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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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PPL MONTANA, LLC *v.* MONTANA

CERTIORARI TO THE SUPREME COURT OF MONTANA

No. 10–218. Argued December 7, 2011—Decided February 22, 2012

Petitioner PPL Montana, LLC (PPL), owns and operates hydroelectric facilities in Montana. Ten of its facilities are located on riverbeds underlying segments of the Missouri, Madison, and Clark Fork Rivers. Five hydroelectric dams on the Upper Missouri River are along the Great Falls reach, including on the three tallest waterfalls; and PPL's two other dams on that river are in canyons on the Stubbs Ferry stretch. These, together with two dams located in steep canyons on the Madison River, are called the Missouri-Madison project. The Thompson Falls project is a facility on the Clark Fork River. Both projects are licensed by the Federal Energy Regulatory Commission. PPL's facilities have existed for many decades, some for over a century. Until recently, Montana, though aware of the projects' existence, sought no rent for use of the riverbeds. Instead, the understanding of PPL and the United States is that PPL has paid rents to the United States. In 2003, parents of Montana schoolchildren filed a federal suit, claiming that PPL's facilities were on riverbeds that were state owned and part of Montana's school trust lands. The State joined the suit and, for the first time, sought rents from PPL for its use of the riverbeds. That case was dismissed, and PPL and other power companies filed a state-court suit, claiming that Montana was barred from seeking compensation for PPL's riverbed use. Montana counterclaimed, contending that under the equal-footing doctrine it owns the riverbeds and can charge rent for their use. The trial court granted Montana summary judgment as to navigability for purposes of determining riverbed title and ordered PPL to pay Montana $41 million in rent for riverbed use between 2000 and 2007. The Montana Supreme Court affirmed. Adopting a liberal construction of the navigability test, it discounted this Court's approach of considering the navigability of particular river segments for purposes of deter-

mining whether a State acquired title to the riverbeds underlying those segments at the time of statehood. Instead, the Montana court declared the river stretches in question to be short interruptions of navigability that were insufficient as a matter of law to find nonnavigability, since traffic had circumvented those stretches by portage. Based on evidence of present-day, recreational use of the Madison River, the court found that river navigable as a matter of law at the time of statehood.

Held: The Montana Supreme Court's ruling that Montana owns and may charge for use of the riverbeds at issue was based on an infirm legal understanding of this Court's rules of navigability for title under the equal-footing doctrine. Pp. 10–26.

(a) The rule that the States, in their capacity as sovereigns, hold "title in the soil of rivers really navigable," *Shively* v. *Bowlby,* 152 U. S. 1, 31, has federal constitutional significance under the equal-footing doctrine. Pursuant to that doctrine, upon its date of statehood, a State gains title within its borders to the beds of waters then navigable. It may allocate and govern those lands according to state law subject only to the United States' power "to control such waters for purposes of navigation in interstate and foreign commerce." *United States* v. *Oregon,* 295 U. S. 1, 14. The United States retains title vested in it before statehood to land beneath waters not then navigable. To be navigable for purposes of title under the equal-footing doctrine, rivers must be "navigable in fact," meaning "they are used, or are susceptible of being used, . . . as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water." *The Daniel Ball*, 10 Wall. 557, 563. This formulation has been used to determine questions of waterbed title under the equal-footing doctrine. See *United States* v. *Utah*, 283 U. S. 64, 76. Pp. 10–14.

(b) The Montana Supreme Court erred in its treatment of the question of river segments and portage. To determine riverbed title under the equal-footing doctrine, this Court considers the river on a segment-by-segment basis to assess whether the segment of the river, under which the riverbed in dispute lies, is navigable or not. See, *e.g., Utah*, *supra,* at 77. The State Supreme Court erred in discounting this well-settled approach. A key justification for sovereign ownership of navigable riverbeds is that a contrary rule would allow private riverbed owners to erect improvements on the riverbeds that could interfere with the public's right to use the waters as a highway for commerce. Because commerce could not have occurred on segments nonnavigable at the time of statehood, there is no reason to deem those segments owned by the State under the equal-footing doctrine. Practical considerations also support segmentation. Physi-

cal conditions affecting navigability vary over the length of a river and provide a means to determine appropriate start points and end points for disputed segments. A segment approach is also consistent with the manner in which private parties seek to establish riverbed title. Montana cannot suggest that segmentation is inadministrable when the state courts managed to apportion the underlying riverbeds for purposes of determining their value and PPL's corresponding rents. The State Supreme Court's view that the segment-by-segment approach does not apply to short interruptions of navigability is not supported by this Court's *Utah* decision. Even if the law might find some nonnavigable segments so minimal that they merit treatment as part of a longer, navigable reach, it is doubtful that the segments in this case would meet that standard. Applying its "short interruptions" approach, the State Supreme Court found the Great Falls reach navigable because it could be managed by way of land route portage, as done by Lewis and Clark. But a portage of even one day would demonstrate the need to bypass a nonnavigable river segment. Thus, the State Supreme Court was wrong to conclude, with respect to the Great Falls reach and other disputed stretches, that portages were insufficient to defeat a navigability finding. In most cases, they are, because they require transportation over land rather than over the water. This is the case at least as to the Great Falls reach. In reaching a contrary conclusion, the State Supreme Court misapplied *The Montello*, 20 Wall. 430. There, portage was considered in determining whether a river was part of a channel of interstate commerce for federal regulatory purposes. *The Montello* does not control the outcome where the quite different concerns of the riverbed title context apply. Portages may defeat navigability for title purposes, and do so with respect to the Great Falls reach. Montana does not dispute that overland portage was necessary to traverse that reach, and the trial court noted the waterfalls had never been navigated. The Great Falls reach, at least from the head of the first waterfall to the foot of the last, is not navigable for purposes of riverbed title under the equal-footing doctrine. There is also a significant likelihood that some of the other river stretches in dispute fail this federal navigability test. The ultimate decision as to these other disputed river stretches is to be determined, in the first instance, by the Montana courts on remand, which should assess the relevant evidence in light of the principles discussed here. Pp. 14–21.

(c) The Montana Supreme Court further erred as a matter of law in relying on evidence of present-day, primarily recreational use of the Madison River. Navigability must be assessed as of the time of statehood, and it concerns a river's usefulness for " 'trade and travel.' " *Utah*, 283 U. S., at 75–76. River segments are navigable if they

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"'[were]'" used and if they "'[were] susceptible of being used'" as highways of commerce at the time of statehood. *Id.,* at 76. Evidence of recreational use and poststatehood evidence may bear on susceptibility of commercial use at the time of statehood. See *id.,* at 82–83. In order for present-day use to have a bearing on navigability at statehood, (1) the watercraft must be meaningfully similar to those in customary use for trade and travel at the time of statehood, and (2) the river's poststatehood condition may not be materially different from its physical condition at statehood. The State Supreme Court offered no indication that it made these necessary findings. Pp. 21–24.

(d) Because this analysis is sufficient to require reversal here, the Court declines to decide whether the State Supreme Court also erred as to the burden of proof regarding navigability. P. 24.

(e) Montana's suggestion that denying the State title to the disputed riverbeds will undermine the public trust doctrine—which concerns public access to the waters above those beds for navigation, fishing, and other recreational uses—underscores its misapprehension of the equal-footing and public trust doctrines. Unlike the equal-footing doctrine, which is the constitutional foundation for the navigability rule of riverbed title, the scope of the public trust over waters within the State's borders is a matter of state law, subject to federal regulatory power. Pp. 24–25.

(f) This Court does not reach the question whether, by virtue of Montana's sovereignty, neither laches nor estoppel could apply to bar the State's claim. Still, the reliance by PPL and its predecessors in title on the State's long failure to assert title to the riverbeds is some evidence supporting the conclusion that the river segments over those beds were nonnavigable for purposes of the equal-footing doctrine. Pp. 25–26.

2010 MT 64, 355 Mont. 402, 229 P. 3d 421, reversed and remanded.

KENNEDY, J., delivered the opinion for a unanimous Court.