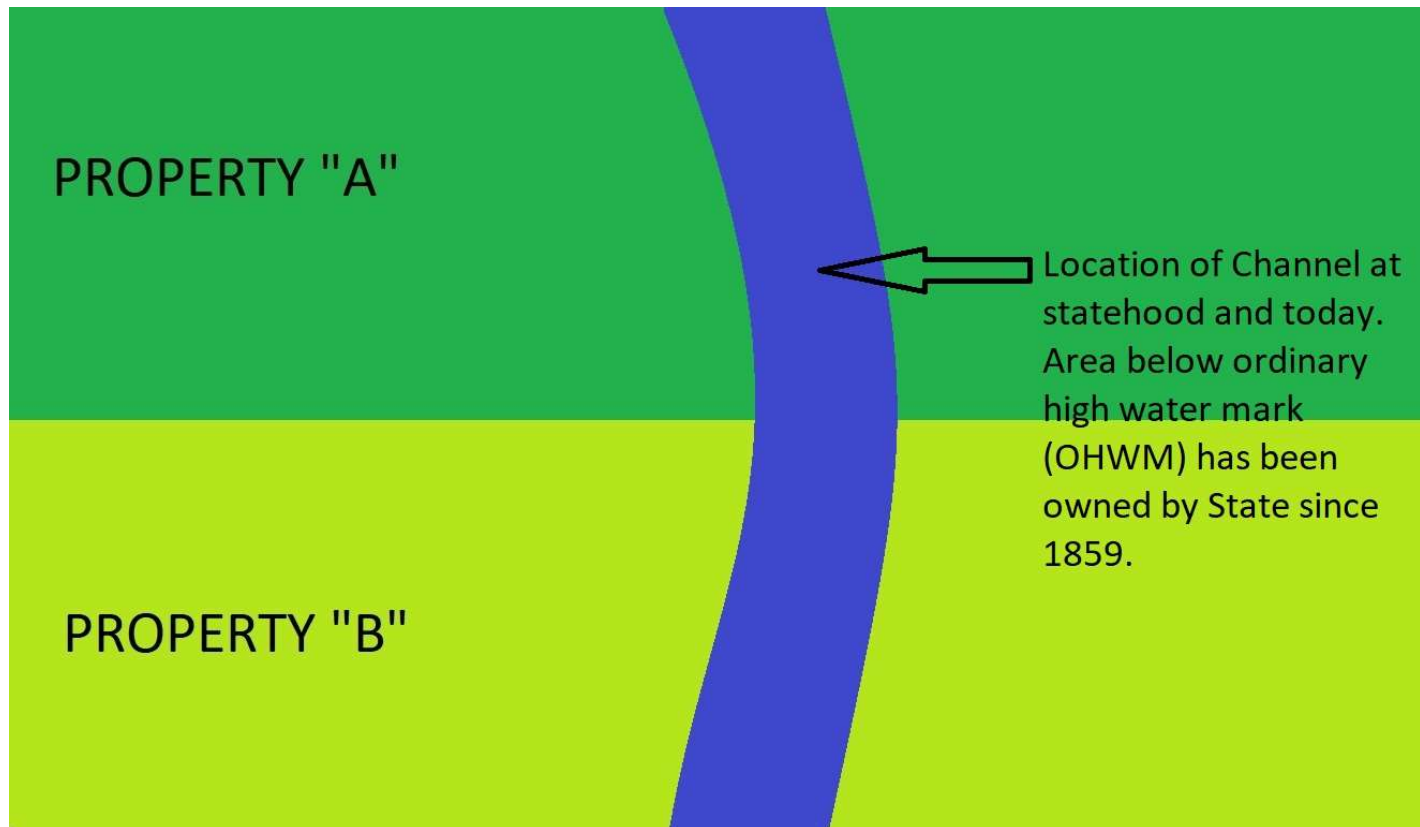
- Assume in all of the following 3 scenarios that the waterway meets the controlling test of navigability:

“[R]ivers 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.”

The Daniel Ball, 77 US 557 (1870)

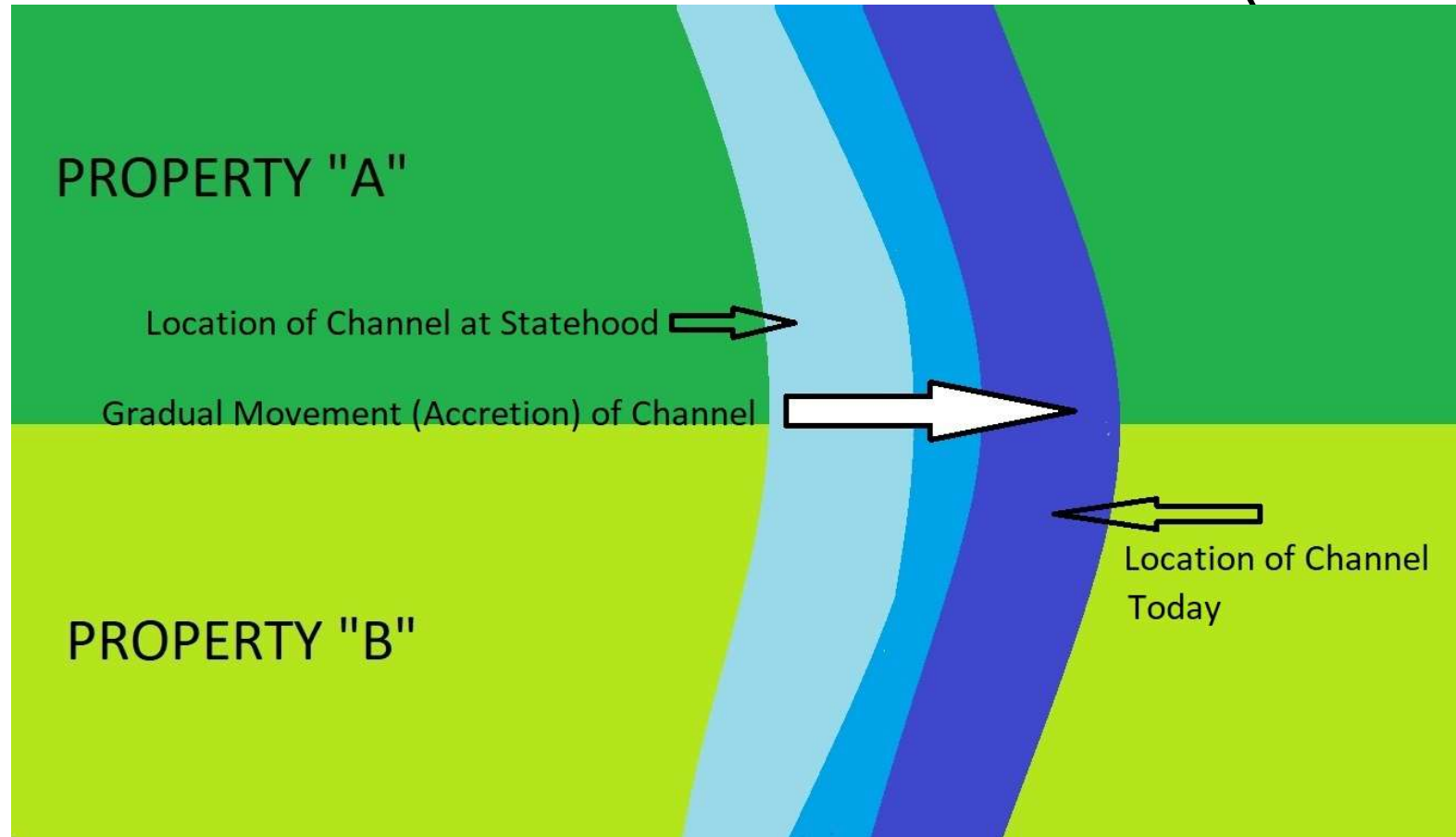
- (For additional legal background and caselaw, see Trout Unlimited’s written testimony on SB 74 for 3/13/25 public hearing)

Scenario 1: No Channel Movement

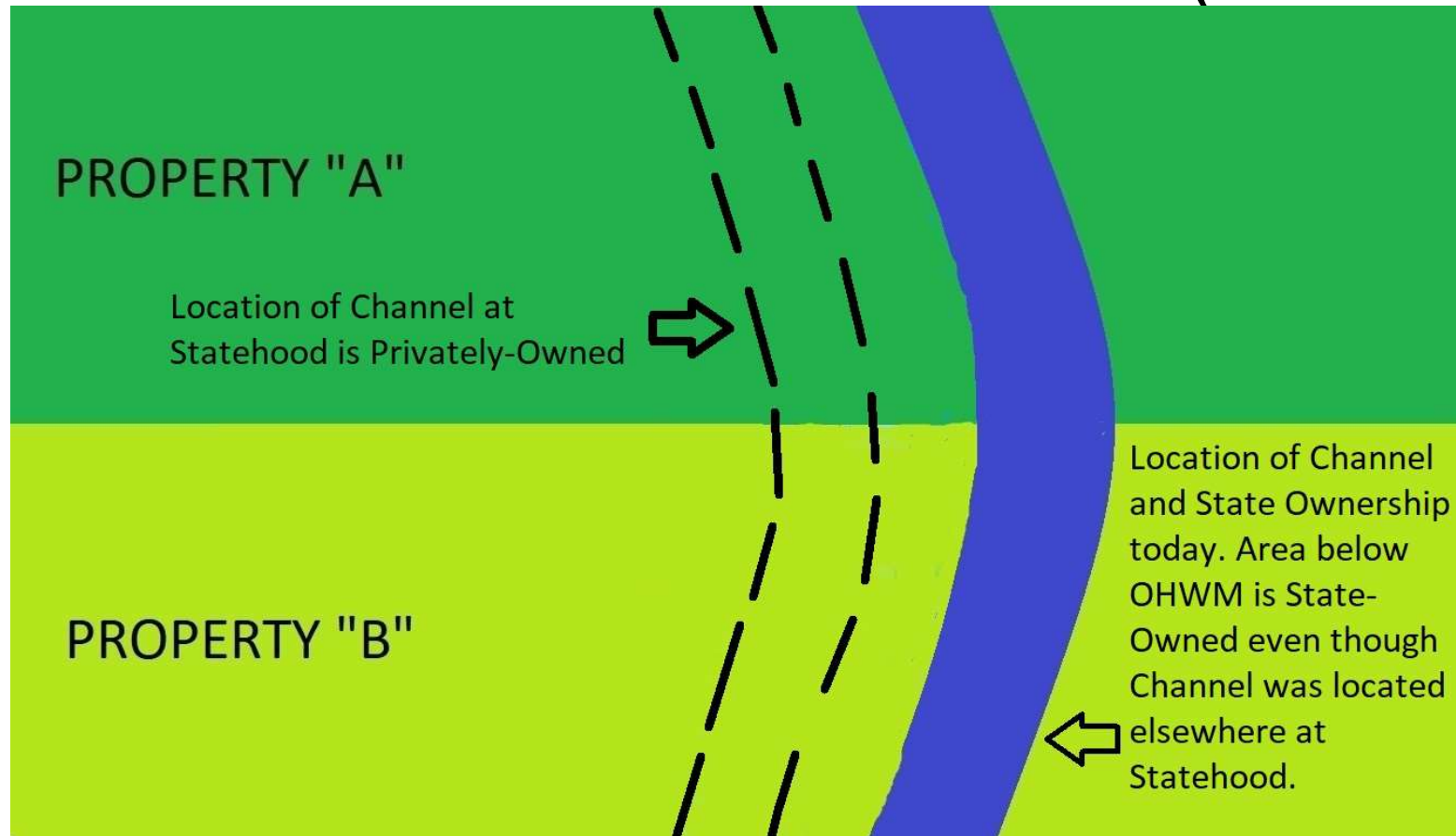


Result of Scenario 1: Navigability determination regards submerged area only. Not uplands.

Scenario 2: Slow Channel Movement (Accretion)

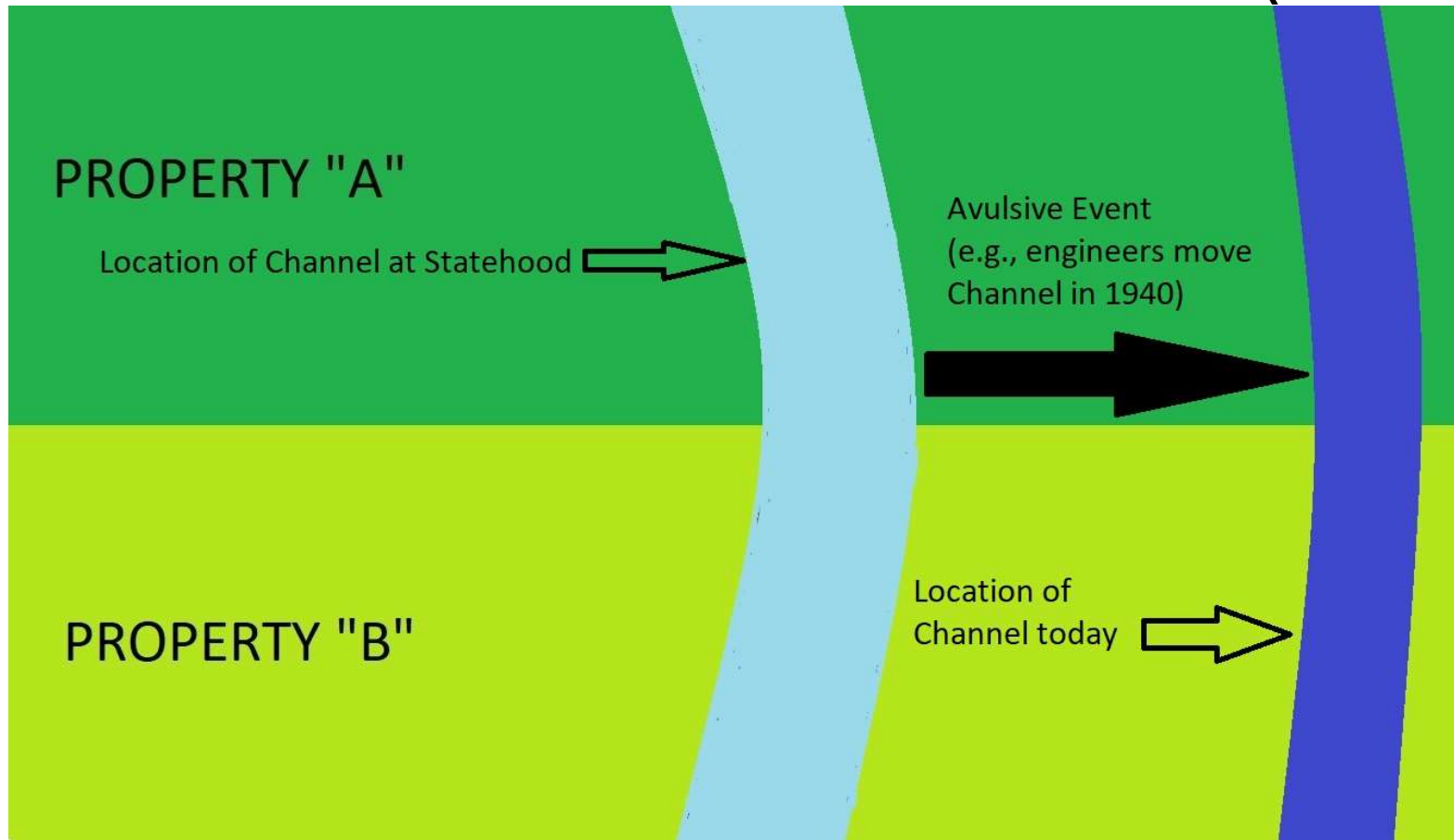


Scenario 2: Slow Channel Movement (Accretion)

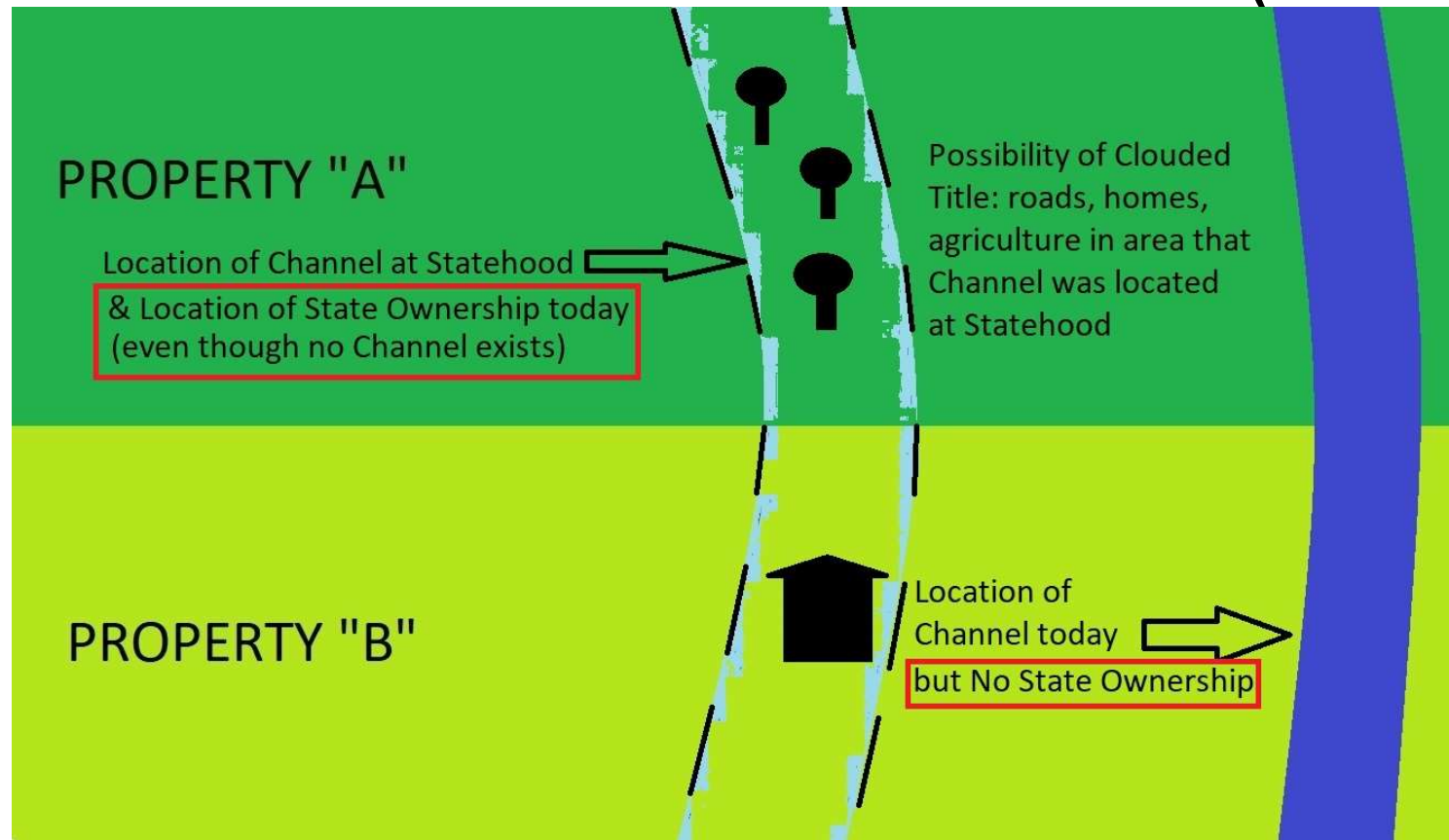


Result of Scenario 2: Navigability determination regards submerged area only. Not uplands.

Scenario 3: Fast Channel Movement (Avulsion)



Scenario 3: Fast Channel Movement (Avulsion)



Result of Scenario 3: Navigability determination involves uplands and submerged area. Area of state ownership is technically the former channel (which may currently be developed). An exchange of deeds clarifies that owners of Property A and Property B own the Location of Channel at Statehood.

Trout Unlimited supports Senate Bill 74 and the “-3” amendment.

Thank you

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