

Slide 6- Randy Newberg's Podcast devoted to CPW Commissioner Jay Tutchton's Public Trust is Legal Fiction Comments in March 2024 – (Link) Episode 123, Elk Talk- Are Wildlife Trustees Qualified? Or NOT? <https://podcasts.apple.com/us/podcast/are-wildlife-trustees-qualified-or-not/id1402903701?i=1000651071671>

- 1. The Public Trust Doctrine is not Legal Fiction per CPW Commissioner Tutchton.
- 2. Hughes Vs Oklahoma did not disturb The Public Trust, it merely limited interstate travel with regards to wildlife, you must review Hughes vs Oklahoma-- since Mr. Tutchton reference was very strong against Geer vs Conn. Hughes vs Oklahoma does not affect The Public Trust Doctrine in regard to wildlife management / tag allocation as a Resident resource, it only affects interstate travel after an animal is harvested under the Commerce Clause. In this case (Mr. Hughes), this meant he could no longer catch minnows in Oklahoma and take them to Texas for sale.
- 3. See [https://scholarship.law.uwyo.edu/cgi/viewcontent.cgi?article=2127&context=land\\_water](https://scholarship.law.uwyo.edu/cgi/viewcontent.cgi?article=2127&context=land_water)
- 4. See [https://wildlife.org/wp-content/uploads/2014/05/ptd\\_10-1.pdf](https://wildlife.org/wp-content/uploads/2014/05/ptd_10-1.pdf)

Apple Podcasts Preview

### Are Wildlife Trustees Qualified? Or Not?

Elk Talk

Wilderness

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Randy and Corey follow up on a listener email where a Colorado Wildlife Commissioner claimed that State Trusteeship of Wildlife is legal fiction. In addition to updates on the deadlines for MT, CO, and UT, topics covered include qualification to be a wildlife trustee, do we want a Federal wildlife system, the laws/cases/Constitutional basis for our current state-based wildlife systems, Trustees ignoring their duties, how we got the the current systems we have, and many other topics that impact how wildlife gets managed and how opportunity gets allocated.

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eminent to privatize this resource. For the first time not only is there a recognition of a right in the government to control the taking of game and to prevent the privatization thereof, we see the unequivocal imposition of the fiduciary duties of the state as trustee, as necessitated by the foundations of our free society.

In the century that has passed since *Geer*, the courts have not backed off from the recognition of this trust relationship. In *Hughes v. Oklahoma*<sup>87</sup> the Court overruled *Geer* to the extent *Geer* held that state “ownership” in wildlife allowed it the right to interfere with interstate commerce. However, in so doing, *Hughes* did not disturb the public trust in wildlife.<sup>88</sup>

Therefore, we have within the common law ample authority that the states, and the federal government where applicable, hold wildlife in trust for the benefit of all persons. Yet because the public trust doctrine is pri-

86. *Id.* at 529 (emphasis added).

87. See *supra* note 11, 441 U.S. 322 (1979).

88. While it is possible to infer from *Geer* a holding that the state holds such actual title, the court’s emphasis on the trust relationship makes it clear that the beneficial ownership of wildlife lies in the people.

The thrust of *Hughes* was simply that the State may not exercise its “ownership” of wildlife in a manner that conflicts with the Commerce Clause in the United States Constitution. “Nothing in [Hughes] indicated any retreat from the States’ public trust duty discussed in *Geer*.” *Owsich v. State of Alaska Guide Licensing and Control Board*, 763 P.2d 488, 495 (Alaska 1988).

[https://scholarship.law.uwvo.edu/land\\_water/vol35/iss1/4](https://scholarship.law.uwvo.edu/land_water/vol35/iss1/4)

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