

**Supreme Court Decisions Regarding Water Policy Issues -- Staff Summary**  
July 29, 2002  
for the Coal Bed Methane/Water Policy Subcommittee of the Environmental Quality  
Council  
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This decision is not directly related to water policy, but does address ownership of the beds underlying federal and potentially state water bodies. In this instance it applies to land between the high water mark and the meander line of a lake which is held in trust for the Tribes.

**In the Matter of: The Estate of Antoinette Hobbs, Deceased**  
2002 MT 85

Background

At the time of Antoinette's death, she owned property on the shore of Flathead Lake located within the Flathead Indian Reservation. In her will she left this property to four individuals. One entity was to receive the portion of the land from the high water mark of the lake inland.

During the administration of the estate, a survey was conducted to show the division of the property and to establish the boundaries of the two resulting lots. This survey did not include any land lying between the high water mark and the meander line of Flathead Lake. The survey was approved by the District Court. After the District Court approval, the heirs became involved in a dispute. The issues raised in that dispute caused one of the heirs to petition the District Court to reopen the estate for the purpose of filing a corrected certificate of survey and to transfer that portion of the land lying between the high water mark and the meander line of Flathead Lake to the heirs. The petition was supported with exhibits and affidavits that verified that Antoinette had paid taxes on the land out to the meander line.

Issue

*Did the District Court err in approving a corrected certificate of survey and in allowing additional land between the high water mark and the meander line of Flathead Lake to be transferred to the heirs of the estate?*

Findings

The heir challenging the new survey (Conrads) argued that the District Court erred in allowing additional land between the high water mark and the meander line of Flathead Lake to be transferred to Antoinette's heirs because Antoinette did not own the land, thus she could not transfer it to her heirs. The Conrads maintain that this land is owned by the United States in trust for the Tribes. The Tribes argued that the District Court lacked

personal and subject matter jurisdiction.

The Flathead Reservation was created by the Treaty of Hell Gate on July 16, 1855. Article II of the treaty reserved for the exclusive use and benefit of the tribes a large tract of land the northern boundary of which bisected Flathead Lake so that the whole southern half of the lake is within the confines of the Reservation. The property in dispute is on the southern shore of Flathead Lake, and is therefore within the boundaries of the Reservation.

*Montana Power Co. v. Rochester* (9<sup>th</sup> Cir. 1942), 127 F.2d 189, settled the question of ownership of the bed of Flathead Lake within the Reservation. The court stated that the treaty of Hell Gate “leaves no room for doubt that the government chose to hold the entire area, submerged lands no less than uplands, in trust for the Indians rather than for the future state to be carved out of the region.”

According to the *Rochester* court, the general rule is that patents of the United States to lands bordering navigable water convey only to the high water mark absent special circumstances. The determination that the bed of the south half of Flathead Lake is held in trust for the Tribes by the United States has been upheld in every federal charge.

Consequently, the Conrads and the Tribes correctly argue that Antoinette’s predecessors, the Burlands, received only that land extending from the high water mark inland. That is all they could have conveyed to Antoinette and that is all Antoinette could devise to her heirs.

The District Court decision was reversed and title to the property between the highwater mark and the meander line of Flathead Lake was not transferred to the heirs.