

## **Wyoming Navigability Report**

### **Summary**

Wyoming allows the public to boat any navigable and non-navigable streams that can be floated by any craft. The right to float the stream is accompanied by a right to fish and hunt while floating, and a right to portage around and over obstructions, including riffles, rapids, and dams.

### **State Test of Navigability**

Wyoming common law has adopted a test for public use of streams that is independent of the test of navigability. The test of navigability is the federal commerce test, where rivers that are susceptible or were used for commerce are navigable. But this is of limited consequence to boaters. In the seminal case *Day v. Armstrong*, the Wyoming Supreme Court stated, “the actual usability of the waters is alone the limit of the public’s right to so employ them.”<sup>1</sup> Actual usability includes use by small craft for pleasure.<sup>2</sup> A stream is not unusable even if it has areas that must be portaged over or around, such as rapids or riffles.<sup>3</sup> In summary, the test of usability, as opposed to the test for navigability, determines whether boating is permissible. Thus, the stream can be used legally if it can be boated.

### **Extent of Public Rights in Navigable & Non-navigable Rivers**

The water of all streams within Wyoming is property of the state, including non-navigable waters.<sup>4</sup> The beds of non-navigable waters may be owned privately, but even in non-navigable waters, the public retains “the right to use public waters . . . for floating usable craft and that use may not be interfered with or curtailed by any landowners.”<sup>5</sup> That is, when water flows over privately owned land, the state has an easement in the lands over which water flows its natural channel.<sup>6</sup>

The right to use the water, for both navigable and non-navigable streams alike, exists wherever the water is capable of use for boating.<sup>7</sup>

Regarding other uses, the *Day* court specified that “it is also the right of the public while so lawfully floating in the State’s waters to lawfully hunt or fish or do any and all other things which are not otherwise made unlawful.”<sup>8</sup> Landowners may not interfere with this right and, therefore, cannot fence boatable streams.<sup>9</sup>

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<sup>1</sup> *Day v. Armstrong*, 362 P.2d 137, 143 (Wyo. 1961).

<sup>2</sup> *Id.* at 147.

<sup>3</sup> *Id.* at 147, 151.

<sup>4</sup> Wyo. Const. Art. 8 § 1 (1997).

<sup>5</sup> *Day*, 362 P.2d at 147.

<sup>6</sup> *Id.* at 145.

<sup>7</sup> *Id.* at 145 (“When waters are able to float craft, they may be so used.”).

<sup>8</sup> *Id.* at 147.

<sup>9</sup> *Id.* at 151.

A right of portage exists in Wyoming; that is, a person “floating in usable craft may, when necessary, disembark and walk, or wade upon submerged lands in order to pull, push, or carry craft over or across shallows, riffles, rapids or obstructions.”<sup>10</sup> The right to use the water does not include the right to walk or wade into the stream.<sup>11</sup> However, contact with the bottom incident to the use of the water is permissible.<sup>12</sup>

The Day court discussed, albeit in dicta, the right to gain access to streams over private land. Because the water is property of the state, the state should have a right of “ingress and egress across adjacent lands to a stream where no other access is available, as well as a restrainable right of nuisance use of adjacent lands.”<sup>13</sup> Therefore, the public may also be able to use that easement to access useable waters over private property where no other access is available. However, neither statute or a court has confirmed this right or its scope.

### **Miscellaneous**

Trespass upon posted property is a misdemeanor with penalties of up to \$750 and six months in jail.<sup>14</sup>

Additional information about boating and fishing in Wyoming is available on the state’s Game & Fish Department’s website at <https://wgfd.wyo.gov/fishing-and-boating/>.

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<sup>10</sup> *Id.* at 151; *see also id.* at 146 (“[A] right to disembark and pull, push or carry over shoals, riffles and rapids accompanies this right of flotation as a necessary incident to the full enjoyment of the public's easement.”)

<sup>11</sup> *Id.* at 147.

<sup>12</sup> *Id.* at 146.

<sup>13</sup> *Id.* at 145.

<sup>14</sup> Wyo. Stat. Ann. § 6-3-303 (1997).