Alabama Rivers Alliance, Email Comments to AWAWG, March 22, 2013

ARA is preparing a response to the concerns of certain stakeholders regarding the State's ownership of the water resources of the State and the State's authority to regulate such resources. In short, this proposition is well grounded in law having been clearly expressed by Justice Holmes in *Hudson County Water Company v. McCarter*, 209 U.S. 349 (1908).
Justice Holmes found that "it is recognized that the State as quasi-sovereign and representative of the interests of the public has a standing in court to protect the atmosphere, the water and the forests within its territory, irrespective of the assent or dissent of the private owners of the land most immediately concerned. *Kansas v. Colorado,* 185 U.S. 125, 141, 142; S.C., 206 U.S. 46. 99; *Georgia v. Tennessee Copper Co*., 206 U.S. 230, 238. What it may protect by suit in this court from interference in the name of property outside of the State's jurisdiction, one would think that it could protect by statute from interference in the same name within." ld at 355. With this, the court held the following:

"[l]t appears to us that few public interests are more obvious, indisputable and independent of particular theory than the interest of the public of a State to maintain the rivers that are wholly within it substantially undiminished, except by such drafts upon them as the guardian of the public welfare may permit for the purpose of turning them to a more perfect use. This public interest is omnipresent wherever there is a State, and grows more pressing as population grows. It is fundamental, and we are of opinion that the private property of riparian proprietors cannot be supposed to have deeper roots. Whether it be said that such an interest justifies the cutting down by statute, without compensation, in the exercise of the police power, of what otherwise would be private rights of property, or that apart from statute those rights do not go to the height of what the defendant seeks to do, the result is the same.... The private right to appropriate is subject not only to the rights of lower owners but to the initial limitation that it may not substantially diminish one of the great foundations of public welfare and health.

We are of opinion, further, that the constitutional power of the State to insist that its natural advantages shall remain unimpaired by its citizens is not dependent upon any nice estimate of the extent of present use or speculation as to future needs. The legal conception of the necessary is apt to be confined to somewhat rudimentary wants, and there are benefits from a great river that might escape a lawyer's view. But the State is not required to submit even to an aesthetic analysis. Any analysis may be inadequate. It finds itself in possession of what all admit to be a great public good, and what it has it may keep and give no one a reason for its will." ld. (emphasis added). See also *Sporhase, et al v. Nebraska, ex rel. Douglas,* 458 U.S. 941, 73 L.Ed.2d 1254, 102 S.Ct. 3456 (1982).

We submit this information to the AWAWG and a more detailed analysis is forthcoming.

Thank you for your work for Alabama,

Sincerely,

Mitch Reid
ARA