

MINNESOTA WATER BOUNDARIES AND RIPARIAN RIGHTS

Common questions that are raised regarding property located on a water course:

- Does the property extend to the water, or does it extend further?
- Can the owner put in a dock?
- What rights does the owner have in the body of water itself?
- Who owns the bed of the lake?
- Does the public have the right to walk on the beach in front of my cabin?

A. The ownership of beds of lakes and waters.

1. Navigability.

The question of whether a stream or lake is navigable is to be determined by Federal law. State v. Adams, 251 Minn. 521 (1950), 89 N.W.2d 661; certiorari denied 79 F. S. Ct. 45, 358 U.S. 826, 3 L.Ed. 2d 67 (1958).

In Adams, the Court stated under Federal law, streams are navigable in law if they are used or are susceptible for use in the ordinary condition as highways for commerce and the ordinary natural conditions refer to the volume of water, the gradients and regularity of flow.

The ownership of soil under the majority of bodies of water in Minnesota is determined by whether the particular body of water was navigable on May 11, 1858, the date of admission of Minnesota to the Union. If the stream or lake is navigable then the bed of the water course is owned by the State of Minnesota.

The United States Army Corp of Engineers has several publications available which show most, but not all, of the navigable waters on a map. Few of our 11,842 lakes and 5,564 streams are considered “navigable” waters. Ownership by the State of Minnesota of the river bed of all navigable waters extends to a point below the “ordinary low water mark.” In the event a navigable body were to completely dry up, land under the lake or stream would be public property.

B. Meandered waters and lakes.

Meandered waters are lakes and streams that were surveyed and platted on the original government land office surveys of Minnesota. The surveys were done primarily in the mid-1800's. There are approximately 5480 meandered lakes shown on these surveys. If a lake is meandered but not determined to be navigable the bed is jointly owned by all of the landowners surrounding the lake. If the lake is drained or goes dry permanently, the owners may go to the court to determine the ownership of the lake bed.

C. Non-meandered waters.

All of the remaining lakes and streams, those that are not navigable nor meandered, are considered non-meandered waters. These are waters that were not surveyed and do not show on the government land survey maps as meandered. The bed underneath these lakes and streams belongs to whoever owns title to the lands that surround or abut them. If the body of water dries up the owner of the property owner abutting the lake owns the bed of water.

There is no truth in a commonly heard statement that the State of Minnesota owns a definable strip of land, around every lake and every stream or that this strip of land gives the general public the right to walk along the shoreline. This is not the case. The general rule of thumb is that the shoreline property owner's rights follow the water level up and down and the general public has no right to use the shoreline or a dry lake bed unless the adjoining shoreline is already in public ownership.

D. Shorelines.

1. The peculiar features of shorelines.

Shorelines are not simple. They are not straight lines or simple radius curves. Shorelines are so irregular that no mathematical formula can describe the curves with absolute precision. Any attempt to describe a shoreline boundary with absolute precision is futile because the curves are too complex and because the shorelines change shape as water levels change. Further, shorelines change from year to year through the natural processes of water erosion, wind erosion, beach formation and flooding.

2. Where is the water boundary.

If you think of a riparian parcel as fronting on the water, the rear line and the side lines are usually ordinary lines in the survey system, such as section lines, quarter lines or sixteenth lines. The front line is the body of water and just inland from the shoreline is the meander line. This means that each riparian government lot certainly contains the land bounded by the meander line in front, the rear lot line and the side lot lines from the rear line down to the

meander line. The difficult area is between the meander line and the body of water. Some factors to consider regarding property with a water boundary:

- Question of ownership of lands is determined by state law.
- Different states can and do define riparian boundaries differently.
- In Minnesota, on a navigable body of water the ownership of the land owner extends to ordinary low water mark.
- Where is the ordinary low water mark (OLWM)?
- Because the water boundary is the ordinary low water contour line, the water boundary is almost always under water. This boundary line is rarely surveyed for these reasons:
 - It is almost always submerged and difficult to survey.
 - It is a very complicated curve.
 - It can change over time.
 - The land owner has limited rights to use the submerged land.
- OLWM can be determined by stipulation with State (Minn. Stat. § 103G.411).
- On streams that are non navigable the abutting owners own to the center of the stream, sometimes referred to as the thread of the stream.

3. Changes in Shorelines

The three theories that apply to the changes of the share of shoreline are accretion, reliction and avulsion. Accretion is the gradual addition to shoreline caused by the washing of sand, dirt and gravel ashore. Reliction is the gradual recession of the water as it recedes and avulsion is rapid change in a water course.

The Minnesota Supreme Court has held that the landowner abutting the water course has the right to accretions and reliction. Webber v. Axtell, 94 Minn. 375, 102 N.W. 915 (1905) addresses accretions and Markuson v. Mortensen, 105 Minn. 10, 106 N.W. 1021 (1908) addresses relictions. In the case of avulsion land boundaries remain static without regard to a riparian owner being cut off from navigation. Arkansas v. Tennessee, 246 U.S. 158, 38 S. CT 301 (1918).

In certain situations land created by artificial changes can also be claimed by the adjacent land owner. The Minnesota Supreme Court in Reads Landing Sand Association v.

Township of Pepin, 566 N.W.2d (Minn. 1996) found that land created by dredging and filing by a third party over a period of time became the property of the riparian land owner.

4. Where is the ordinary high water mark (OHW).

How determined.

The ordinary high water mark is an elevation which marks the boundary of the lake, marsh, or stream bed. It is the highest level at which the water has remained long enough to leave its mark upon the landscape. Lake Minnetonka Improvement, 56 Minn. 513, 58 N.W. 295 (1894); Minn. Stat. § 103G.005, Subd. 14. Generally, it is the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.

5. Qualified rights of landowner.

While the landowner on a navigable body of water owns to the ordinary low water mark, a landowner's title to the land between the ordinary low water mark and the ordinary high water mark is limited or qualified by the right of the public to use the same for purposes of navigation or other public purpose. State v. Korrer, 127 Minn. 60, 148 N.W.2d 617 (1914). The public, however, does not have the right to use the land between the ordinary low water mark and the ordinary high water mark on navigable bodies of water for private purposes.

E. Definitions.

- **Accede:** “to go to, be added.” WEBSTER’S SEVENTH NEW COLLEGIALE DICTIONARY.
- **Accretion:** “the process by which new soil is accumulated; growth. The imperceptible addition of land to the shore of the ocean or bay, or to the banks of a river.” CURTIS M. BROWN, BOUNDARY CONTROL AND LEGAL PRINCIPALS (1957).
- **Alluvion:** “the increase of the earth on a shore or bank of a stream or the sea, by the force of the water; as by a current or by waves, which is so gradual that no one can judge how much is added at each moment of time.” BLACK’S LAW DICTIONARY.
- **Avulsion:** “the removal of a considerable quantity of soil from the land of one man, and its deposit upon or annexation to the land of another, suddenly and by the perceptible action of water.” BLACK’S LAW DICTIONARY.
- **Recede:** “to move back or away, withdraw, retreat.” WEBSTER’S SEVENTH NEW DICTIONARY.

- **Reliction:** “an increase of the land by the permanent withdrawal or retrocession of the sea or a river.” BLACK’S LAW DICTIONARY.
- **Riparian Rights:** “the rights of the owners of lands on the banks of watercourses, relating to the water, its use, ownership of soil under the stream, accretions, etc.” BLACK’S LAW DICTIONARY.

F. Riparian rights.

Riparian rights do not stem from who owns the lake bed but arise by reason of ownership of the shoreline. The Minnesota Supreme Court, in Adams, speaking through Commissioner Magney, stated “The decision was based exclusively upon the ground that riparian owners had the right to the maintenance of the waters in their natural condition. That right must exist whether a body of water be navigable or nonnavigable.” 251 Minn. 546, 89 N.W.2d 678). The ownership of beds of streams and lakes is quite a different matter from the right to control waters. Riparian rights include:

- fishing;
- boating;
- hunting and other domestic or recreational uses;
- harvesting wild rice;
- harvesting ice;
- drawing irrigation water so long as the water level is not impaired;
- skating;
- bathing;
- drawing domestic and agricultural waters;
- moorage, including the right to anchor a boat to one’s own land or to the bottom but not to tie the boat to private land of others;
- wharfage out to the line of navigability;
- right to have the stream continue without interruption;
- right to continuance of an established lake level;
- right to build a dock;
- accretions and relictions;
- drawing water for powering of a mill; and
- one of extreme importance to all shoreland owners, the exclusive rights of

access from the property to the lake.

These riparian rights extend to the entire body of water. Every owner of land abutting a lake has the right to use the lake for normal riparian uses: fishing, boating, hunting, swimming, docking, etc., whether the lake is navigable or non-navigable, subject to restrictions enacted by the State and provided the use does not unreasonably interfere with the riparian rights of others.

If a public road abuts the water or at a public access, the public has riparian rights

G. Riparian owner's duties.

Just as a riparian owner has certain riparian rights, riparian owners have certain duties. They cannot exercise their riparian rights in a manner so as to unreasonably interfere with the riparian rights of others. They also cannot dike-off, drain, or fence-off their part of a water body. It is a public nuisance and misdemeanor to “interfere with, obstruct, or render dangerous for passage waters used by the public.” Minn. Stat. § 609.74.

H. State's rights to regulation.

The riparian owner's rights below the ordinary high-water level are also subject to the extensive jurisdiction of the Minnesota Department of Natural Resources established by Minn. Stat. Chapter 105 State v. Kuluvan, 266 Minn. 408, 123 N.W.2d 699(1963). In that case the Court stated:

It is fundamental, in this state and elsewhere, that the state in its sovereign capacity possesses a proprietary interest in the public waters of the state. Riparian rights are subordinate to the rights of the public and subject to reasonable control and regulation by the state. Section 105.42 regulated the property rights of a riparian owner only to the extent of prohibiting any interference with the adjoining waters if such waters are public waters and if the interference is detrimental to public use. Such a regulation cannot be regarded as unreasonable and certainly not as taking property without compensation. When it is established that the public has access to waters capable of substantial beneficial use by all who so desire, the statute directs that the state fulfill its trusteeship over such waters by protecting against interference by anyone, including those who assert the common-law rights of a riparian owner. To permit such owners to interfere with the natural rights of the public to fish, hunt, swim, navigate, and otherwise enjoy such waters would result in subordinating public rights to private rights and in abdicating the state's trust over an incomparable natural resource. We find no difficulty in holding that the statute is a reasonable regulation and that it does not unconstitutionally infringe upon any rights of a riparian owner, including the rights to use his land above the ordinary low-water mark, the right to wharf out to the point of navigability, or rights arising because of the claimed ownership of the bed underlying any waters declared public by §105.38.

Regulation, however, if too restrictive, can result in the denial of a landowner's riparian rights. The Minnesota Court of Appeals in Lake Minnetonka Conservation District v. Canning, et al., (unpublished opinion) 2006 WL 1738252, reversed an order for summary judgment where the Lake Minnetonka Conservation District attempted to restrict a landowner's right to establish dockage rights.

I. Public waters.

Minnesota Statutes Section 103G, originally adopted in 1990, provides for the definition of public waters and for the use and control of public waters.

Minnesota Statutes Section 103G.005, subd. 15, defines public waters, which are subject to the regulations by the commissioner of natural resources. The definition of public waters is broad and includes, among others, waters of the state that have been determined to be navigable by a court of competent jurisdiction; meandered lakes; water basins designated by the commissioner of natural resources for a specific purpose; water basins located within and totally surrounded by public owned lands; water basins where there is a publicly owned and controlled access that is intended to provide for public access to the water basin.

Minnesota Statutes Section 103G.201 provides that public waters are not determined exclusively by the proprietorship of the underlying, overlying, or surrounding land or by whether it is a body or stream of water that was navigable in fact or susceptible of being used as a highway for commerce at the time this state was admitted to the union.

J. Public Waters Inventory, Minn. Stat. § 103G.201.

Minn. Stat. § 103G.201 provides that the commissioner of natural resources shall maintain a public waters inventory map of each county that shows the waters of the state that are designated as public waters. The commissioner is required to send a notification or copy of the maps and lists to the auditor of each affected county.

K. Allocation and Control of Waters of the State, Minn. Stat. § 103G.255.

This statute provides that the commissioner of natural resources shall administer the use, allocation, and control of waters of the state and maintain the control of lake levels and water storage reservoirs. The commissioner also has the right to determine the ordinary high water level of waters of the state.

L. Work in Public Waters, Minn. Stat. § 103G.245.

The requirements of when a public waters work permit is needed when working in or altering public waters are set forth in Section 103G.245. Permits are required for any work that changes or diminishes the course, current, or cross section of any public waters, or when filling,

excavating, or placing of materials is in or upon the beds of public waters. This Statute is very broad and complex.

M. Effect of Public Waters Designation, Minn. Stat. § 103G.205.

The designation of waters of this state as public waters does not grant the public additional or greater rights of access to the waters; diminish the right of ownership or usage of the beds underlying the designated public waters; affect state law forbidding trespass on private lands; nor does it require the commissioner to acquire access to the designated public waters under Minn. Stat. § 97A.141.