

## THE PUBLIC TRUST DOCTRINE – A PRIMER

The public trust doctrine emanates from art. IX, § 1 of the Wisconsin Constitution. It protects an array of public rights including, in addition to commercial navigation, a variety of purely recreational and nonpecuniary uses including boating, swimming, fishing, hunting, recreation, and scenic beauty. *Gillen v. City of Neenah*, 219 Wis. 2d 806, 820, 580 N.W.2d 628 (1998); *State v. Bleck*, 114 Wis. 2d 454, 465, 338 N.W.2d 492 (1983); *Hixon v. Public Service Comm.*, 32 Wis. 2d at 619; *Muench v. Public Service Comm.*, 261 Wis. 492, 507-08, 511-12, 53 N.W.2d 514, 55 N.W.2d 40 (1952).

The public trust doctrine calls on the state to protect and preserve the state's natural resources for the enjoyment of its citizens. *Wis. Environmental Decade, Inc. v. DNR*, 85 Wis. 2d 518, 526, 271 N.W.2d 69 (1978); *Just v. Marinette County*, 56 Wis. 2d 7, 16-18, 201 N.W.2d 761 (1972); *State ex rel. Chain O'Lakes P. Asso.*, 53 Wis. 2d at 582; *Reuter v. Department of Natural Resources*, 43 Wis. 2d 272, 277, 168 N.W.2d 860 (1969); *Zealy v. City of Waukesha*, 201 Wis. 2d 365, 382, 548 N.W.2d 528 (1996). The policy of the common and statutory law that recognizes the rights of the public to enjoy navigable waters is to be broadly and beneficently construed. *Muench*, 261 Wis. at 512; *Diana Shooting Club v. Husting*, 156 Wis. 261, 271-72, 145 N.W. 816 (1914).

Private riparian rights are qualified, subordinate and subject to the paramount interest of the state and the paramount rights of the public in navigable waters. *R.W. Docks & Slips v. State*, 2001 WI 73, 244 Wis. 2d 497, ¶21-22, 628 N.W.2d 781. The general proposition pertaining to the hierarchical relationship between riparian and public rights specifically applies to the construction of a pier or similar structure in aid of a riparian's navigation. *Delaplaine and another v. The C & N.W. R'y Co.*, 42 Wis. 214, 226 (1877); *Boorman v. Sunnuchs*, 42 Wis. 233, 242 (1877); *Diedrich v. Northwestern Union R'y. Co.*, 42 Wis. 248, 262 (1877); *Cohn v. The Wausau Boom Co.*, 47 Wis. 314, 322, 2 N.W. 546 (1879); *S.S. Kresge Co. v. Railroad Commission*, 204 Wis. 479, 490, 235 N.W. 4, 236 N.W. 667 (1931); *Doemel v. Jantz*, 180 Wis. 225, 235, 193 N.W. 393 (1923). The riparian right to place a pier from the land out to navigable water is subordinate to public rights and cannot interfere with public use. The Wisconsin Supreme Court stated 80 years ago that a riparian owner has the right to use the shore to build a pier in aid of navigation, but that when the pier goes into the water it is subject to public rights. *Doemel v. Jantz*, 180 Wis. 225, 234-35 (1923).

The common law right of a riparian to erect structures for navigation purposes is further conditioned by the limits of reasonable use. *R.W. Docks*, 244 Wis. 2d 497, ¶22; *Sterlingworth*, 205 Wis. 2d at 731. The reasonable use doctrine balances a riparian's right to place a pier in public waters against both public rights and the rights of other riparians. *Sea View*, 223 Wis. 2d at 157.

The right of a riparian owner to construct a pier is also subject to legislative control and may be regulated or prohibited by law, in keeping with the trust in which the state holds its navigable waters. *R.W. Docks*, 244 Wis. 2d 497, ¶20; *Bleck*, 114 Wis. 2d at 466 (citing *Attorney General ex rel. Askew v. Smith*, 109 Wis. 532, 85 N.W. 512 (1901)). "No riparian has without the consent of the state a right to invade the bed of a

navigable [water] with a structure of any kind even though it be one in aid of navigation." *S.S. Kresge Co. v. Railroad Comm.*, 204 Wis. 479, 493, 235 N.W. 4, 236 N.W. 667 (1931). In Wis. Stat. §§ 30.01(5) and 30.13(1), the Legislature has limited the right to place a pier without a permit to the placement of a pier sufficient for docking and loading and unloading boats, which does not interfere with public rights in navigable waters and with other riparians' rights. Wis. Stat. §§ 30.01(5) and 30.13(1)(a).