

Historic Exchange in Mississippi

**An on-line review of
*The Secretary of State's Efforts
to Create a Public Trust
Ecosystem Regime in Mississippi***

The Biloxi Tidelands Exchange of 1996

What is the PUBLIC TRUST DOCTRINE?



The Public Trust Doctrine holds that certain areas, such as navigable waters and tidelands, should be maintained by the states in a manner that allows the citizens to have access for fishing, navigation, and in some states, recreation.

ORIGINS OF THE PUBLIC TRUST DOCTRINE



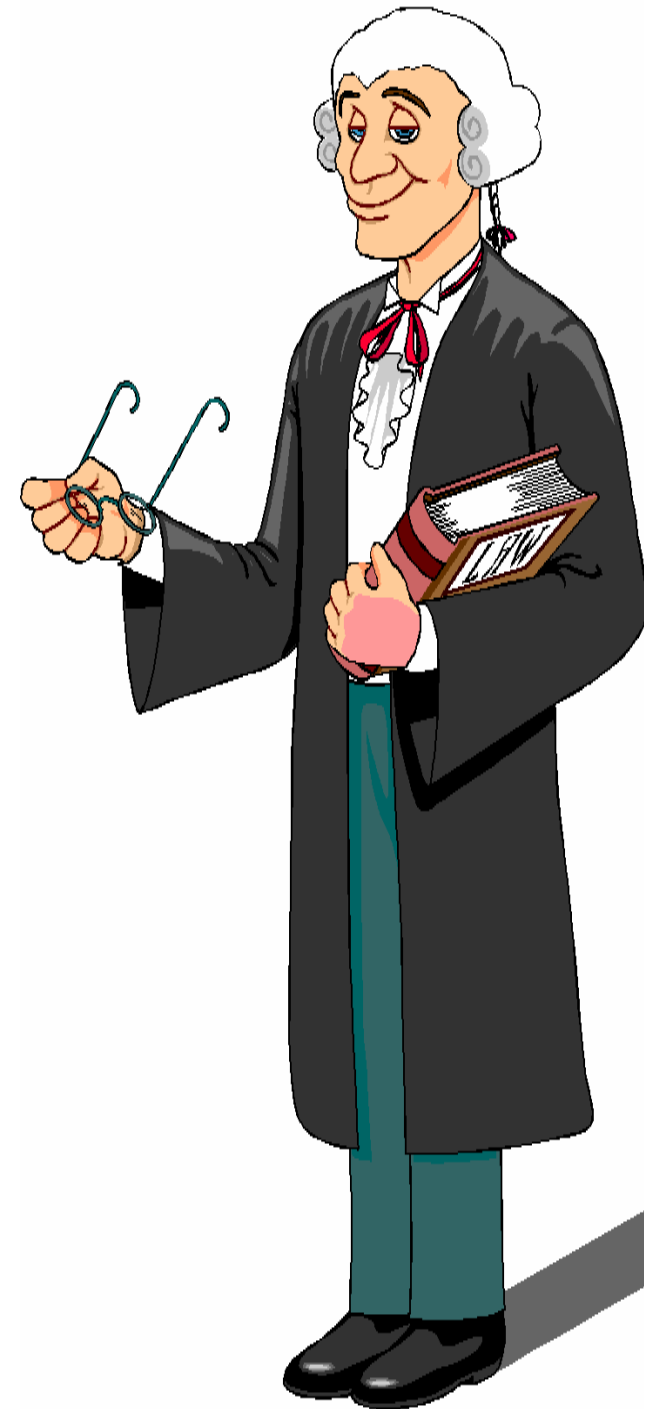
The Public Trust Doctrine dates back to the sixth century in Roman Civil Law.

“By the law of nature these things are common to all mankind - the air, running water, the sea, and consequently the shores of the sea. No one, therefore, is forbidden to approach the seashore.”

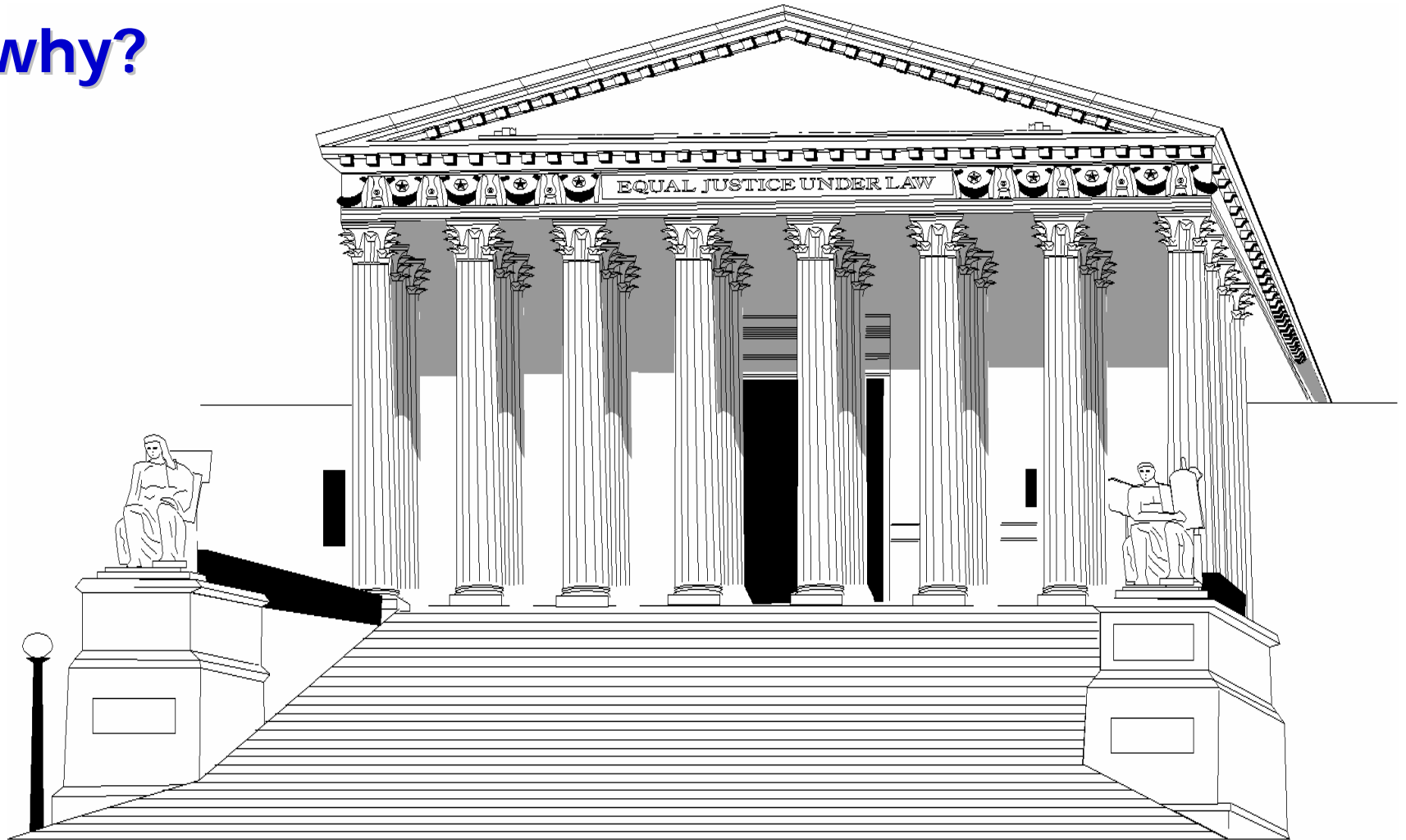
Institutes of Justinian, Roman Civil Law Digest, circa 500 A.D.

**Influenced by Roman Law,
England protected its tidelands
and waters in the king's names
for all English subjects.**

**Later adopted by the American
colonies and states, the Public
Trust Doctrine has developed
into one of the most important
doctrines in public property law
in the United States.**



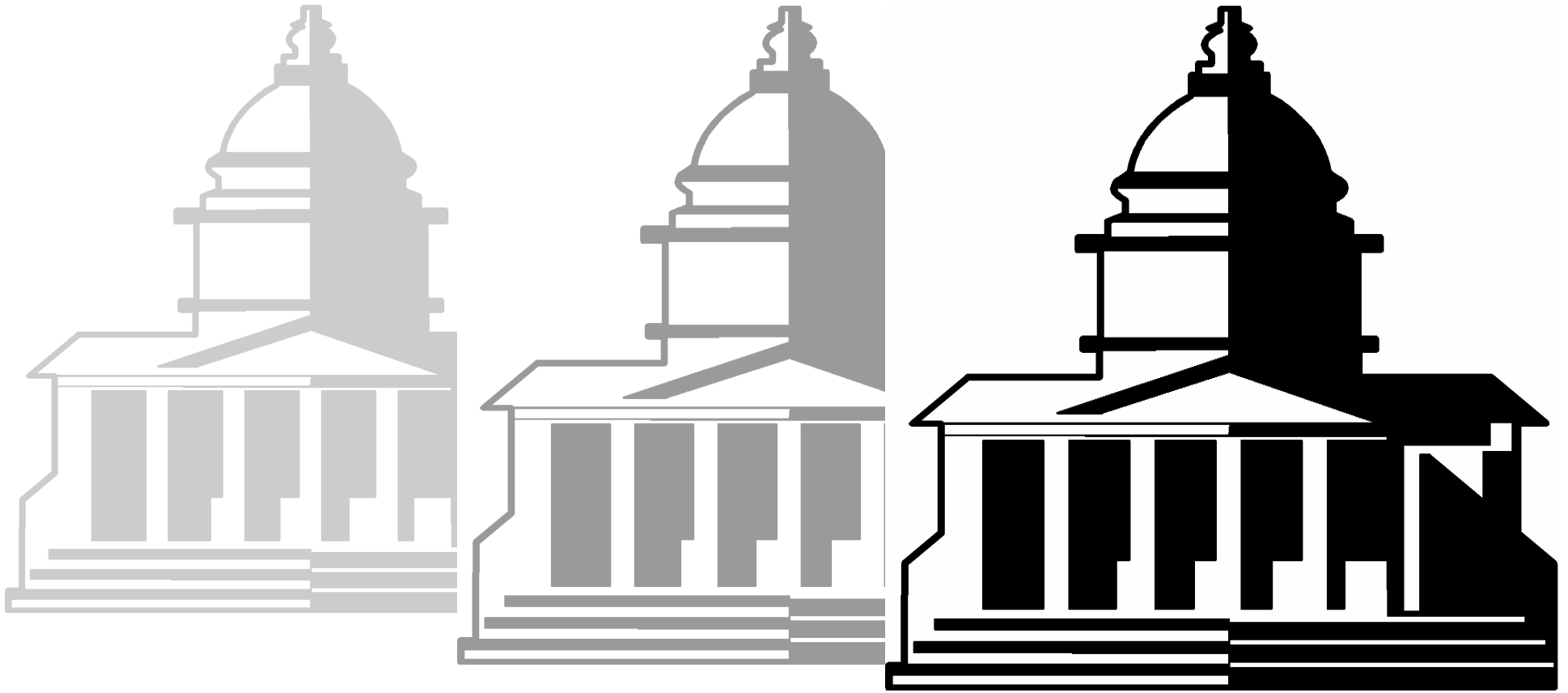
But, why?



According to the U.S. Supreme Court, from the time of statehood, a State holds public trust lands for the people of the state for purposes of navigation, fishing, & commerce.

What about the Mississippi coastline?

Tidelands are those lands beneath tidewaters. Mississippi tidelands are held in trust by the Secretary of State for the citizens of Mississippi. As trustee, the Secretary of State determines whether certain uses are in the best interest of the state citizens.



Because tidelands are public trust lands, the Secretary of State cannot sell them without a

**higher public purpose
and
a legislative enactment.**



So, when approached about selling 6.7 acres of concrete-filled tidelands to a casino for a multi-million dollar development,

**the Secretary of State
embarked on a unique effort:**

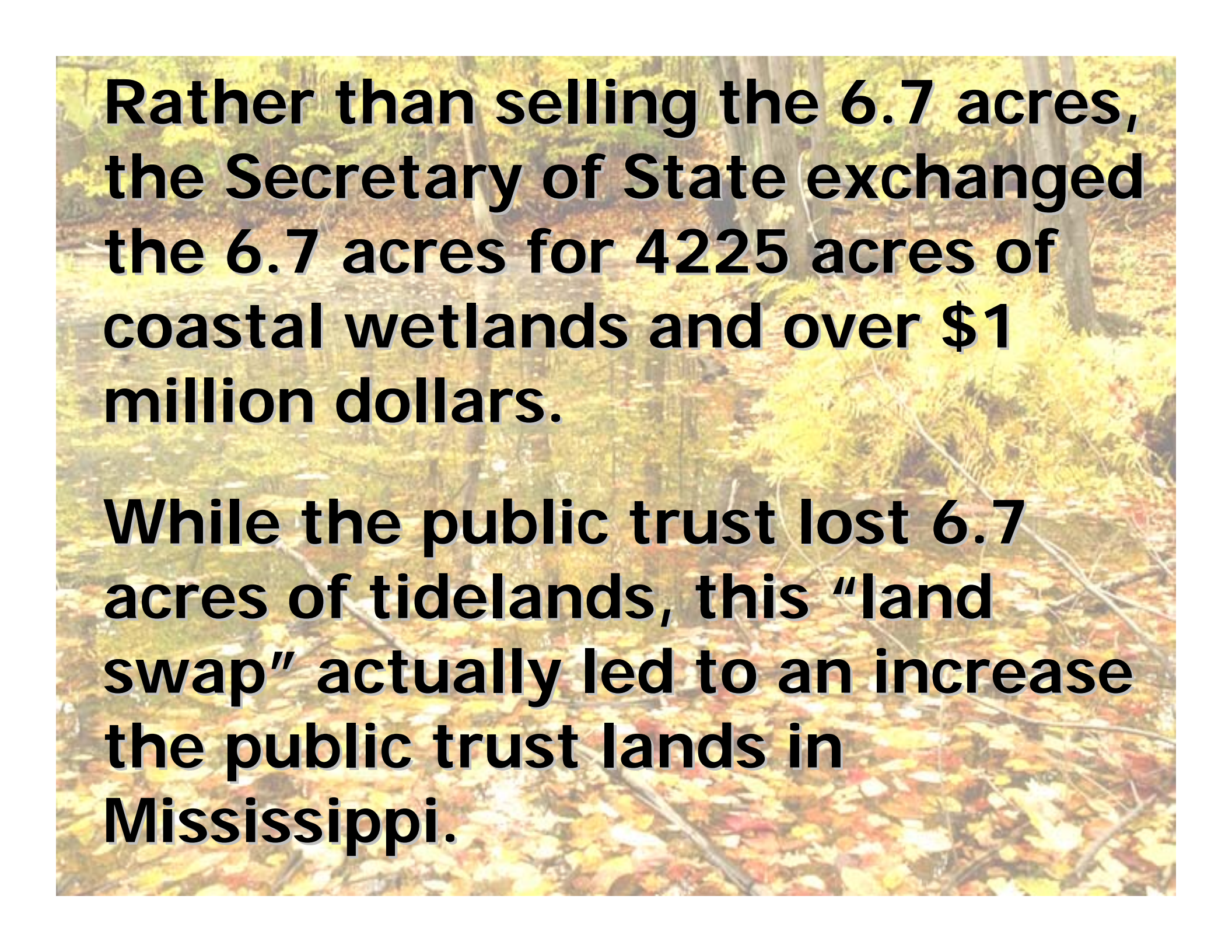
**Rather than sell,
Exchange the
6.7 acres of
filled lands for:**



A photograph of a forest stream with autumn foliage reflected in the water. The water is calm, creating clear reflections of the surrounding trees and fallen leaves. The ground is covered in a thick layer of fallen leaves in various shades of yellow, orange, and brown. The trees in the background have sparse foliage, with some leaves still green and others turned yellow.

this.

**4225 acres of Coastal
Wetlands across the three
coastal Mississippi counties.**



Rather than selling the 6.7 acres, the Secretary of State exchanged the 6.7 acres for 4225 acres of coastal wetlands and over \$1 million dollars.

While the public trust lost 6.7 acres of tidelands, this “land swap” actually led to an increase the public trust lands in Mississippi.

Here's how it worked:



4.3 acres of filled tidelands

Casino paid \$1.32 million

2.7 acres of to-be-filled tidelands

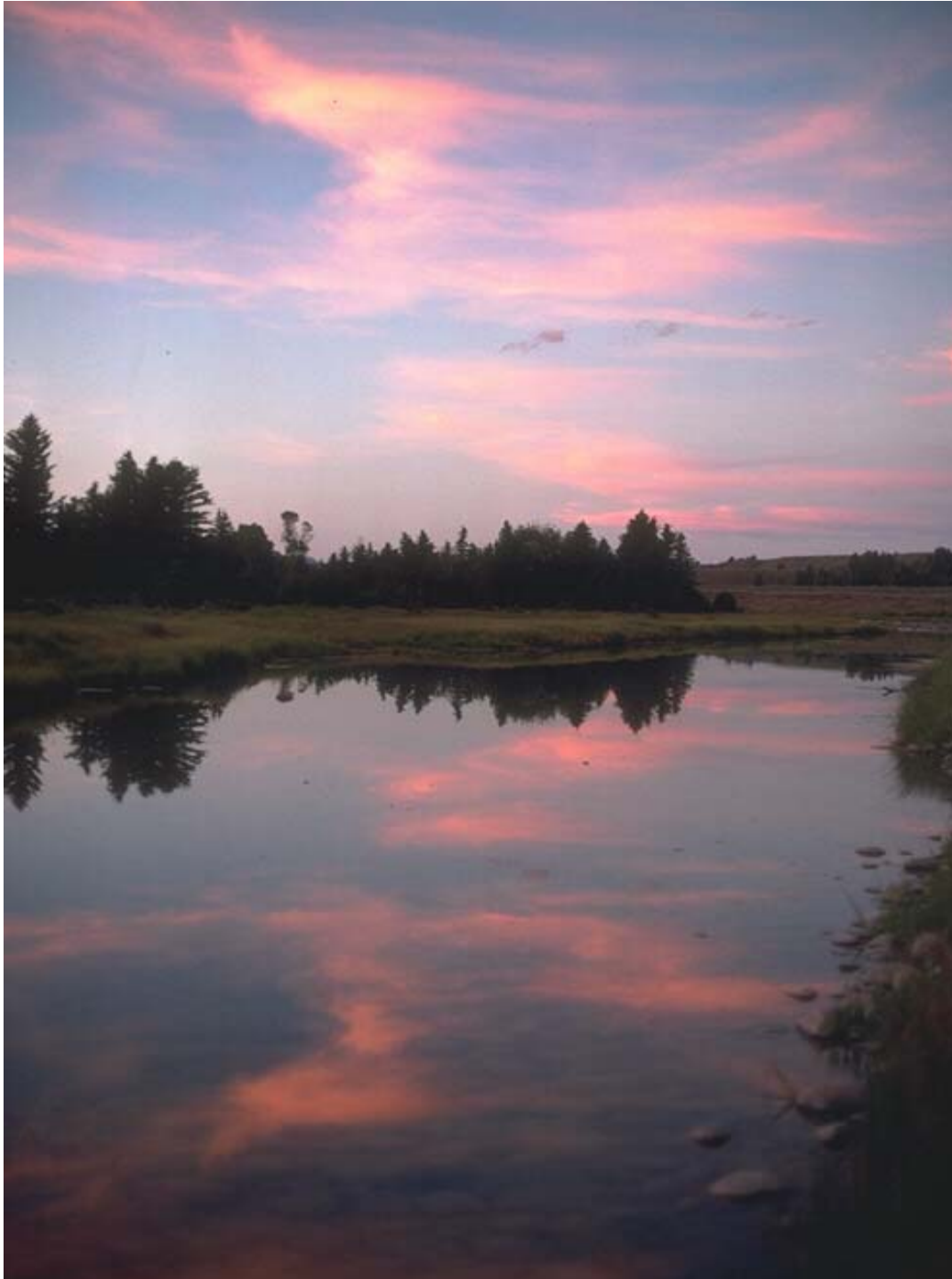
**Casino bought 4225 acres of
pristine wetlands & donated
them to the state trust**

Adjacent tidelands (in natural state)

**Casino paid to lease these
adjacent lands for casino
barge**



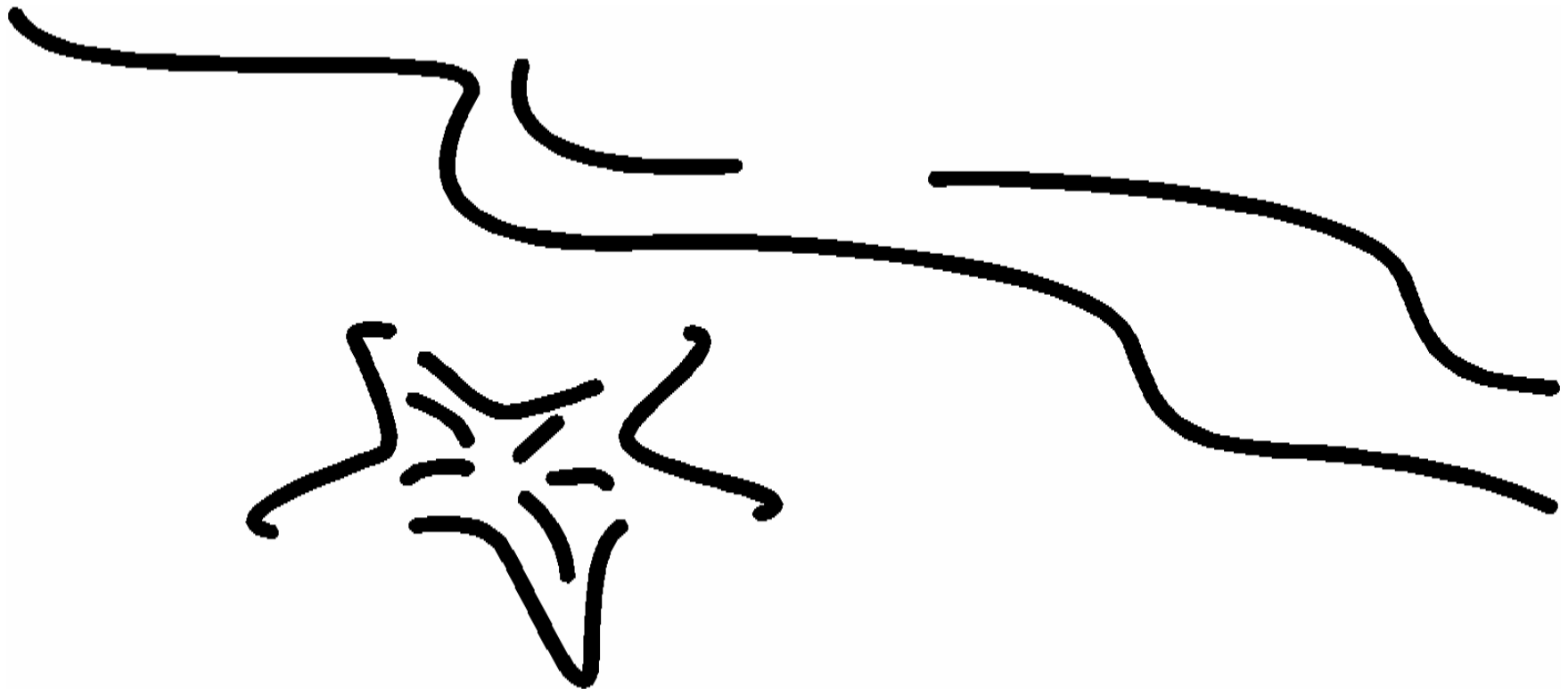
The exchange of 6.7 acres of tidelands for 4225 acres of wetlands represents the first land exchange of its kind in Mississippi.



According to the Mississippi Tidelands Act, it is in the public interest to protect Mississippi **tidelands and their ecosystems.**


The historic land exchange furthered this legislative policy and created a **4225 acre buffer for the Mississippi Gulf Coast ecosystem.**

Such a buffer protects the coastal ecosystem -- its bays, estuaries, and bayous -- and the natural resources that inhabit them.





Since then....



The Mississippi Legislature remained silent during the following legislative sessions, implying acceptance to the Secretary of State's actions as Trustee of public trust lands.



**The State of Mississippi
took title to the coastal
wetlands,**

**augmenting its public
trust land acreage.**

The \$500 million investment has developed into the **Beau Rivage** Casino and Resort.





The added wetlands are being managed by the Department of Marine Resources.



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**And, the Secretary of
State remains open to
further exchanges of
this kind.**



For More Information

Contact a member of the
Sea Grant Legal Program at

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Please also refer to the detailed legal analysis of the Secretary of State's tidelands exchange in

Augmenting the Public Trust: The Secretary of State's Efforts to Create a Public Trust Ecosystem Regime in Mississippi

published in Volume 26, MISSISSIPPI LAW JOURNAL (1998).