



Tecumseh Chapter of the Indiana Society of Professional Land Surveyors
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FROM THE AUGUST 29, 2007 CHAPTER MEETING:

- Clem Kuns and Pat Williams gave a presentation on navigable / non-navigable waters. The presentation included a discussion on case law and its application for boundary surveys located along watercourses. The primary purpose of the presentation was to make surveyors aware that the navigability status of the majority of streams in Indiana has not been determined. Navigability status is based on the stream's potential for navigation use dating all the way back to the time that the state was admitted to the Union; therefore, **surveyors should consider, at a minimum, noting on their surveys the possibility that streams (up to the high water mark) can be considered navigable waterways with title resting with the state.** Examples of waterways determined to be navigable in Indiana were cited. For example, in Tippecanoe County, the only waterways determined to be navigable are the Wabash and Tippecanoe Rivers; however, there are many waterways within Tippecanoe County that have the potential for a navigable determination (since they are larger than smaller streams throughout the state that have been determined to be navigable).

Further information on this topic can be found at the following websites:

<http://www.deq.state.mi.us/documents/deq-glm-key-pcu-USACEjurislist.pdf>

http://www.state.in.us/dnr/water/surface_water/DrainageHandbook/pdf/Appdx_G-3.pdf

<http://www.in.gov/legislative/register/20061011-IR-312060440NRA.xml.pdf>

<http://www.in.gov/nrc/2443.htm>

PROGRAM DOCUMENTATION

NAVIGABLE RIVERS

Select Case Law Research for TBIRD Design Corp.
May 2007

- I. *The Daniel Ball* – Supreme Court of the United States – 77 U.S. 557; 19 L. Ed. 999; 1870 U.S. Lexis 1152; 2000 AMC 2106; 10 Wall. 557

This case involved a commercial vessel transporting goods and passengers along the Grand River in the State of Michigan.

- Established that the doctrine of common law as to the navigability of waters has **no** application in this country. The ebb and flow of the tide do **not** constitute the usual test or any test at all of the navigability of waters.
- Established **“Those rivers must be regarded as public navigable rivers in law which are navigable in fact”**
- Established that navigability of rivers is determined by their navigable capacity, 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.
- Distinguished between navigable waters of the United States and navigable waters of the States.
- Asserted that, as related to transportation on the navigable water of the U.S., the court sees no distinct line between authority to regulate interstate commerce versus domestic commerce; i.e. it is not relevant whether commerce takes place across State boundaries or solely within one State.

- II. *The Montello* – Supreme Court of the United States – 87 U.S. 430; 22 L. Ed. 391; 1874 U.S. Lexis 1432; 20 Wall. 430

This case discussed the navigability of the Fox River in southern Wisconsin, which, prior to canal improvement, navigability was embarrassed by rocks, waterfalls, rapids, etc.

- Appended to *The Daniel Ball* that “a river is a navigable water of the United States when it forms by itself, or by its connection with other waters, a continued highway over which commerce is, or may be, carried with other States or foreign countries in the customary modes in which such commerce is conducted by water.
- Established that “the true test of the navigability of a stream does not depend on the mode by which commerce is, or may be, conducted, nor the difficulties attending navigation.
- Furthermore: “It would be a narrow rule to hold that in this country, unless a river was capable of being navigated by steam or sail vessels, it could not be treated as a public highway. The capability of use by the public for purposes of transportation and commerce affords the true criterion of the navigability of a river, rather than the extent and manner of that use. If it be capable in its natural state of being used for purposes of commerce, no matter in what mode the commerce may be conducted, it is navigable in fact, and becomes in law a public river or highway.”

III. *United States v. Holt State Bank et al.* – Supreme Court of the United States – 270 U.S. 49; 46 S. Ct. 197; 70 L. Ed. 465; 1926 U.S. LEXIS 396

This case was brought by the United States to quiet adjainer's title to the bed of a drained lake (Mud Lake) in Minnesota.

- Claimed that: “It is settled law in this country that lands underlying navigable waters within a State belong to the State in its sovereign capacity and may be used and disposed of as it may elect, subject to the paramount power of Congress to control such waters for the purposes of navigation in commerce among the States and with foreign nations, and subject to the qualification that where the United States, after acquiring the territory and before the creation of the State, has granted rights in such lands by way of performing international obligations, or effecting the use or improvement of the lands for the purposes of commerce among the States and with foreign nations, or carrying out other public purposes appropriate to the objects for which the territory was held, such rights are not cut off by the subsequent creation of the State, but remain unimpaired, and the rights which otherwise would pass to the State in virtue of its admission into the Union are restricted or qualified accordingly.
- Cites *Shively v. Bowlby*, which expressed that “the United States early adopted and constantly has adhered to the policy of regarding lands under navigable waters in acquired territory, while under its sole dominion, as held for the ultimate benefit of future States, and so has refrained from making any disposal thereof, save in exceptional instances ...”
- Held that “under the constitutional principle of equality among the several States (Equal Footing Doctrine) the title to the bed ... then passed to the State, if the lake was navigable, and if the bed had not already been disposed of by the United States.
- Expressed that “Navigability, when asserted as the basis of a right arising under the Constitution of the United States, is necessarily a question of federal law to be determined according to the general rule recognized and applied in the federal courts” and cites *Brewer-Elliott Oil & Gas Co. v. United States*

IV. *United States v. Utah* – Supreme Court of the United States – 283 U.S. 64; 51 S. Ct. 438; 75 L. Ed. 844; 1931 U.S. LEXIS 850

This case was brought by the United States to quiet title to land constituting the beds of portions of the Colorado River and its tributaries the San Juan, Green and Grand Rivers in Utah. Apparently the United States claimed title to non-navigable portions of these rivers as it was explicitly defined in Treaty of Guadalupe with Mexico.

- Held that “In accordance with the constitutional principle of the equality of States, the title to the beds of rivers within Utah passed to that State when it was admitted to the Union, if the rivers were then navigable.”
- Held that “the question of navigability ... is a federal question” and that “State laws cannot affect titles vested in the United States.”

V. *Illinois Central Railroad Company v. Illinois* – Supreme Court of the United States – 146 U.S. 387; 13 S.Ct. 110 36 L. Ed. 1018; 1892 U.S. LEXIS 2208

This case came as a result of Illinois State Legislature conveying lands to the Illinois Central Railroad Company. The railroad company then sought to obstruct Lake Michigan by building piers and selling off subdivided land.

- Affirmation of the Public Trust Doctrine
- The ownership of and dominion and sovereignty over lands covered by tide waters, and the fresh waters of the Great Lakes within the limits of the several states, belong to the respective states within which they are found, with the consequent right to use or dispose of any portion thereof, when that can be done without impairment of the interest of the public in the waters, subject to the right of Congress to control their navigation for the regulation of commerce.
- The trust devolving upon the State for the public, and which can only be discharged by the management and control of property in which the public has an interest, cannot be relinquished by a transfer of the property.
- The Legislature of Illinois cannot deprive the State of control over the bed and waters of the harbor of Chicago and place the same in the hands of a private corporation.
- The bed or soil of navigable waters is held by the people of the State in their character as sovereign in trust for public uses for which they are adapted.
- There can be no irrevocable contract in a conveyance of property by a grantor in disregard of a public trust, under which he was bound to hold and manage it.

VI. *State Ex Rel. Indiana Department of Conservation v. Kivett* – Supreme Court of Indiana – 228 Ind. 623; 95 N.E.2d 145; 1950 Ind. LEXIS 177

This case eloquently reaffirms the above Supreme Court decisions as it applies to Indiana Law and adjudicates the question of navigability along a portion of the White River.

Other Relevant Laws / Cases Mentioned

- Ordinance of 1787 for the Government of the Northwest Territory enacted that “The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free as well to the inhabitants of the said Territory as to the citizens of the United States, and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefore.”
- *The Montello* cites *Jolly et al. v. Terre Haute Draw-Bridge Co.* – Circuit Court, D. Indiana – 13 F. Cas. 919; 1853 U.S. App. LEXIS 716; 3 Am. Law Reg. 29; 6 Mc Lean 237
- *United States v. Holt State Bank et al* cites *Barney v. Keokuk*, 94 U.S. 324, 338; *Shively v. Bowlby*, 152 U.S. 1, 47-48, 57-58; *Scott v. Lattig*, 227 U.S. 229, 242; *Port of Seattle v. Oregon & Washington R. R. Co.*, 255 U.S. 56, 63; *Brewer-Elliott Oil & Gas Co. v. United States*, 260 U.S. 77, 83-85.
- *United States v. Oregon*, 295 U.S. 1, 14 asserted that the test of navigability stated in *The Daniel Ball*, although addressed to the navigability of “rivers”, applies to all water courses.
- *Utah v. United States* – Supreme Court of the United States – 403 U.S. 9; 91 S. Ct. 1775; 29 L. Ed. 2d 279; 1971 U.S. LEXIS 31; 2 ERC (BNA) 1759; 1 ELR 20250 stated that if indeed the lake was navigable at the time of statehood, the claim of the State would override any claim of the United States, with the possible exception of a claim based on the doctrine of reliction.
- Sundry Appropriations Act of 1888 (25 Stat 505) (later repealed) permitted the reservation of federal land for reservoir purposes. Sundry Appropriations Act of 1890 is predecessor of 43 USCS 662.
- *Utah Division of State Lands v. United States et al.* – Supreme Court of the United States – 482 U.S. 193; 107 S. Ct. 2318; 96 L. Ed. 2d 162; 1987 U.S. LEXIS 2475; 55 U.S.L.W. 4750 stated that, under the Constitution, the Federal Government could defeat a prospective State’s title to land under navigable waters by a prestatehood conveyance of the land to a private party for a public purpose appropriate to the Territory.
- *Riverfront Protection*, 672 F. 2d at 795 found that a river’s use “need not be without difficulty, extensive, or long and continuous” for the river to be a highway for commerce.
- *Utah v. United States*, 403 U.S. 9, 11 stated that it is not essential that the river be used for the transportation of water-borne freight by a carrier whose purpose is to make money from the transportation.
- *Alaska v. United States*, 754 F.2d 851 stated that “Navigability is a flexible concept and ‘each application of the [Daniel Ball test] ... is apt to uncover variations and refinements which require further elaboration.’”
- *State of Alaska v. Ahtna, Inc. et al* – United States Court of Appeals for the Ninth Circuit – 891 F.2d 1401; 1989 U.S. App. LEXIS 18749; 20 ELR 20745 established the fact of commercial recreation as a present use is evidence of a waterway’s susceptibility of use for commerce.
- See Also Flood Control Act of 1958, Title II of Public Law No. 85-500



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State Ex Rel. **Indiana** Department of Conservation v. **Kivett**

No. 28,645

Supreme Court of Indiana

228 Ind. 623; 95 N.E.2d 145; 1950 Ind. LEXIS 177

November 14, 1950, Filed

PRIOR HISTORY: [***1]

From the Superior Court of Marion County, Room No. 2, *Hezzie B. Pike*, Judge.

Action by the State of Indiana on the relation of the Indiana Department of Conservation against Wesley Kivett to enjoin defendant from taking sand, gravel, stone and other minerals from the bed of White River and for an accounting of all minerals theretofore removed. From a judgment for defendant, plaintiff appeals.

DISPOSITION: *Reversed* with instructions.

COUNSEL: *J. Emmett McManamon*, Attorney General, *Clyde H. Jones*, Chief Counsel; *Frank A. Wiekling* and *Lloyd C. Wampler*, Deputy Attorneys General, for appellant.

Grafton J. Kivett, of Martinsville; *S. C. Kivett, Sr.*; and *Kivett, Chambers, Vernon & Kivett*, all of Indianapolis, for appellee.

JUDGES: Young, J.

OPINION BY: YOUNG

OPINION: [*625] [**146] Fundamentally this case involves the title to the bed of White River in Morgan County, Indiana, about one and a half miles upstream from the city of Martinsville, Indiana.

The complaint in the case was the usual form to enjoin the appellee from taking sand, gravel, stone and other minerals and substances from the bed of White River for an accounting for all such materials he has heretofore [***2] taken from said stream. To this complaint, the appellee, as defendant, filed answer in denial of all of the allegations thereof and a second paragraph alleging that the Indiana Department of Conservation is without authority to seek to recover money due the said State of Indiana and that the Auditor of State is the proper person to file such suit. Both parties filed a petition for special findings of fact and conclusions of law which were, in due course, handed down.

[*626] The case was submitted on a stipulation of facts and, in the preparation of such stipulation there had evidently been an abundance of investigation by both parties. The facts stipulated are that the west branch of White River in Morgan County, Indiana, ran in a southwesterly direction to a point where it joins the east branch of such White River and that such east branch after being joined by the west branch empties into the Wabash River at a point below the city of Vincennes, Indiana. The appellee owned adjacent land in Morgan County, Indiana, where he has a gravel rig or extractor through which he operates [**147] a drag line with dredge or bucket attached out over and into the bed of White River [***3] and has taken, and is now taking, and threatens to continue to take sand, stone, minerals and other substances from the bed of White River. He was notified on the 9th day of December, 1946, that it was unlawful for him to continue this operation without first procuring a permit therefor from the State of Indiana, and that it would be necessary for him to have a permit if he intended to continue such business.

From about 1821 to about 1855, White River was used for carrying cargoes of mess pork, prime pork, lard, ham shoulders, bulk port, flour, corn, bacon, lumber, venison hams, walnuts and other products from all points on White River in Morgan County to New Orleans, Louisiana. The flat boats ranged in size from boats 50 feet long, 12 feet wide and two feet deep with a capacity of 75,000 pounds, to boats 100 feet long, 20 feet wide, 3 1/2 feet deep and with a carrying capacity of 400,000 pounds. It was only during the months of February, March, April, and sometimes in May, that these barges proceeded down the river to New Orleans. There was evidence that 345 flat boats left Morgan County for New Orleans in the years 1829 to 1853, from which operations they made a net profit of [***4] \$ 1,248,000. Photostatic [*627] copies of letters, records, papers and documents of one Samuel Moore are in evidence, including insurance policies, receipts, letters and papers of said Samuel Moore. In addition to such downstream business, it appears that keelboats ascended the stream via the Wabash and White Rivers as far as Indianapolis, and that at the time of the admission of the State of Indiana into the Union, and for a long time prior thereto, White River had been used as a highway and a mode of travel by Indians, traders, explorers, missionaries and early settlers, and, in 1831, two steamboats reached Indianapolis via White River, one of which towed a loaded barge. There was also a showing that large cargoes of bacon, flour and salt were shipped down the Ohio River to the Wabash River and thence upstream as far as Indianapolis and there is a report in the record that a 15ton keelboat brought salt from West Virginia to Indianapolis. There were a number of historical documents taken from the Indiana Historical Society. Such use of the river continued until about 1868, when the completion of the Indianapolis and Vincennes Railroad led to the abandonment of the river [***5] as a highway.

Reports by early engineers as to the navigability of White River make no distinction between Morgan, Marion, Johnson and Hamilton Counties, although there was evidence to the effect that in Morgan County there was a 44 per cent increase in the flow of water than at Indianapolis in 1946 and 1947. The use of the stream as a highway has at all times been limited to the flat and keelboats herein described, with the exception of some small craft, which were pushed upstream by poling and, upon two occasions, by small steamboats. That, with the exception of these boats and the canoes, skiffs and bateaux used by Indians, explorers, missionaries, traders and new settlers, all shipments were downstream.

[*628] It is the contention of the appellant that, in final analysis, there is but a single question before this court, i.e., who owns the bed of the west fork of White River in Morgan County? Appellant contends that the answer to this question depends upon the navigability of this stream when Indiana was admitted to the Union in 1816, and that the answer to this question is one to be determined by federal law.

Appellant further contends that it is clear from the record [***6] in the case that said river was available and open in its natural state for use of flatboats and keelboats, which were the usual and ordinary method at that time for transportation of property and passengers. It calls attention to the fact that we must remember that the first steamboat in operation in this country was on the Hudson River in 1807, and that it took a number of years for steamboats to reach remote sections of the country, such as Indiana was at that time. As a result, the natural and reasonable way of travel was by flatboats and keelboats and, when such traffic is shown to have occurred on White River, that is tantamount to a finding that White River, at that time, was navigable.

[**148] In *United States v. Holt State Bank* (1925), 270 U.S. 49, it is said:

"It is settled law in this country that lands underlying navigable waters within a State belong to the State in its sovereign capacity and may be used and disposed of as it may elect, subject to the paramount power of Congress to control such waters for the purposes of navigation in commerce among the states and with foreign nations, . . ."

In *United States v. Utah* (1931), 283 U.S. 64, [***7] it is said:

[*629] "In accordance with the Constitutional principle of the equality of States, the title to the beds of rivers within Utah pass to that State when it was admitted to the Union, if the rivers were then navigable . . ."

"The question of navigability is thus determinative of the controversy and is a federal question."

To the same general effect are *State v. Longyear Holding Company et al.*, (1947), 224 Minn. 451, 29 N. W. 2d 657;

United States v. Oregon (1934), 295 U.S. 1-14; *Berney v. Keokuk* (1876), 94 U.S. 324.

Whether or not the waters of a state are navigable presents a question which must be decided under federal law and, under federal law, the rule is that a river is navigable in law which is navigable in fact. *The Daniel Ball* (1870), 77 U.S. (10 Wall.) 557; *Economy Light & Power Co. v. United States* (1921), 256 U.S. 113; *United States v. Appalachian Electric Power Co.* (1940), 311 U.S. 377; *Shively v. Bowlby* (1894), 152 U.S. 1.

Indiana is a part of the territory covered by an Ordinance of Congress of 1787, in which is found this language:

". . . The navigable waters leading into the Mississippi [***8] and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory, as to the citizens of the United States, and those or any other states that may be admitted into the confederacy, without any tax, impost, or duty therefore." (Vol. 1, p. 288, Burns' 1933.)

Whether or not a stream is navigable is an issue of fact and depends upon whether or not it was available and was susceptible for navigation according to the general rules of river transportation at the time Indiana was admitted to the Union. It does [*630] not depend upon whether it is now navigable, and the Supreme Court of the United States has held that such a test is not the fair one. *United States v. Holt State Bank, supra*; *United States v. Oregon, supra*; *Economy Light and Power Company v. United States, supra*; *United States v. Appalachian Electric Power Co., supra*; *Shively v. Bowlby, supra*.

So it seems that the correct test for determining the navigability of White River is whether or not it was susceptible and available for such use when the State was admitted to the union and it, therefore, is not material [***9] if upstream traffic offered difficulties. The true test seems to be the capacity of the stream, rather than the manner or extent of use. *The Montello* (1874), 20 Wall. 430, 22 L. Ed. 391; *United States v. Utah, supra*; *Economy Light and Power Co. v. United States, supra*. And the mere fact that the presence of sandbars or driftwood or stone, or other objects, which at times renders the stream unfit for transportation, does not destroy its actual capacity and susceptibility for that use. *Economy Light and Power Co. v. United States, supra*; *United States v. Utah, supra*.

It seems to follow from the authorities above cited, that Indiana, by virtue of the Ordinance of 1787, acquired title to the beds of the navigable waters of the State when Indiana, in fact, became a State and took what rights the Northwest Territory had in said area. If White River was susceptible of navigation, or available for navigation in 1816, it follows that the fee simple title to the beds of natural navigable streams passed to the State and the State could not part with title to such real estate, except by an act of the Legislature. There has been no act of the Legislature upon [***10] [**149] which appellee depends to which our attention has been called. He obtained his title [*631] through a patent from the Federal government. After these remote grants the plaintiff never received a patent for any of the lands forming the bed of White River, and never was assessed, and never paid any taxes upon such land.

In connection with this discussion, we would like to call attention to two or three cases which seem to us to be pretty decisive of the case before us. In *United States v. Utah, supra*, there was an original suit by the United States to quiet title to land constituting the beds of the Colorado River and its tributaries, where they flow through the State of Utah. The matter was referred to a special master, to whose report exceptions were filed. Mr. Chief Justice Hughes delivered the opinion of the court, in the course of which he used the following language:

"The controversy is with respect to certain facts, and the sufficiency of the basis of fact for a finding of navigability, rather than in relation to the general principles of law that are applicable. In accordance with the constitutional principle of the equality of states, *the [***11] title to the beds of rivers within Utah passed to that state when it was admitted to the Union, if the rivers were then navigable*; and if, they were not then navigable, the title to the river beds remained in the United States. . . ." (Our italics.)

"The test of navigability has frequently been stated by this Court. In *The Daniel Ball*, 10 Wall. 557, 563, the Court said: '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.' In *The Montello*, 20 Wall. 430, 441, 442, it was pointed out that 'the true test of the navigability of a stream does not depend on the mode by which commerce is, or may be, conducted, [*632] nor the difficulties attending navigation,' and that 'it would be a narrow rule to hold that in this country, unless a river was capable of being navigated by steam or sail vessels, it could not be treated as a public highway.' The principles thus laid down have recently

been [***12] restated in *United States v. Holt State Bank*, 270 U.S. 49, 56, where the Court said:

"The rule long since approved by this Court in applying the Constitution and laws of the United States is that streams or lakes which are navigable in fact must be regarded as navigable in law; that they are navigable in fact when they are used, or are susceptible of being used, in their natural and 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; and further that navigability does not depend on the particular mode in which such use is or may be had -- whether by steamboats, sailing vessels or flatboats -- nor on an absence of occasional difficulties in navigation, but on the fact, if it be a fact, that the stream in its natural and ordinary condition affords a channel for useful commerce."

"Recognizing the difficulties which are thus created, the master is plainly right in his conclusion that the mere fact of the presence of such sandbars causing impediments to navigation does not make a river non-navigable. It is sufficient to refer to the well-known conditions on the Missouri River [***13] and the Mississippi River. The presence of sandbars must be taken in connection with other facts making for navigability. In *The Montello, supra*, the Court said (p. 443): 'Indeed, there are but few of our fresh-water rivers which did not originally present serious obstructions to an uninterrupted navigation. In some cases, like the Fox River, they may be so great while they last as to prevent the use of the best instrumentalities for carrying on commerce, but the vital and essential point is whether the natural navigation of the river is such that it affords a channel for useful commerce. If this be so the river is navigable in fact, although [**150] its navigation may be encompassed with difficulties by reason of natural barriers such as rapids and sandbars.'"

[*633] We also call attention to the case of *United States v. Holt State Bank, supra*, wherein, on page 54, the court uses the following language:

"It is settled law in this country that lands underlying navigable waters within a State belong to the State in its sovereign capacity and may be used and disposed of as it may elect, . . ."

In the case of *Economy Light & Power Co. v. United [***14] States, supra*, 256 U.S. 113, at page 117 of the opinion, the Court used the following language:

"The District Court found that there was no evidence of actual navigation within the memory of living men, and that there would be no present interference with navigation by the building of the proposed dam. The Circuit Court of Appeals did not disturb this finding. 256 Fed. Rep. 792, 798. But both courts found that in its natural state the river was navigable in fact, and that it was actually used for the purposes of navigation and trading in the customary way, and with the kinds of craft ordinarily in use for that purpose on rivers of the United States, from early fur-trading days (about 1675) down to the end of the first quarter of the nineteenth century."

And on pages 123 and 124, the Court used the following language:

"We concur in the opinion of the Circuit Court of Appeals that a river having actual navigable capacity in its natural state and capable of carrying commerce among the States, is within the power of Congress to preserve for purposes of future transportation, even though it be not at present used for such commerce, and be incapable of such use according [***15] to present methods, either by reason of changed conditions or because of artificial obstructions. . . ."

In addition to the other evidence, above outlined, is the decision of the Supreme Court in the case of *Cutler [*634] v. Cox* (1828), 2 Blackf. 178, and the record in the case of *Robert C. Stalls, etc. v. Grant Stafford, Admr.*, filed in the

Morgan Probate Court, February term, 1844. The first case was brought in trespass on the case and rules from the failure to comply with the terms of an agreement whereby Cox undertook to build a boat to be used in the New Orleans trade. The latter case has to do with the recovery from the administrator certain sums alleged by the plaintiff to be due as his share of partnership assets derived from the building of four boats to be used in freighting goods from Martinsville to New Orleans. There was a photostatic copy of an auction sale published in the Indianapolis Gazette on April 3, 1822, in which there was offered for sale salt and a keelboat of about 18 tons burden. Also there was a photostatic copy of the Indianapolis Journal on April 16, 1831, making rather prominent mention of the arrival at Indianapolis of the [***16] steamboat "General Hanna."

The appellee calls attention to the fact that there is no evidence in the record that there was ever any avulsion or change in the flow of the stream of White River at the place where appellee's gravelpit is located. This is true, but the record shows generally certain avulsions in the flow of the stream of White River, and, if the land of appellee had been included therein, it would have been a perfectly simple matter to have proved it, and, in the absence of such proof, we must assume that there was no such change in the flow of the stream of White River at the place where appellee's land lies.

Appellee also takes the position that in 1816, when Indiana was admitted to the Union, this part of the country was not inhabited, but that the first settlers of Morgan County arrived there in 1818 or 1819, and that the City of Indianapolis was not established until 1820. But this is not material in the decision of this case, for the use of the river a few years [*635] later was sufficient to show its sufficiency and availability in 1816. *United States v. Utah, supra*.

Appellee relies largely upon the theory that White River was not navigable in [***17] 1816 at the place in Morgan County, [**151] which is the scene of the occurrence here involved, and they refer us to the case of *Hardin v. Jordan* (1891), 140 U.S. 371, 35 L. Ed. 428; *Arkansas v. Tennessee* (1918), 246 U.S. 158, 62 L. Ed. 638, and to the case of *Anderson-Tulley Co. v. Tingle* (1948), 166 F. 2d 224. These three cases simply take the position that the land emerging on either side of a navigable stream is a matter to be determined by the laws of each state involved, and in those cases it was held that the several states involved had given the bed of the stream to the owners of the abutting land, which is not the situation before us.

Appellees have cited six Indiana cases which, they say, would require this court to take judicial knowledge of the fact that such streams as White River are not navigable in the sense that the title to the bed and banks belong to the state, and that the trial court could take judicial notice of the fact that White River in Morgan County was not navigable. *Ross v. Faust* (1876), 54 Ind. 471; *Indianapolis Water Co. v. Kingan & Co.* (1900), 155 Ind. 476, 58 N. E. 715; *Illyes v. White River Light, [***18] etc., Co.* (1910), 175 Ind. 118, 123, 93 N. E. 670; *Depew v. Wabash & Erie Canal* (1854), 5 Ind. 8, 12; *Sizor v. The City of Logansport* (1898), 151 Ind. 626, 50 N. E. 377; *Brown v. Powers* (1914), 182 Ind. 145, 150, 104 N. E. 857. These cases, appellee contends, establish a ruling precedent and that under the rule of *stare decisis* have become a fixed part of the law in Indiana. These decisions, they say, have become rules of property and are binding upon strangers to the record.

In *Ross v. Faust, supra*, this court held that it had judicial knowledge of the fact that White River in [*636] Marion County, Indiana, is neither a navigated nor navigable river. This court held in *Indianapolis Water Co. v. Kingan & Co., supra*, that the appellees had produced sufficient evidence in that case that the rights claimed by the Water Company had never been used. Outside of the building of the dam and levee there was neither a taking nor a possession of the river above the dam and held that the use of the river by flowage evidenced no broader claim than a right of flowage; and such a right is a mere easement; and citing *Ross v. Faust, supra*, [***19] held that White River runs through Marion County and is not navigable and that the title should pass, to the thread of a stream, and the title of the adjoining proprietors extends to the thread of the stream. After a discussion of the authorities, this court held that after possession for 20 years the conclusive presumption arises of a grant or right ample enough to protect the possession, and decided the case with the statement that the user by flowage evidenced no broader claim than a right of flowage and such right is a mere easement. In the case of *Illyes v. White River Light & Power Co., supra*, the appellee, by virtue of the act under which it was organized, undertook to condemn land of the appellant and the court said in passing: "White River, in Hamilton County, is not navigable and the title of riparian proprietors extends to the thread of the stream." Again citing *Ross v. Faust*, and *Indianapolis Water Co. v. Kingan & Co., supra*, it was held that the description of the land attempted to be condemned included land to the thread of the stream. It will be observed that in none of these cases was the State of Indiana a party. The appellant, in response [***20] to this, cites the cases of *United States v. Appalachian Electric Power Co.* (1940), *supra*; *Economy Light & Power Co. v. United States, supra*, and the case of [*637] *United States v. Oregon, supra*, and quotes from this case as follows:

"Dominion over navigable waters and property in the soil under them are so identified with the sovereign power of government that a presumption against their separation from sovereignty must be indulged, in construing either grants by the sovereign of the lands to be held in private ownership or transfer of sovereignty itself. See *Massachusetts v. New York*, 271 U.S. 65, 89. For that reason, upon the admission of a State to the Union, the title of the United States to lands [**152] underlying navigable waters

within the States passes to it, as incident to the transfer to the State of local sovereignty, and is subject only to the paramount power of the United States to control such waters for purposes of navigation in interstate and foreign commerce. But if the waters are not navigable in fact, the title of the United States to land underlying them remains unaffected by the creation of the new State. See [***21] *United States v. Utah, supra*, 75; *Oklahoma v. Texas, supra*, 583, 591. Since the effect upon the title to such lands is the result of federal action in admitting a state to the Union, the question, whether the waters within the State under which the lands lie are navigable or non-navigable, is a federal, not a local one. It is, therefore, to be determined according to the law and usages recognized and applied in the federal courts, even though, as in the present case, the waters are not capable of use for navigation in interstate or foreign commerce. *United States v. Holt State Bank*, 270 U.S. 49, 55, 56; *United States v. Utah, supra*, 75; *Brewer-Elliott Oil Co. v. United States*, 260 U.S. 77, 87."

And it is true that all those cases decided was that White River is not or was not at the time of said decision a navigable stream. None of those cases involved land in Morgan County.

It is our conclusion that none of those cases had in them sufficient facts to be able to adjudicate the navigability [*638] of White River in 1816, and that, therefore, none of those cases is pertinent here. As between the parties and proprietors they are [***22] binding, but as between the State of Indiana and those parties they are not binding. We are not disposed to follow them.

In *Bissell Chilled Plow Works v. South Bend Mfg. Co.* (1916), 64 Ind. App. 1, 27, 11 N. E. 932, the Appellate Court in this case said: "The ultimate question here is between two riparian owners and the determination of their rights and duties as between themselves is not an adjudication of any right the public may have to abate any nuisance that may have been created and maintained by either or both of such riparian owners. *McQuiddy v. Ware* (1873), 20 Wall. 14, 22 L. Ed. 311; *City of Logansport v. Uhl* (1885), 99 Ind. 531, 539, 50 Am. Rep. 109; *Indiana, etc., R. Co. v. Eberle* (1887), 110 Ind. 542, 546, 11 N. E. 467; *Ryason v. Dunten* (1904), 164 Ind. 85, 91, 73 N. E. 74; 2 Wood, Nuisance (3d ed.), §§ 801, 802."

The case of *Cox v. State* (1883), 3 Blackf. 193, is presented to us. We will not attempt a detailed analysis of that case. Cox was indicted for obstructing the west branch of White River. He took the position he did it pursuant to a statute of the Legislature. This court, after considerable discussion of [***23] the law, held that the Legislature was without power to pass the statute involved and that Cox acted without authority when he proceeded in conformity thereto. The court held that the river was navigable.

It may be said that we have weighed the evidence in this case. If that be true, we refer to § 2-3229, Burns' 1946 Replacement, wherein it is said that "In all cases not now or hereafter triable by a jury, the Supreme and Appellate Courts shall, if required by the assignment of errors, carefully consider and weigh the evidence [*639] and admissions heard on the trial when the same is made to appear by a bill of exceptions setting forth all the evidence given in the cause, and if, on such appeal, it appears from all the evidence and admissions that the judgment appealed from is not fairly supported by, or is clearly against the weight of the evidence, it shall be the duty of such court to award judgment according to the clear weight of the evidence, and affirm the judgment or return said cause to the trial court with instructions to modify the judgment or to grant a new trial; or to enter such judgment or decree as, to such court of appeal, may seem right and proper upon the [***24] whole case." *Gray, Trustee v. Union Trust Co. of Indianapolis* (1938), 213 Ind. 675, 697, [**153] 12 N. E. 2d 931, 14 N. E. 2d 532; *State Life Insurance Co. v. Cast* (1938), 214 Ind. 17, 13 N. E. 2d 705; *Parkison v. Thompson* (1905), 164 Ind. 609, 619, 73 N. E. 109; *Rooker v. Fidelity Trust Co., Trustee* (1931), 202 Ind. 641, 653, 177 N. E. 454; *Sallee v. Soules* (1907), 168 Ind. 624, 630, 81 N. E. 587; *State, ex rel. v. Board, etc.* (1905), 165 Ind. 262, 271, 74 N. E. 1091.

Where a cause of action is of exclusively equitable jurisdiction and the evidence is entirely in writing, the Supreme Court of this state is authorized by its inherent power and also by statute to render final judgment therein. In *State ex rel. v. Board, etc., supra*, we quote the following language from pages 271 and 272:

"This suit would have been of exclusively equitable jurisdiction under the law of this State prior to June 18, 1852, and belongs to that class of cases in which this court may review both the law and the facts. The evidence in this case being all written, we can judge of its probative force and effect as well as the trial court could, [***25] and are able to ascertain and declare the justice of the case. It is competent for this court, under such circumstances, [*640] both by virtue of its inherent power and by the statute (Acts 1903, p. 338, § 8), to render such a decree in the premises as the justice of the case requires. The evidence being documentary and undisputed, it is manifest that the finding and judgment of the court below are contrary to law, and that a new trial would serve no useful purpose."

Sallee v. Soules, supra, involved an appeal from an interlocutory order appointing a receiver, wherein all the evidence was by affidavit and this court said, on p. 630: "The cause was heard wholly upon affidavits, and we are therefore in a position to weigh and determine for ourselves the weight of the evidence produced. *Hudelson v. Hudelson* (1905), 164 Ind. 694; *State, ex rel. v. Board, etc.* (1905), 165 Ind. 262. We have examined all the proofs submitted, and are satisfied that the action of the trial court is supported by a preponderance of such evidence."

There is no conflict in the written evidence in this case. The only conflict is in the conclusions that may be drawn from same. [***26] Accordingly, we have relied upon the statute which gives us the right to weigh the evidence and direct a verdict in favor of the person entitled to same. We have not overlooked appellee's contention that the conclusions of law are for the appellee and, using the yardstick used by appellee, we recognize that no question could be raised upon the evidence. However, in view of the statute and right of the court to direct a conclusion, we are disposed to do that. We do not think the position of the appellant is applicable in this case. Where the evidence is entirely in writing and the conclusions of law are contrary to what we think just and right, we may, and have elected not to consider further this point raised by appellee.

[*641] The judgment in this case is reversed and same is remanded to the trial court with directions to restate its conclusions of law in favor of appellant and to reopen the case for evidence on the question of damages.

Document 1 of 3. [next](#)▶▶

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APPENDIX E.3

IDNR Roster of Navigable Waterways in Indiana

Check here for the most up to date information:

<http://www.in.gov/legislative/register/20061011-IR-312060440NRA.xml.pdf>

<http://www.in.gov/nrc/2443.htm>

NATURAL RESOURCES COMMISSION
Information Bulletin #3 (Second Amendment)

SUBJECT: Roster of Indiana Waterways Declared Navigable or Nonnavigable

HISTORY: The original bulletin was published at 15 IR 2385 (July 1, 1992). The Natural Resources Commission in March 1997 approved a first revision (published at 20 IR 2920) that superseded the original bulletin. This second revision makes a technical amendment correcting an Internet address and code citations.

A searchable version of this bulletin is available through the Natural Resources Commission Internet Web site at <http://www.in.gov/nrc/policy/navigati.html>.

I. NAVIGABILITY

Property rights relative to Indiana waterways often are determined by whether the waterway is "navigable." Both common law and statutory law make distinctions founded upon whether a river, stream, embayment, or lake is navigable.

A landmark decision in Indiana with respect to determining and applying navigability is *State v. Kivett*, 228 Ind. 629, 95 N.E.2d 148 (1950). The Indiana Supreme Court stated that the test for determining navigability is whether a waterway:

was available and susceptible for navigation according to the general rules of river transportation at the time [1816] Indiana was admitted to the Union. It does not depend on whether it is now navigable.... The true test seems to be the capacity of the stream, rather than the manner or extent of use. And the mere fact that the presence of sandbars or driftwood or stone, or other objects, which at times render the stream unfit for transportation, does not destroy its actual capacity and susceptibility for that use.

A modified standard for determining navigability applies to a body of water that is artificial. The test for a manmade reservoir, or a similar waterway that did not exist in 1816, is whether it is navigable in fact. *Reed v. United States*, 604 F. Supp. 1253 (1984).

The court observed in *Kivett* that "*whether the waters within the State under which the lands lie are navigable or non-navigable, is a federal*" question and is "*determined according to the law and usage recognized and applied in the federal courts, even though*" the waterway may not be "capable of use for navigation in interstate or foreign commerce." Federal decisions applied to particular issues of navigability are useful precedents, regardless of whether the decisions originated in Indiana or another state. The primary issue in *Kivett* was ownership of the riverbed from which the defendant was removing materials. If the waterway was navigable on the date of statehood, title to the bed of the river passed to the state of Indiana and could not ordinarily be conveyed incident to the adjoining riparian property. Also, once a waterway is found to be navigable it remains so, even if the waterway is no longer used for purposes of commercial navigation. *United States v. United States Steel Corporation*, 482 F.2d 439 (7th Cir. 1973).

In the absence of a contrary state boundary, the appropriate line of demarcation for a navigable waterway is the ordinary high watermark. The Indiana Water Resource, Governor's Water Resource Study Commission, State of Indiana (Indiana Department of Natural Resources, 1980), page 107. The Natural Resources Commission has also adopted this standard by rule. [312 IAC 6-1](#). If not navigable, title to the bed of the river passes to the adjacent property owner or owners.

Ownership is not the only issue determined by whether a waterway is navigable. Public recreational and commercial usage of the surface of a river or stream often depends upon whether the water is navigable. Other legal foundations may, however, authorize public usage. A prescriptive easement may exist. A waterway may be a "public freshwater lake" subject to [IC 14-26-2](#) and [312 IAC 11-1](#) through [312 IAC 11-5](#). Pursuant to [IC 14-29-8](#), the Natural Resources Commission may, by rule, declare a waterway to be a "recreational stream."

State legislation also establishes regulatory functions that rest upon a determination of navigability. For example, a permit is typically required from the Indiana Department of Natural Resources before a person can

- place, fill, or erect a permanent structure in;
- remove water from; or
- remove material from;

a navigable waterway. [IC 14-29-1-8](#) and [312 IAC 6](#).

Other notable regulatory standards applicable to navigable waters include [IC 14-18-6](#) (Lake Michigan fills), [IC 14-29-4-5](#) (dedication of channels into navigable waters), [IC 14-19-1-1](#) (general charge of Indiana navigable waters placed in DNR), and [IC 14-29-3](#) (removal of sand and gravel from the beds of navigable waters).

II. ESTABLISHING A ROSTER

Despite the legal significance of determining whether a particular waterway is or is not navigable, a comprehensive roster of Indiana waters declared navigable has not existed. In part, this absence can be explained by the essentially judicial character of the doctrine of navigability. Since a determination of navigability is ultimately based upon a judicial finding which is both waterway and site specific, any roster is subject to

criticism because it is incomplete.

In addition, legislative declarations have identified specific waters as being navigable (or public highways). Although most legislative declarations occurred before 1850, more recently governmental agencies have also determined questions of navigability. Notable examples include the U.S. Army Corps of Engineers, the Federal Energy Regulatory Commission, and, at the state level, the Indiana Natural Resources Commission. A determination by any of these legislative or administrative entities is subject to judicial scrutiny and modification.

Even within these limitations, a roster of waters declared navigable can be productive for efforts to regulate and manage the state's waters. With an understanding that any listing of waterways declared navigable is necessarily imperfect and subject to adjustments as new decisions are made, the roster which follows is intended to aid in the regulatory process and in a general public awareness of waterway usage.

A few explanatory remarks are appropriate to the structure of the roster. A waterway is presumed to be navigable at all points downstream from a determination of navigability. A judicial determination as to whether a particular water is or is not navigable generally supersedes a legislative or administrative decision. Unless otherwise refuted, a legislative determination of navigability is presumed to demonstrate historical usage of a waterway for navigation, and a later statutory repeal does not negate the navigability of the waterway.

A declaration of navigability or nonnavigability must be based upon a primary source. These primary sources are a declaration by a court, the legislature, or an agency with jurisdiction over navigable waters. A waterway declared by a primary source to be nonnavigable is identified in brackets. If a waterway is unlisted, no declaration of navigability or nonnavigability has been located from a primary source.

Secondary sources may be applied to determine the geographic limitations of navigability for a particular waterway. Secondary sources include courthouse records, published county histories, periodicals, newspaper articles, interviews, and similar evidence. For example, in the early 19th century, the Indiana General Assembly sometimes identified a stream as being a public highways downstream from a particular mill. Secondary sources are typically applied to determine where the mill is believed to have been located.

Reported state or federal court decisions are applied in seeking to resolve legal issues of navigability which bear upon particular waters (example: where a navigable river is channelized, the new channel becomes navigable and the former channel loses its navigable character when sedimentation causes the bed to surface). Although this roster does not include citations to the authorities applied in determining navigability, these authorities can be obtained through the Indiana Natural Resources Commission.

Natural Resources Commission
Division of Hearings
Indiana Government Center-South
402 West Washington Street, Room W272
Indianapolis, IN 46204
317-232-4699

III. ROSTER OF INDIANA WATERS DECLARED NAVIGABLE OR NONNAVIGABLE (LISTED BY WATERWAY NAME)

A

Anderson River (including Middle Fork): Navigable in Spencer County from its junction with the Ohio River for 28.4 river miles to the Perry-Spencer county line. The Middle Fork is navigable from its junction with the Anderson River for 3.3 river miles.

Armuth Ditch: See Black Creek.

Arnold Creek: Navigable in Ohio County from its junction with the Ohio River for 4.4 river miles.

B

Baker Creek: Navigable in Spencer County from its junction with Little Pigeon Creek 1.8 river miles.

Bald Knob Creek: Navigable in Perry County from its junction with Oil Creek for 0.5 river miles.

Banbango Creek: See Baugo Creek.

Bangango Creek: See Baugo Creek.

Baugo Creek: Navigable from its junction with the St. Joseph River in South Bend for 15.2 river miles to the main forks (near Wakarusa).

Bayou Creek: Navigable in Vanderburgh County from its junction with the Ohio River for 1.5 river miles.

Beanblossom Creek: Navigable in Monroe County from its junction with the West Fork of the White River for 17.7 river miles to Griffy Creek.

Bear Creek: Navigable in Perry County from its junction with the Ohio River for 1.6 river miles.

Big Blue River: Navigable from its junction with Sugar Creek (to form the Driftwood River) for 55.46 river miles to the Henry-Rush county line.

Big Blue River: See also Blue River.

Big Creek: Navigable in Posey County from its junction with the Wabash River for 25.4 river miles (near Cynthiana). See also Little Fork of Big Creek.

Big Deer Creek: See Deer Creek.

Big Indian Creek: See Indian Creek (Morgan County).

Big Oil Creek: Navigable in Perry County from its junction with the Ohio River for 10.6 river miles.

Big Poison Creek: Navigable in Perry County from its junction with the Ohio River for 6.3 river miles.

Big Raccoon Creek: Navigable from its junction with the Wabash River for 42.35 river miles to the Parke-Putnam county line (now Cecil M. Harden Lake). The dam for Harden Lake is located at river mile 33.7.

Big Saluda Creek: Navigable in Jefferson County from its junction with the Ohio River for 1.0 river miles.

Big Sandy Creek: See Sandy Creek.

Big Vermillion River: Navigable from its junction with the Wabash River for 10.8 river miles to the Illinois state line. (This river is navigable to Carmargo, Illinois.)

Black Creek: Navigable from its junction with the West Fork of the White River (near Edwardsport) for 11.8 river miles (near Marco).

Blue River: Navigable from its junction with the Ohio River for 57.15 river miles to Fredricksburg.

Blue River: See also Big Blue River.

Bryant Creek: Navigable in Switzerland County from its junction with the Ohio River for 2.6 river miles.

Buck Creek: Navigable in Harrison County from its junction with the Ohio River for 5.8 river miles.

Buck Creek: Navigable in Perry County from its junction with the Ohio River for 0.7 river miles.

Buck Run: Navigable in Ohio County from its junction with the Ohio River for 1.1 river miles.

Bull Creek: Navigable in Clark County from its junction with Ohio River for 1.1 river miles.

Bull Hollow: Navigable in Perry County from its junction with Big Oil Creek for 0.7 river miles.

Burns Ditch: See Portage Burns Waterway

Burns Waterway Harbor: Navigable as an extension of Lake Michigan for 1.3 river miles to the Little Calumet River.

Busseron Creek: Navigable from its junction with the Wabash River in Knox County for 20.96 river miles. A channelization and relocation of Busseron Creek is navigable from its junction with the Wabash River in Sullivan County (near Rogers Ditch) for 2.85 river miles to its junction with the original channel.

Busserou Creek: See Busseron Creek.

C

Cagles Mill Lake: See Eel River, and see Mill Creek.

Calumet River: See Grand Calumet River; also Little Calumet River.

Calumet River Canal: See Indiana Harbor Canal.

Cammie Thomas Ditch: Navigable for 7.45 river miles as a channelization of the Muscatatuck River.

Camp Creek: Navigable in Clark County from its junction with the Ohio River for 1.7 river miles.

Caney Branch: Navigable in Perry County from its junction with Big Poison Creek for 0.2 river miles.

Caney Branch: Navigable in Perry County from its junction with Little Deer Creek for 0.8 river miles.

Caney Creek: Navigable in Spencer County from its junction with the Ohio River for 2.8 river miles.

Carman's Creek: See Turman Creek.

Cecil M. Harden Lake: See Big Raccoon Creek.

Clear Creek: Navigable in Monroe County from its junction with Salt Creek for 2.55 river miles (near Harrodsburg).

Clear Creek: Navigable from its junction with Little Pigeon Creek for 2.4 river miles.

Clover Lick Creek: Navigable in Perry County from its junction with Big Oil Creek for 0.7 river miles.

Conns Creek: Navigable (although with private ownership of the creek bed) from its junction with the Flatrock River for 11.5 river miles to the Rush-Shelby county line.

Crooked Creek: Navigable in Spencer County from its junction with the Ohio River for 7.7 river miles.

Cypress Creek (including Cypress Creek Diversion Channel): Navigable in Warrick County from its junction with the Ohio River for 6.6 river miles. (The original bed of Cypress Creek is also navigable west of Cypress Creek Diversion Channel for 1.95 river miles, except where the creek bed has emerged and is no longer inundated.)

D

Deer Creek: Navigable in Perry County from its junction with the Ohio River for 5.9 river miles.

Driftwood River: Navigable from its junction with the East Fork of the White River (near Columbus) 15 river miles to its junction with the Big Blue River (near Edinburgh).

Dry Run Creek: Navigable in Crawford County from its junction with the Big Blue River for 1.4 river miles.

E

East Calumuck River: See Little Calumet River.

East Deer Creek: Navigable in Perry County from its junction with Deer Creek for 0.6 river miles.

East Fork of the White River: Navigable from its junction with the White River 189 river miles to its junction with the Flatrock and Driftwood rivers (near Columbus).

East Fork of the Whitewater River: Navigable from its junction with the Whitewater River for 26.25 river miles to the Union-Wayne county line.

Eel River: Navigable from its junction with the West Fork of the White River for 51.2 river miles to its junction with

Mill Creek (now within Cagles Mill Lake).

Elk Creek: Navigable in Washington County from its junction with the Cammie Thomas Ditch for 3.0 river miles.

F

Fanny Creek: Navigable in Perry County from its junction with the Ohio River for 0.8 river miles.

Fawn River: Navigable for 13.45 river miles within Indiana. The Fawn River has two navigable segments in Indiana, separated by segments in Michigan. Navigability commences at the Indiana-Michigan state line (near Gilmore Lake and two mile south of Sturgis, Michigan) and continues downstream. The Fawn River has been found to be nonnavigable at Greenfield Mills (river mile 32).

Flat Creek: Navigable from its junction with the Patoka River for 12.0 river miles (near Otwell).

Flatrock River: Navigable from its junction with the East Fork of the White River (Columbus) 93 river miles to its uppermost point in Henry County (near Mooreland).

Fourteen Mile Creek: Navigable in Clark County from its junction with the Ohio River for 2.9 river miles.

G

Garrett Creek: Navigable in Spencer County from its junction with the Ohio River for 2.2 river miles.

Goose Creek: Navigable in Switzerland County from its junction with the Ohio River for 1.5 river miles.

Grand Calumet River: Navigable from the Illinois state line (near Hammond) for 15.4 river miles to Marquette Park. (The river is also navigable in Illinois.)

Grants Creek: Navigable in Switzerland County from its junction with the Ohio River for 2.5 river miles.

Great Miami River: Navigable for 1.4 river miles in Dearborn County. (Most of this river lies within Ohio; the Great Miami River has been determined to be navigable from its junction with the Ohio River for 117 river miles. The waterway enters Indiana at two locations.)

H

Harden Lake: See Big Raccoon Creek.

Harris Ditch: Navigable in Posey County from its junction with the Ohio River for 0.9 river miles to Little Pitcher Lake.

Hogan Creek (including North Fork and South Fork): (The Main Stem of) Hogan Creek is navigable in Dearborn County from the junction on the Ohio River for its entire length of 0.4 river miles. The North Fork is navigable from the junction with Hogan Creek for 4.9 river miles. The South Fork is navigable from the junction with Hogan Creek for 5.0 river miles.

Honey Creek: Navigable in Spencer County from its junction with the Ohio River for 1.8 river miles.

Houchins Ditch: See Patoka River.

Hurricane Fork: See Little Fork of Big Creek.

I

Independence Creek: See Indian Creek Harrison County).

Indian Creek: Navigable in Harrison County from its junction with the Ohio River for 4.8 river miles.

Indian Creek: Navigable in Martin County from its junction with the East Fork of the White River for 15.0 river miles to the Lawrence-Martin county line.

Indian Creek: Navigable in Morgan County from its junction with the West Fork of the White River for 3.3 river miles (near Martinsville).

Indian Creek: Navigable in Switzerland County from its junction with the Ohio River for 4.1 river miles.

Indian Fork: Navigable in Perry County from its junction with Big Oil Creek for 1.4 river miles.

Indian-Kentuck Creek: Navigable in Jefferson County from its mouth on the Ohio River for 3.8 river miles.

Indiana Harbor and Ship Canal (including Calumet River Canal and Lake George Canal): The (Main Stem of the) Indiana Harbor and Ship Canal is navigable in Lake County for 3.0 river miles from the Indiana Harbor to where it branches into the Calumet River Canal and the Lake George Canal. The portion of the Main Stem that is ordinarily referred to as the "Indiana Harbor" is lakeward of the historic shoreline of Lake Michigan and is surrounded by manmade land comprising LTV Steel and Inland Steel. The "Ship Canal" (also called the "Indiana Harbor Canal") is the portion of the Main Stem landward of the historic shoreline. The Calumet River Canal is navigable in Lake County from the Indiana Harbor Canal for 1.95 river miles to the Grand Calumet River. The Lake George Canal is navigable in Lake County from the Indiana Harbor Canal for 0.85 river miles (near White Oak Avenue if extended southerly).

Iroquois River: Navigable from the Indiana-Illinois state line for 39 river miles to the Dexter Ditch (near Parr).

Island Branch: Navigable in Ohio County from its junction with the Ohio River for 1.0 river miles.

J

Jackson Creek: Navigable in Spencer County from its junction with the Ohio River for 1.8 river miles.

K

Kankakee River: Navigable from the Indiana-Illinois state line for 86.3 river miles to the Indiana-Michigan state line. (This river is also navigable downstream in Illinois.)

Kelly Bayou: Navigable in Sullivan County from its downstream junction with an oxbow of the Wabash River for 5.8 river miles to its upstream junction with the Wabash River.

Kelly Hollow: Navigable in Perry County from its junction with Millstone Creek for 1.0 river miles.

Kemper Ditch: See Little Calumet River.

Kingly Creek: Navigable in Perry County from its junction with the Ohio River for 0.2 river miles.

Knob Creek: Navigable in Perry County from its junction with the Ohio River for 0.2 river miles.

L

Lake Drain: Navigable in Spencer County from its junction with the Ohio River for 1.6 river miles.

Lake George Canal: See Indiana Harbor Canal.

Lake Michigan: Navigable throughout Indiana.

Lancassange Creek: Navigable in Clark County from its junction with the Ohio River for 0.3 river miles.

Laughery Creek: Navigable from its junction with the Ohio River for 10.8 river miles (near Milton).

Lick Creek: Navigable in Orange County from its junction with the Lost River for 19.5 river miles to Old Spring Mill (near Paoli).

Little Blue River: Navigable in Crawford County from its junction with the Ohio River (near Alton) for 10.6 river miles.

Little Blue River: Navigable from its junction with the Big Blue River (Shelbyville) for 25.6 river miles to its junction with Ball Run.

Little Calumet River: Navigable from the Indiana-Illinois state line for 21.24 river miles to Burns Waterway Harbor, and navigable for an additional 17.75 river miles to its junction (as Kemper Ditch) with Interstate 94. (The river is also navigable in Illinois.)

Little Creek: See Little Fork of Big Creek.

Little Deer Creek: Navigable from its junction with Deer Creek for 3.9 river miles.

Little Fork of Big Creek: Navigable in Posey County from its junction with Big Creek for 5.1 river miles.

Little Oil Creek: Navigable from its junction with Big Oil Creek for 4.4 river miles.

Little Pigeon Creek: Navigable from its junction with the Ohio River for 15.8 river miles.

Little Pitcher Lake: Navigable in Posey County as an extension of Harris Ditch.

Little Raccoon Creek: Navigable in Parke County from its junction with Big Raccoon Creek for 5.3 river miles (Nevins Covered Bridge).

Little River: Navigable from its junction with the Wabash River 20.2 river miles to Ellison Road (near Fort Wayne).

Little Sandy Creek: Navigable in Spencer County from its junction with the Ohio River for 2.0 river miles.

Little Wabash River: See Little River.

Locust Creek: Navigable in Vanderburgh County from its junction with Pigeon Creek for 1.5 river miles.

Log Lick Creek: Navigable in Switzerland County from its junction with the Ohio River for 2.3 river miles.

Lost River: Navigable from its junction with the East Fork of the White River for 48.87 river miles (near Orangeville).

M

McFadden Creek: Navigable in Posey County from its junction with the Ohio River for 2.3 river miles.

Marble Powers Ditch: See Kankakee River.

Maumee River: Navigable from the Indiana-Ohio state line 27.05 river miles to the Hosey Dam, Fort Wayne. (The river is also navigable in Ohio; the river may be alternatively described as navigable to total river mile 134.9. The Indiana-Ohio state line is located at total river mile 107.85.)

Middle Fork of Anderson River: See Anderson River.

Mill Creek: Navigable from its junction with the Eel River (now Cagles Mill Lake) for 32.45 river miles to the Hendricks-Morgan county line. See also Mill Creek Ditch.

Mill Creek: Navigable in Crawford County from its junction with the Little Blue River for 1.4 river miles.

Mill Creek Ditch: Navigable from its junction with Mill Creek upstream for 1.35 river miles to the Hendricks-Morgan county line.

Millstone Creek: Navigable in Perry County from its junction with the Ohio River for 1.4 river miles.

Mississinewa River: Navigable from its junction with the Wabash River for 109.75 river miles to the Indiana-Ohio state line.

Monroe Lake: See Salt Creek.

Mosquito Creek: Navigable in Harrison County from its junction with the Ohio River for 2.8 river miles.

Mud Creek: Navigable from its junction with Mill Creek (near Little Point) for 5.6 river miles to Tudor Road (near Hazelwood).

Muscatatuck River: Navigable from its junction with the East Fork of the White River for 24.25 river miles to the main forks. See also Vernon Fork of Muscatatuck River, South Fork of Muscatatuck River, and Cammie Thomas Ditch.

N

Neglie Creek: Navigable in Perry County from its junction with Little Deer Creek for 0.5 river miles.

North Fork of Hogan Creek: See Hogan Creek.

North Fork of Muscatatuck River: See Vernon Fork of Muscatatuck River.

North Fork of Salt Creek: Navigable from its junction with Salt Creek for 36.7 river miles to its junction with David

Branch (near Nashville).

O

Ohio River: Navigable throughout the state (from total river mile 491.34 to total river mile 848.0).

Oil Creek: See Big Oil Creek.

P

Patoka River: Navigable from its junction with the Wabash River for 146.6 river miles (within Greenfield Township, Orange County).

Pickamink River: Iroquois River.

Pigeon Creek: Navigable from its junction with the Ohio River for 5.9 river miles.

Plum Creek: Navigable in Switzerland County from its junction with the Ohio River for 2.9 river miles.

Poison Creek: See Big Poison Creek.

Portage Burns Waterway: Navigable in its entirety (1.3 river miles) as a connection between the Little Calumet River and Lake Michigan. (The point at which Portage Burns Waterway connects with the Little Calumet River is now considered the separation between the East Branch and the West Branch of the Little Calumet River.)

Potato Run: Navigable in Harrison County from its junction with the Ohio River for 0.4 river miles.

R

Raccoon Creek: See Big Raccoon Creek.

Rock River: See Sugar Creek.

Rider Ditch: Navigable in Jackson County as a channelization of the Vernon Fork of the Muscatatuck River.

S

St. Joseph River: Navigable throughout Indiana (Elkhart and St. Joseph counties) for 39.57 river miles. The river enters Indiana from Michigan and returns to Michigan. (The river is also navigable downstream in Michigan, and the river may be alternatively described as navigable from total river mile 49.93 to total river mile 89.5.)

Salt Creek: Navigable from its junction with the East Fork of the White River into Monroe Lake. See also the North Fork of Salt Creek.

Sample Run: Navigable in Perry County from its junction with the Ohio River for 0.2 river miles.

Sand Creek: Navigable in Switzerland County from its junction with Bryant Creek for 0.9 river miles.

Sand Run: See Sand Creek.

Sandy Creek: Navigable in Spencer County from its junction with the Ohio River for 2.6 river miles.

Silver Creek: Navigable in Clark County from its junction with the Ohio River for 3.0 river miles.

Smart Ditch: Navigable in Jackson County as a channelization of the Muscatatuck River (and the Vernon Fork of the Muscatatuck River).

South Fork of Big Creek: See Little Fork of Big Creek.

South Fork of Hogan Creek: See Hogan Creek.

South Fork of Muscatatuck River: Navigable from its junction with the Muscatatuck River 28.1 river miles to its junction with Graham Creek.

Sugar Creek: Navigable from its junction with the Big Blue River (to form the Driftwood River) for 24.4 river miles (near Boggstown).

Sugar Creek: Navigable from its junction on the Wabash River (near West Union) for 56.83 river miles to the Montgomery-Boone county line.

T

Tanners Creek: Navigable from its junction with the Ohio River in Lawrenceburg for 10.6 river miles.

Tate's Hollow: Navigable in Perry County from its junction with the Ohio River for 0.3 river miles.

Thomas Ditch: See Cammie Thomas Ditch.

Tippecanoe River: Navigable from its junction with the Wabash River in Tippecanoe County for 32.0 river miles to the Norway Dam that forms Lake Shafer in White County. [Added October 2000 by the NRC based on recent decision from the Federal Energy Regulatory Commission.]

Trail Creek: Navigable in LaPorte County from its junction with Lake Michigan for 1.0 river miles. For purposes of this delineation, the shoreline of Lake Michigan is identified at the approximate site of the Franklin Street "Draw" Bridge.

Turman Creek: Navigable in Sullivan County from its junction with the Wabash River for 7.9 river miles (near Dodds Bridge).

Turtle Creek: Navigable in Switzerland County from its junction with the Ohio River for 1.3 river miles.

Twin Creek: Navigable in Washington County from its junction with the East Fork of the White River for 7.98 river miles to the Cox Ferry Road Bridge near the Jefferson-Brown township line.

V

Vermillion River: See Big Vermillion River.

Vernon Fork of Muscatatuck River: Navigable from its junction with the Muscatatuck River for 39.3 river miles to Vernon (S.R. 7). See also Rider Ditch.

W

Wabash River: Navigable from its junction with the Ohio River for 441.9 river miles to the Wells-Adams county

line.

Webb Branch: Navigable in Perry County from its junction with Big Oil Creek for 0.9 river miles.

West Fork of the White River: Navigable from its junction with the White River 277 river miles to Smithfield, Delaware County.

West Fork of the Whitewater River: Navigable from its junction with the Whitewater River for 64.3 river miles to the three forks (near Connersville).

White River: Navigable from its junction with the Wabash River for 49.5 river miles to where it branches into the East Fork of the White River and the West Fork of the White River.

Whitewater River: Navigable from the Ohio state line for 29.65 river miles to where it branches into the East Fork of the Whitewater River and the West Fork of the Whitewater River. (The river is also navigable downstream in Ohio; the river may be alternatively described as navigable from total river mile 7.9 to total river mile 96.9.)

Wilson Creek: Navigable in Dearborn County from its junction with the Ohio River for 1.9 river miles.

Y

Yellow River: Navigable from its junction with the Kankakee River for 41.0 river miles to Plymouth.

IV. ROSTER OF INDIANA WATERS DECLARED NAVIGABLE OR NONNAVIGABLE (LISTED BY COUNTY NAME)

A

Adams County

- (1) [St. Marys River: Nonnavigable.]
- (2) [Wabash River: Nonnavigable.]

Allen County

- (1) Little River: Navigable from its junction with the Wabash River 20.2 river miles to Ellison Road.
- (2) Maumee River: Navigable from the Indiana-Ohio state line 27.05 river miles to the Hosey Dam (Fort Wayne).
- (3) [St. Mary's River: Nonnavigable.]

B

Bartholomew County

- (1) Driftwood River: Navigable from its junction with the East Fork of the White River (Columbus) to the county line.
- (2) East Fork of White River: Navigable from the county line to its junction with the Driftwood and Flatrock rivers (Columbus).
- (3) Flatrock River: Navigable from its junction with the East Fork of the White River (Columbus) to the county line.

Benton County

No waterway has been declared navigable or nonnavigable.

Blackford County

No waterway has been declared navigable or nonnavigable.

Boone County

No waterway has been declared navigable or nonnavigable.

Brown County

- (1) North Fork of Salt Creek: Navigable from its junction with Salt Creek for 36.7 river miles to its junction with David Branch (near Nashville).
- (2) Salt Creek: Navigable from its junction with the East Fork of the White River into Lake Monroe.

C

Carroll County

- (1) Tippecanoe River: Navigable throughout the county.
- (2) Wabash River: Navigable throughout the county.

Cass County

- (1) Wabash River: Navigable throughout the county.

Clark County

- (1) Bull Creek: Navigable from its junction with the Ohio River for 1.1 river miles.
- (2) Camp Creek: Navigable from its junction with the Ohio River for 1.7 river miles.
- (3) Fourteen Mile Creek: Navigable from its junction with the Ohio River for 2.9 river miles.
- (4) Lancassange Creek: Navigable from its junction with the Ohio River for 0.3 river miles.
- (5) Ohio River: Navigable throughout the county.
- (6) Silver Creek: Navigable from its junction with the Ohio River for 3.0 river miles.

Clay County

- (1) Eel River: Navigable throughout the county.

Clinton County

No waterway has been declared navigable or nonnavigable.

Crawford County

- (1) Big Blue River: Navigable throughout the county.
- (2) Dry Run Creek: Navigable from its junction with the Big Blue River for 1.4 river miles.
- (3) Little Blue River: Navigable from its junction with the Ohio River for 10.6 river miles.
- (4) Mill Creek: Navigable from its junction with the Little Blue River for 1.4 river miles.
- (5) Ohio River: Navigable throughout the county.

D

Daviess County

- (1) East Fork of the White River: Navigable throughout the county.
- (2) West Fork of the White River: Navigable throughout the county.

Dearborn County

- (1) Great Miami River: Navigable throughout the county.
- (2) Hogan Creek (including North Fork and South Fork): Hogan Creek (Main Stem) is navigable from its junction with the Ohio River for the entire length (0.4 river miles). The North Fork of Hogan Creek is navigable from its junction with Hogan Creek for 4.9 river miles. The South Fork of Hogan Creek is navigable from its junction with Hogan Creek for 5.0 river miles.
- (3) Laughery Creek: Navigable from its junction with the Ohio River for 10.8 river miles (near Milton).
- (4) Ohio River: Navigable throughout the county.
- (5) Tanners Creek: Navigable from its junction with the Ohio River in Lawrenceburg for 10.6 river miles.
- (6) Whitewater River: Navigable throughout the county.
- (7) Wilson Creek: Navigable from its junction with the Ohio River for 1.9 river miles.

Decatur County

- (1) Flatrock River: Navigable throughout the county.

DeKalb County

No waterway has been declared navigable or nonnavigable.

Delaware County

- (1) Mississinewa River: Navigable throughout the county.
- (2) West Fork of the White River: Navigable to Smithfield.

Dubois County

- (1) Flat Creek: Navigable from its junction with the Patoka River throughout the county.
- (2) East Fork of the White River: Navigable throughout the county.
- (3) Patoka River: Navigable throughout the county.

E

Elkhart County

- (1) Baugo Creek (formerly Banbango or Bangango Creek): Navigable from its junction with the St. Joseph River in South Bend for 15.2 river miles to the main forks (near Wakarusa).
- (2) St. Joseph River: Navigable throughout the county.

F

Fayette County

- (1) West Fork of the Whitewater River: Navigable to the three forks (near Connersville).

Floyd County

- (1) Ohio River: Navigable throughout the county.
- (2) Silver Creek: Navigable from its junction with the Ohio River for 3.0 river miles.

Fountain County

- (1) Wabash River: Navigable throughout the county.

Franklin County

- (1) East Fork of the Whitewater River: Navigable throughout the county from its junction with the Whitewater River.
- (2) West Fork of the Whitewater River: Navigable throughout the county from its junction with the Whitewater River.
- (3) Whitewater River: Navigable throughout the county.

Fulton County

No waterway has been declared navigable or nonnavigable. There is a discussion of navigability relative to a determination that Nyona Lake as a public freshwater lake in *Bath v. Courts*, Ind. App., 459 N.E.2d 72 (1984).

G

Gibson County

- (1) Patoka River (also known as Houchins Ditch): Navigable throughout the county from its junction with the Wabash River.
- (2) Wabash River: Navigable throughout the county.
- (3) White River: Navigable throughout the county from its junction on the Wabash River.

Grant County

- (1) Mississinewa River: Navigable throughout the county.

Greene County

- (1) Black Creek: Navigable to near Marco.
- (2) Eel River: Navigable throughout the county from its junction with the West Fork of the White River.
- (3) West Fork of the White River: Navigable throughout the county.

H

Hamilton County

- (1) West Fork of the White River: Navigable throughout the county.

Hancock County

- (1) Big Blue River: Navigable throughout the county.

Harrison County

- (1) Big Blue River: Navigable throughout the county from its junction with the Ohio River.
- (2) Buck Creek: Navigable 5.8 river miles from its junction with the Ohio River.
- (3) Indian Creek: Navigable 4.8 river miles from its junction with the Ohio River.
- (4) Mosquito Creek: Navigable 2.8 river miles from its junction with the Ohio River.
- (5) Ohio River: Navigable throughout the county.
- (6) Potato Run: Navigable 0.4 river miles from its junction with the Ohio River.

Hendricks County

- (1) Mud Creek: Navigable to Tudor Road (near Hazelwood).

Henry County

- (1) Flatrock River: Navigable throughout the county.

Howard County

No waterway has been declared navigable or nonnavigable.

Huntington County

- (1) [Huntington Lake: Nonnavigable for interstate commerce.]
- (2) Little River: Navigable throughout the county from its junction on the Wabash River.
- (3) Wabash River: Navigable throughout the county.

J

Jackson County

- (1) East Fork of White River: Navigable throughout the county.
- (2) Muscatatuck River: Navigable throughout the county.

Jasper County

- (1) Iroquois River: Navigable to near Parr.
- (2) Kankakee River: Navigable throughout the county.

Jay County

No waterway has been declared navigable or nonnavigable.

Jefferson County

- (1) Big Saluda Creek: Navigable 1.0 river miles from its junction with the Ohio River.
- (2) Indian-Kentuck Creek: Navigable 3.8 river miles from its junction with the Ohio River.
- (3) Ohio River: Navigable throughout the county.

Jennings County

- (1) Muscatatuck River: Navigable to the main forks.

Johnson County

- (1) Big Blue River: Navigable throughout the county.
- (2) East Fork of White River: Navigable to its junction with the Flatrock and Driftwood rivers.
- (3) Sugar Creek: Navigable from its junction with the Big Blue River (to form the Driftwood River) throughout the county.
- (4) West Fork of White River: Navigable throughout the county.

K

Knox County

- (1) Black Creek: Navigable from its junction with the West Fork of the White River (near Edwardsport) throughout the county.
- (2) Busseron Creek: Navigable throughout the county.
- (3) Wabash River: Navigable throughout the county.
- (4) West Fork of White River: Navigable throughout the county from its junction with the White River.
- (5) White River: Navigable throughout the county from its junction with the Wabash River.

Kosciusko County

- (1) [Tippecanoe Lake: Nonnavigable.]

L

Lagrange County

- (1) Fawn River: Two segments of the river are navigable in Lagrange County. These segments are separated

by portions of the river in Michigan. The Fawn River has been found to be nonnavigable at Greenfield Mills (river mile 32).

Lake County

- (1) Grand Calumet River: Navigable from the Illinois state line (near Hammond) to Marquette Park.
- (2) Indiana Harbor and Ship Canal: Navigable throughout the county.
- (3) Kankakee River: Navigable throughout the county.
- (4) Lake Michigan: Navigable throughout the county.
- (5) Little Calumet River: Navigable throughout the county.
- (6) [Wolf Lake: Nonnavigable.]

LaPorte County

- (1) Kankakee River: Navigable throughout the county.
- (2) Lake Michigan: Navigable throughout the county.
- (3) Trail Creek: Navigable 1.0 river miles from its junction with Lake Michigan.
- (4) [Unnamed Lake: Located in the north one-half of section 8, township 36 north, range 1 west is a nonnavigable lake.]

Lawrence County

- (1) East Fork of White River: Navigable throughout the county.
- (2) Salt Creek: Navigable from its junction with the East Fork of White River throughout the county.

M

Madison County

- (1) West Fork of White River: Navigable throughout the county.

Marion County

- (1) West Fork of the White River: Navigable throughout the county.

Marshall County

- (1) Yellow River: Navigable to Plymouth.

Martin County

- (1) East Fork of White River: Navigable throughout the county.
- (2) Indian Creek: Navigable throughout the county.
- (3) Lost River: Navigable from its junction with East Fork of the White River.

Miami County

- (1) Mississinewa River: Navigable throughout the county.
- (2) Wabash River: Navigable throughout the county.

Monroe County

- (1) Beanblossom Creek: Navigable to Griffy Creek.
- (2) Clear Creek: Navigable to near Harrodsburg.
- (3) North Fork of Salt Creek: Navigable from its junction with Salt Creek (within Lake Monroe) throughout the county.
- (4) Salt Creek: Navigable into Lake Monroe.
- (5) West Fork of White River: Navigable throughout the county.

Montgomery County

- (1) Sugar Creek: Navigable throughout the county.

Morgan County

- (1) Indian Creek: Navigable from its junction with the West Fork of the White River for 3.3 river miles.
- (2) [Lamb's Creek: Nonnavigable.]
- (3) Mill Creek: Navigable throughout the county.
- (4) Mill Creek Ditch: Navigable throughout the county.
- (5) Mud Creek: Navigable from its junction with Mill Creek throughout the county.
- (6) West Fork of White River: Navigable throughout the county.

N

Newton County

- (1) Iroquois River: Navigable throughout the county.
- (2) Kankakee River: Navigable throughout the county.

Noble County

No waterway has been declared navigable or nonnavigable.

O

Ohio County

- (1) Arnold Creek: Navigable from its junction with the Ohio River for 4.4 river miles.
- (2) Buck Run: Navigable from its junction with the Ohio River for 1.1 river miles.
- (3) Island Branch: Navigable from its junction with the Ohio River for 1.0 river miles.
- (4) Laughery Creek: Navigable throughout the county.
- (5) Ohio River: Navigable throughout the county.

Orange County

- (1) Lick Creek: Navigable downstream from Old Spring Mill (near Paoli).
- (2) Lost River: Navigable to near Orangeville.
- (3) Patoka River: Navigable within Greenfield Township and downstream.

Owen County

- (1) Cagles Mill Lake: Navigable throughout the county.
- (2) Eel River: Navigable to Cagles Mill Lake.
- (3) Mill Creek: See Cagles Mill Lake.
- (4) West Fork of White River: Navigable throughout the county.

P

Parke County

- (1) Big Raccoon Creek: Navigable throughout the county.
- (2) Little Raccoon Creek: Navigable from its junction with Big Raccoon Creek for 5.3 river miles (Nevins Covered Bridge).
- (3) Cecil M. Harden Lake: See Big Raccoon Creek.
- (4) Sugar Creek: Navigable throughout the county.
- (5) Wabash River: Navigable throughout the county.

Perry County

- (1) Anderson River: Navigable from its junction with the Ohio River along the Spencer County line.
- (2) Bald Knob Creek: Navigable from its junction with Big Oil Creek for 0.5 river miles.
- (3) Bear Creek: Navigable from its junction with the Ohio River for 1.6 river miles.
- (4) Big Deer Creek: Navigable from its junction with the Ohio River for 5.9 river miles. See Deer Creek.
- (5) Big Oil Creek (including Webb Branch): Navigable from its junction with the Ohio River for 10.6 river miles. Webb Branch is navigable from its junction on Big Oil Creek for 0.9 river miles.
- (6) Big Poison Creek: Navigable from its junction with the Ohio River for 6.3 river miles.
- (7) Buck Creek: Navigable from its junction with the Ohio River for 0.7 river miles.
- (8) Bull Hollow: Navigable from its junction with Big Oil Creek for 0.7 river miles.
- (9) Caney Branch of Big Poison Creek: Navigable from its junction with Big Poison Creek for 0.2 river miles.
- (10) Caney Branch of Little Deer Creek: Navigable from its junction with Little Deer Creek for 0.8 river miles.
- (11) Clover Lick Creek: Navigable from its junction with Big Oil Creek for 0.7 river miles.
- (12) Deer Creek: Navigable from its junction with the Ohio River for 5.9 river miles.
- (13) East Deer Creek: Navigable from its junction with Deer Creek for 0.6 river miles.
- (14) Fanny Creek: Navigable from its junction with the Ohio River for 0.8 river miles.
- (15) Indian Fork: Navigable from its junction with Big Oil Creek for 1.4 river miles.
- (16) Kelly Hollow: Navigable from its junction with Millstone Creek for 1.0 river miles.
- (17) Kingly Creek: Navigable from its junction with the Ohio River for 0.2 river miles.
- (18) Knob Creek: Navigable from its junction with the Ohio River for 0.2 river miles.
- (19) Little Deer Creek (also known as West Fork of Deer Creek): Navigable from its junction with Deer Creek for 3.9 river miles.
- (20) Little Oil Creek: Navigable from its junction with Big Oil Creek for 4.4 river miles.
- (21) Little Poison Creek: Navigable from its junction with Big Poison Creek for 1.2 river miles.
- (22) Millstone Creek: Navigable from its junction with the Ohio River for 1.4 river miles.
- (23) Neglie Creek: Navigable from its junction with Little Deer Creek for 0.5 river miles.
- (24) Ohio River: Navigable throughout the county.
- (25) Oil Creek: See Big Oil Creek.
- (26) Poison Creek: See Big Poison Creek.
- (27) Sample Run: Navigable from its junction with the Ohio River for 0.2 river miles.
- (28) Tates Hollow: Navigable from its junction with the Ohio River for 0.3 river miles.
- (29) Webb Branch: See Big Oil Creek.

Pike County

- (1) East Fork of White River: Navigable throughout the county.
- (2) Flat Creek: Navigable downstream from a point in Franklin Township.
- (3) Patoka River: Navigable throughout the county.
- (4) White River: Navigable throughout the county.

Porter County

- (1) Burns Ditch: See Portage Burns Waterway.
- (2) Portage Burns Waterway: Navigable in its entirety (1.3 river miles) as a connection between the Little Calumet River and Lake Michigan.
- (3) Kankakee River: Navigable throughout the county.
- (4) Lake Michigan: Navigable throughout the county.
- (5) Little Calumet River: Navigable throughout the county.

Posey County

- (1) Big Creek: Navigable from its junction with the Wabash River for 25.4 river miles (near Cynthiana).
- (2) Harris Ditch: Navigable from its junction with the Ohio River for 0.9 river miles.
- (3) Hurricane Fork: See Little Fork of Big Creek.
- (4) Little Fork of Big Creek: Navigable from its junction with Big Creek for 5.1 river miles.
- (5) Little Pitcher Lake: Navigable as an extension of Harris Ditch.
- (6) South Fork: See Little Fork of Big Creek.
- (7) McFadden Creek: Navigable from its junction with the Ohio River for 2.3 river miles.
- (8) Ohio River: Navigable throughout the county.
- (9) Wabash River: Navigable from its junction with the Ohio River throughout the county.

Pulaski County

No waterway has been declared navigable or nonnavigable.

Putnam County

- (1) Cagles Mill Lake: See Eel River, and see Mill Creek.
- (2) Eel River: Navigable upstream to its junction with Mill Creek (now within Cagles Mill Lake).
- (3) Mill Creek: Navigable throughout the county.

R

Randolph County

- (1) Mississinewa River: Navigable throughout the county.

Ripley County

No waterway has been declared navigable or nonnavigable.

Rush County

- (1) Big Blue River: Navigable throughout the county.
- (2) Flatrock River: Navigable throughout the county.
- (3) Little Blue River: Navigable downstream from its junction with Ball Run in Posey Township.

S

St. Joseph County

- (1) Baugo Creek (formerly Banbango Creek): Navigable from its junction with the St. Joseph River throughout the county.
- (2) Kankakee River: Navigable throughout the county.
- (3) St. Joseph River: Navigable throughout the county.

Scott County

- (1) Cammie Thomas Ditch: Navigable as a channelization of the Muscatatuck River.
- (2) Muscatatuck River: Navigable throughout the county.
- (3) South Fork of Muscatatuck River: Navigable from its junction with the Muscatatuck River upstream to its junction with Graham Creek at river mile 28.1.

Shelby County

- (1) Big Blue River: Navigable throughout the county.
- (2) Conns Creek: Navigable from its junction with the Flatrock River throughout the county (but with private ownership of the creek bed).
- (3) Flatrock River: Navigable throughout the county.
- (4) Little Blue River: Navigable from its junction with the Big Blue River (Shelbyville) throughout the county.
- (5) Sugar Creek: Navigable to Hough Cemetery (near Boggstown).

Spencer County

- (1) Anderson River: Navigable from its junction with the Ohio River throughout the county.
- (2) Baker Creek: Navigable from its junction with Little Pigeon Creek for 1.8 river miles.
- (3) Caney Creek: Navigable from its junction with the Ohio River for 2.8 river miles.
- (4) Clear Creek: Navigable from its junction with Little Pigeon Creek for 2.4 river miles.
- (5) Crooked Creek: Navigable from its junction with the Ohio River for 7.7 river miles.
- (6) Garrett Creek: Navigable from its junction with the Ohio River for 2.2 river miles.
- (7) Honey Creek: Navigable from its junction with the Ohio River for 1.8 river miles.
- (8) Jackson Creek: Navigable from its junction with the Ohio River for 1.8 river miles.
- (9) Lake Drain: Navigable from its junction with the Ohio River for 1.6 river miles.
- (10) Little Pigeon Creek: Navigable from its junction with the Ohio River for 15.8 river miles.
- (11) Little Sandy Creek: Navigable from its junction with the Ohio River for 2.0 river miles.
- (12) Ohio River: Navigable throughout the county.
- (13) Sandy Creek: Navigable from its junction with the Ohio River for 2.6 river miles.

Starke County

- (1) Kankakee River: Navigable throughout the county.
- (2) Yellow River: Navigable from its junction with the Kankakee River throughout the county.

Steuben County

No waterway has been declared navigable or nonnavigable.

Sullivan County

- (1) Busseron Creek: Navigable to near Caledonia.
- (2) Kelly Bayou: Navigable from its downstream junction with an oxbow of the Wabash River to its upstream junction of the Wabash River.
- (3) Turman Creek: Navigable from its junction on the Wabash River for 7.9 river miles.
- (4) Wabash River: Navigable throughout the county.

Switzerland County

- (1) Bryant Creek: Navigable from its junction with the Ohio River for 2.6 river miles.
- (2) Goose Creek: Navigable from its junction with the Ohio River 1.5 river miles.
- (3) Grants Creek: Navigable from its junction with the Ohio River for 2.5 river miles.
- (4) Indian Creek: Navigable from its junction with the Ohio River for 4.1 river miles.
- (5) Log Lick Creek: Navigable from its junction with the Ohio River for 2.3 river miles.
- (6) Ohio River: Navigable throughout the county.
- (7) Plum Creek: Navigable from its junction with the Ohio River for 2.9 river miles.
- (8) Sand Creek: Navigable from its junction with the Ohio River for 0.9 river miles.
- (9) Turtle Creek: Navigable from its junction with the Ohio River for 1.3 river miles.

T

Tippecanoe County

- (1) Tippecanoe River: Navigable from its junction with the Wabash River.
- (2) Wabash River: Navigable throughout the county.

Tipton County

No waterway has been declared navigable or nonnavigable.

U

Union County

- (1) East Fork of Whitewater River: Navigable throughout the county.

V

Vanderburgh County

- (1) Bayou Creek: Navigable from its junction with the Ohio River for 1.5 river miles.
- (2) Locust Creek: Navigable from its junction with Pigeon Creek for 1.5 river miles.
- (3) Ohio River: Navigable throughout the county.
- (4) Pigeon Creek: Navigable from its junction with the Ohio River for 5.9 river miles.

Vermillion County

- (1) Big Vermillion River: Navigable for 10.8 miles from its junction with the Wabash River throughout the county (and for a total of 22.6 river miles to Carmargo, Illinois).
- (2) Wabash River: Navigable throughout the county.

Vigo County

- (1) Wabash River: Navigable throughout the county.

W

Wabash County

- (1) Mississinewa River: Navigable throughout the county.
- (2) Wabash River: Navigable throughout the county.

Warren County

- (1) Wabash River: Navigable throughout the county.

Warrick County

- (1) Baker Creek: Navigable from its junction with Little Pigeon Creek for 1.8 river miles.
- (2) Big Pigeon Creek: See Pigeon Creek.
- (3) Clear Creek: Navigable from its junction with Little Pigeon Creek for 2.4 river miles.
- (4) Cypress Creek (including Cypress Creek Diversion Channel): Navigable from its junction with the Ohio River for 6.6 river miles. (The original bed of Cypress Creek is also navigable west of Cypress Creek Diversion Channel, except where the creek bed has emerged and is no longer inundated.)
- (5) Little Pigeon Creek: Navigable from its junction on the Ohio River for 15.8 river miles.
- (6) Ohio River: Navigable throughout the county.

Washington County

- (1) Big Blue River: Navigable to the town of Fredricksburg at river mile 57.2.
- (2) Cammie Thomas Ditch: Navigable as a channelization of the Muscatatuck River.
- (3) East Fork of White River: Navigable throughout the county.
- (4) Elk Creek: Navigable from its junction with the Cammie Thomas Ditch to river mile 3.0.
- (5) Muscatatuck River: Navigable from its junction with the East Fork of the White River throughout the county.
- (6) Twin Creek: Navigable from the East Fork of White River to river mile 7.98.

Wayne County

No waterway has been declared navigable or nonnavigable.

Wells County

(1) Wabash River: Navigable throughout the county (with navigability terminating at the Adams County line).

White County

(1) Tippecanoe River: Navigable to river mile 32.0 at the Norway Dam that forms Lake Shafer.

Whitley County

No waterway has been declared navigable or nonnavigable.

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