POLICY IMPLICATIONS of DEFINING MEAN HIGH TIDE

Origin of mean high tide: English common law (1800s)
Purpose: using local law, custom, and practice to establish the boundary between public and private property (the ordinary high water mark)
Problems with its application:
• there is no mention of mean, average, elevation, or line, but the limit (i.e., mark) reached by the ordinary (not extraordinary) tides
• the “line” is an indistinguishable location on the beach; better defined as the theoretical intersection of the elevation of MHT and the beach
Reality: each state has the authority to define the boundary of the lands held in public trust as outlined by common law; this leads to inconsistency of judicial decisions

Facts: City of LA brought suit to determine title of tideland of Mormon Island, situated in the inner bay of San Pedro (now known as Los Angeles Harbor)
Issue: determination of the boundary between the upland and the tideland
Federal rule: Borax applied the 18.6 year lunar (Metonic) cycle to determine the MHTL* (where a plane of a certain elevation, determined by the mean height of the tides over an 18.6 year cycle, intersects the contours of a particular beach).
*RHTL as given by the US Coast and Geodetic Survey

Rhode Island state law: State v. Ibbison, 448 A.2d 728 (1982)
Facts: citizens were conducting a beach clean-up in Westerly. Property owner alleged trespass, believing his rights extended to the MHWL. Defendants believed that their rights to traverse the shore extended to the HWL.
Issue: Court was faced with defining how the high water line was to be calculated
Rule: “The mean high tide is the arithmetic average of high-water heights observed over an 18.6-year Metonic cycle. It is the line that is formed by the intersection of the tidal plane of mean high tide with the shore.” Id. at 730. (adopting holding of Borax).

Problems with the adoption of Borax by the Rhode Island Judiciary:
• Tidal activity on an island in an estuary is significantly different compared to an ocean beach; and
• Attempt to apply a statistical average (Metonic cycle) to such a dynamic setting (such as a coastal beach and shoreline)

A better way to define public trust lands in Rhode Island:
1) Adhere to common law
2) Better understanding of scientific and meteorological terms
3) Convince the RI Supreme Court regarding the best application of Ibbison, rather than modifying or changing Ibbison
4) Presentation of the factual dynamics to the Court in a manner that can be understood