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[00:00:10] Yes. Around 1980 a group of Butte sportsmen contacted me. And thought it would be a good time to bring a lawsuit given the composition of our Supreme Court to establish the public's right to float and recreate on stream so they contacted me I agreed to represent them on a reduced need basis and we went on from there. Well we looked at several grounds. We we were working to find suitable land owners unsuitable rivers and we could prove. And basically we looked at commercial maverick ability long voting which is a federal test for. Use. And then we looked at recreational use and we selected the Dearborn River and defended Michael kind of about a massive ranch in Dearborn and that's a river that flows easily into the Missouri between Helen and Great Falls. And then we selected the beaver head river. Which didn't have much of a commercial use history other than contemporary outfitting. And there was a land owner there who was blocking trying to block public access and he was putting impediments on bridges and.

[00:01:35] Interfering with floaters. So we we filed the lawsuit. Ultimately the main issue that emerged was what's called the public trust doctrine which is that the waters of the state are owned by the state for the benefit of the public so that regardless of who owns the stream better or the river banks the public has the right to use him. That's what the Supreme Court ultimately held.

[00:02:05] And that's based on Montana's constitution is that correct. Yes. And and the kind of the general common law doctrine of public trust. But we have specific trust language in 1972 Montana constitution so that. Dovetailed nicely. Well.

[00:02:31] We started out with using the term navigable but it's on any water way. The Supreme Court came out with a very broad set of rulings in both cases that basically says the capability of the waters themselves to be used. So it is the high watermark Mark that's the demarcation but it's for all of all streams.

[00:02:55] And so this means that even if a landowner owns land on both sides of that but as long as there's public access they can not deny access to the waterways that target. You can't trespass on the uplands but if you can get on the waters you can use the stream bed the flow and you can go to the high water mark.

[00:03:22] Well it varies. Some like little his holder of the had simply wanted to charge. Recreation is so is an economic motive. Current I think was more he just didn't want to be bothered with trespassers and he claimed there were letters and campfires on his property. And I think a lot of white owners just had an exaggerated fear of privacy infringement. So I think it's a combination. But there was a pretty widespread opposition at the time. Yes Montana has probably the best access law would after our lawsuit. Then. There was a contentious legislative session in 1985 and they enacted a pretty progressive stream access statute and everybody gave a little bit. So it's not as broad as the cases but it was a good compromise. But in terms of how we compare Wyoming for example you can't use the stream bed. So if you float you can't get out the vote you can walk on the stream but because in their view it's on the land or Colorado I think is even more restrictive. But I can't really speak in detail that that. Yeah I do. I know I'm kind of a populist in that sense I think.

[00:05:02] I think the streams like I grew up in and on the Madison River and nobody ever thought that they could restrict floaters when I was growing up. And I think that people do have a sense of ownership. And. There are always bad actors litters and abusers and

you're gonna always have those but in general I think it's great for the public and it's the fears of the land owners. I don't think have been borne out. So I think we've kind of reached a pretty stable plateau in the last 15 20 years and it's worked out well.

[00:05:46] Oh there is. Yeah. There were concerns that the other side could win.

[00:05:50] There was a high stress case because there are some cases where you take a chance and if you lose so be it some but this case was we couldn't lose. I just there was so much pressure on us I wouldn't it just felt awful if we lost so but the opposite. You may have some some arguments. There was an old Montana precedent that would have gone against us. So it wasn't a slam dunk by any means.

[00:06:28] Well it is the mix I guess but there is a lot of cooperative landowners. I mean you know as long as people are courteous they ask permission and so on. So there's always been sort of a neighborly accommodation in Montana. It's it's getting worse unfortunately because of the wealth that's come into the state. And the the the more possessive attitude a lot of absentee landowners who don't care as much about their neighbors this as it used used to be the case when I was growing up.

[00:07:14] Tony Schoen and Tom Bugni and Gerry the late Gerry Manley and Tom Daniels. Joseph which so is a good group that really was pretty politically savvy and me they wanted to get that precedence set. Yeah there was an immediate challenge by Jack Gault who is a state senator and big land owner for.

[00:07:43] Mark County area and that was basically taking a property and due process. And he lost in the main although the Supreme Court tweaks some of the excuse me. Tweaks some of the.

[00:08:02] Facets of the statute. So.

[00:08:05] So that was the first challenge. Then the Mountain States Legal Foundation Challenge what were called Class 2 waters which were not navigable but usable. And if this was on Odell creek over near my hometown Havana's Ruby River in Madison County and the Stillwater river over in. Stillwater county and we won that on federal court then went to.

[00:08:30] The Federal 9th Circuit. That was about nine 20 0 2 and then. But just recently in the PPO case there was a case filed actually by my firm originally but the state took it over about charging rats for dams on rivers like the Madison dam and the Great Falls dams that went up to the U.S. Supreme Court. They held that you can't have an average ability for title the establishment of an advocate body for title on a. On a general River you have to look at it segment by segment and particularly the 17 miles of the Great Falls that Lewis and Clark had a politician around in Missouri were deemed non navigable. So they reversed. But at the end of the case they did a nice thing. This is the U.S. Supreme Court.

[00:09:26] They you know they held that the public trust doctrine is a matter of state law. So they sort of went out of their way to sanction. And so we already have the public trust precedent and the Coalition for stream access cases. So whatever the general case was lost to the state we got a nice gift out of the sort of the afterthought in that case. It's very important. Hello. I think we're pretty well situated now. My partner Devon get is as did the Ruby River Bridge.

[00:10:10] Bridge access cases over the last 10 12 years. And they were largely successful fought by James Cox Kennedy a very wealthy land holder over in. The Ruby River. And so it's just important to. Keep vigilant on that but as I say I think we're situated pretty well now.

[00:10:38] Well to start with we had a little equity seminar at the law school in Missoula last Friday. And Tony Shannon who's a longtime great fisherman particularly in the big gold river said that our attorney fortunately is a much better attorney than he is officially because I fish too I don't have him big hole and they're always coaching me to keep my rod straight.

[00:11:03] Upright. Oh and I miss a lot of strikes. So anyway but here's my background was my father was a great fisherman and he was the school superintendent loved to fish and would go out every chance he got. And he was just the opposite of what you see these days. He was not a well-dressed fisherman. He had these all the waiters and tan patches all over. No felt soles are just rubber soles and he looked like a hobo when he went fishing and his equipment was all tagged and left messy.

[00:11:43] So he was just a pure go after the trial guy. He wasn't the image and my brother and I used to used to go out. He was more of a spin fisherman and they used to have a tribe there remains which should be a very section of all these days.

[00:12:04] But he would fish with what he called Bull heads sculpins about two and a half three inches long. We go up to Blaine Spring Creek too. He had this old net and my brother and I would hold and kick up the rocks and we would harvest these bull heads. And he had a big ol hook and he went after the lockers.

[00:12:31] And back in the 50s there wasn't a big gaming industry. There was weren't any commercial guides to speak of Bing Crosby and his revenue came to town. People want to know well who should take him out. So they nominated her. Yes.

[00:12:48] So we took Bing Crosby out his favorite spot.

[00:12:52] I want to show you this a friend of his from Butte

[00:12:59] bought this trophy trout.

[00:13:03] I guess it's a Bass says cut by Herb gets in the channels channels were his favorite places where the Madison River runs and they had this lake. So anyway he was quite the fisherman. My brother and I didn't quite catch the disease until later although we would go to creeks and we went up to the tobacco roads every summer to the mountain lakes and had a great time.

[00:13:32] But but more important my dad was longtime president of Madison River or the Madison run gun club and he was devoted. That's maybe where I got my populist views on public rights to Rick Reed. And so my brother and I'd be looking envelopes every month to send out the notices. So that's basically my background.

[00:14:05] He had a rubber raft and all the other army surplus. No wrong frame.

[00:14:11] My brother and I would have these poles and we would pull him down the Madison River and he would fish. And I remember one time back when you could float froma. To the lake. And that had access to the miners down on the channels.

[00:14:31] So I remember my mother waiting for us. She was meeting us and it was dark and she was steaming worried about us because. The timing wasn't exactly as planned. But we we just had a great time with that. But then when I was about a junior high school I was supposed to meet my dad over at Warm Springs pass Norris because he and his buddies were floating in that all floating the bear trap. And I pulled up and I said Where's the boat left behind. Apparently they beat the crap out of it. And they ended up floating on the gunnels and kicking off rocks. You get down with the guy you've got to make sure you meet this young girl. Oh I've got five minutes okay. Ultimately by the way you've heard of Herb's rock and we think so. It was named after my father. Well he was floating on a different expedition with the guy. They got caught up on a rock and again at the surface. The boat he was left behind. He had to swim out.

[00:15:50] But anyway that's the law. Herb's Rock is a name that's all that herb that's on the Madison on the kitchen sink. Gary.

[00:16:04] Well rookies in the critics like Jordan Creek. I remember my dad taking out my. We had a group of nine Catholic cousins and one family with no one son. He raised them all up and we went out to Jordan Creek out north of JAG Creek and flowing into Amos Lake. And my cousin Peter No and I forget how young he was but he he hooked fish.

[00:16:30] There are a lot of fish that he just ran right into the creek. I go on I go. So Brookings cuts rig mostly Rainbow and browns.

[00:16:47] I'm a big fan of the Browns because I think they're pretty when they get those jobs. They're pretty vicious looking.

[00:16:57] Dad used to I shouldn't say this but I will. This was before. Catch and Release days. We had this battle. A. Year and a half ago and.

[00:17:08] They were complimenting Buffalo way on all its pioneering of catch and release and I said that fair efficient but lately released in the Madison my father probably killed it but he used to bring home fish and we were so sick of eating fish and our neighbors was so sick of eating fish used to. This is sacrilegious but he used to fertilize our garden with trout.

[00:17:34] Because he just didn't leave and not bringing home his catch.

[00:17:43] Well no I had a big gap when I went out of state to law school. I was so busy here in college so I really didn't take it up again until I was practicing law and I my practice is so busy that I don't get out as much as I'd like to. But you know it's more I took a probably in my 30s again.

[00:18:14] Well on the Madison it's much less productive much more crowded less productive. I love to float to Madison is still gorgeous vistas but I think it's kind of hit or miss on Madison Yellowstone as is also a bit crowded but.

[00:18:38] Pretty productive at times. Big Coal is always one of my favorites is a big hole during salmon fly in.

[00:18:46] That's always productive partially because I go out to Michigan and he knows fishing on the Beagle side.

[00:18:56] But I'd say the fishing is not nearly as good as when my father was fishing in Maine.

[00:19:03] He used to and after he was semi retired he would walk south of Venice when the gorge wasn't precluding fishing in the winter and he and be warming for about the only ones who would break out in the winter. But he used to come home with three or four for me big fish back him. And they brought him home.

[00:19:36] For yourself or for your father brother or anybody else.

[00:19:40] Yeah I guess I have that photograph here.

[00:19:46] When he was probably late 70s early 80s. This your dad.

[00:19:52] Yeah. My partner arrest and I took him to Russ had a place. To disclose the location but with some great fish and they were Pierce.

[00:20:07] And great fly fishing. But you could see these lockers down these clear pools and ring stream. And Russ was partners with Skip Matthews who was then chief justice of the Alaska Supreme Court.

[00:20:25] He when they were partners in this former law partners before Russ moved to partners in this property. So that was there looking and Russ said well you can throw one spoon in there. And so one of my favorite photographs this my father took about a minute and a half and this locker hit and my father is sitting there with this huge fish leading from them.

[00:20:50] Fortunately I had my camera. So then a couple of years later I had floated the Madison with Skip who'd come down from Alaska. We stopped my parent's place and he learned that Skip was part of says Oh I got a serious. I was just because it was pure catch and release and he brought up this photo and skipped just blacks. But they couldn't stand a little culling of those big fish there I think. So yeah. So that's.

[00:21:20] That was a fun time.

[00:21:30] I've always had the best luck on the big goal and you always get fish usually really healthy looking good sized fish.

[00:21:40] I don't think it says a scenic float is Yellowstone or the Madison but the fishing is better and I've fished the beaver head when we were litigating schematics access. That's quite a good fishery although you're kind of bouncing when you're floating bouncing off. One. Well back.

[00:22:02] Against the other but it's good fishing.

[00:22:11] I just have one Robert Winston. I grew up. By the way with Tom Morgan I know this you've interviewed him. Tom was his father on the old Western Motel. And. I said this

and I used to work for him. Mowing lawns on a white tomboys two years ahead of me and my sister's class. And so.

[00:22:33] I kept in touch with him over the years. So we did some legal work farm and everybody got a rod. I think we paid taxes on that.

[00:22:53] No. Just. Yeah. I'll just be vigilant about protecting the resource. I mean you know part of the argument has always been well we're gonna be too crowded if you let a fish.

[00:23:05] But they've had good regulations over on the big hole for example where outfitters can can only use some sections of the river and some days.

[00:23:16] And I think that's a nice mix and I've done some fair amount of natural resources litigation particularly early in my career and there are ways that states can regulate effectively and still accommodate everybody. I just take this trend toward fee based fishing and hunting although I think there is a place for that maybe in some places but I don't have a problem with the spring creeks in. Paradise Valley being fee based. But I just don't want to see too much of that because it's so important and some people don't have the kind of money that. Would that would require.