

RIPARIAN RIGHTS

Riparian rights are a very broad and complex issue which for the most part are based on English common law. The full scope of the riparian rights issue can not be addressed in a single discussion of this nature. I, therefore, will limit my discussion to what riparian rights are and why they are important.

DEFINITIONS:

Riparian is defined as pertaining to, situated or dwelling on the bank of a river or other body of water. The key words are bank and river, since ownership of abutting uplands is a necessary condition for acquiring riparian rights.

The term riparian is used commonly to refer to all rights to the water or water body bed which belong to the abutting upland owner. However, this is not technically correct:

- Riparian rights are those rights to the water body and bed which inure to the abutting upland owner of a moving body of water such as a river or stream.
- Littoral rights are those rights to the water body and bed which inure to the abutting upland owner of a non-flowing water body such as a lake or ocean.

When dealing with riparian or littoral rights you will immediately run into the terms navigable and meanderable bodies of water. The first relates to a factual situation while the latter relates to an administrative procedure.

Navigable waters are those waters which at the time of statehood had been used or were susceptible to use in their natural state by craft of common use for travel, trade, and commerce. The federal Submerged Lands Act clarified the transfer of such lands to states and include all tidelands to the 3 mile limit.

Meanderable bodies of water are those which by virtue of size are excluded from the uplands by survey. Historically the Federal government has taken the position of a private landowner when disposing of riparian lands (submerged lands are transferred without reference when the abutting uplands are conveyed) with two major exceptions. Alaska Statehood Grant lands and Alaska Native Claims Settlement lands include submerged lands under non-navigable water bodies in the same manner as uplands are included.

Meanderlines are survey lines which approximate the mean high water mark and are established as a means to quantify the uplands involved in the survey. A meanderline does not create a boundary, rather the mean high water line remains the boundary.

Other terms which will be found when dealing with riparian rights and must be understood are:

Accretion which is the gradual deposit of material along the bank of a waterbody at a rate imperceptible to the eye.

Alluvium which is basically the same as accretion but technically includes all deposits laid down by water which are deposited on the shore above the water.

Batture is a little used term of French origin which refers to alluvial deposits below water that ultimately form islands. (the filling in of the bed of the water body.)

Avulsion is the sudden catastrophic change in a water body such as cutting a new course when at flood or, as in the 1964 earthquake, the sudden rise of land above water level. Avulsive changes do not result in changes in ownership.

Erosion is the wearing away of land by water and if gradual, result in the change of ownership (loss).

Reliction is the gradual uncovering of land caused by the retreat of water.

Thread of the stream, when used as a boundary is the middle between the shores irrespective of the depth of the channel.

Riparian Rights

With the above definitions in mind, we can now look to the rights which inure to land owners who abutt water bodies. Riparian rights are derived from English common law (for the most part). There are different rights when dealing with navigable water bodies than when dealing with non-navigable water bodies.

A universal rule to remember when dealing with navigable water bodies is:

"Unless there are reservations or exceptions in the grant from the Federal government, the laws of the state determines the extent of ownership of riparian owner on navigable water bodies."

Other generalized rules are:

Riparian rights are dependent upon ownership of bank rather than the bed of water bodies.

There can be no riparian rights unless the land borders on a water body.

The following are rights which to one degree or another belong to riparian owners:

1. Title to the submerged lands.
 - a. generally a riparian owner holds title to the beds of only non-navigable water bodies
 - b. generally the beds of navigable bodies of water are owned by the State. This is the situation in Alaska.
2. Free access to the navigable part of a water body. This usually includes the right to construct piers or docks provided such does not interfere with navigation or other rights of the public. (One source notes that in Alaska this right is regarded as an easement and is effective only if need exists.
3. The right to accretion. This right is considered to be compensation for the risk of loss from erosion and is protected (probably by injunctive relief) to prevent some one from diverting the current or bailing gravel in a manner which prevents accretion.

This right extends to islands provided the island is created on the portion of the bed of the water body which is owned by the riparian owner.
4. In some jurisdictions there are rights to:
 - a. reclaim land under tidal water
 - b. control the water column
 - c. appropriate the water
 - d. fisheries.

None of the above appear to apply to Alaska

In closing, there are few constants when dealing with riparian rights. Each state has its own laws and court decisions dealing with riparian rights and submerged land ownership. Boundaries and land areas are constantly changing with ownership being lost or gained by the natural movement of water. While riparian rights are founded in common law, the courts have final authority to resolve riparian issues. There are no firm or clear cut answers, therefore, each case must be resolved on its own merits.

Alaska is just coming into the riparian arena but will grow very rapidly in the next few years because the submerged lands amendments in the recently passed ANILCA have established a Statute of Limitations on litigating submerged lands and riparian issues of ownership as they relate to the Alaska Native Claims Settlement Act.

In further pursuit of this topic, I suggest additional presentations be scheduled as follows:

1. Survey and apportionment of submerged lands and accretions. Consider State and Federal Cadastral Surveyors.
2. Land titles and riparian rights. Consider a land title company.
3. Conveyances of riparian lands. Consider State and Federal agencies involved in land conveyances.
4. Management of riparian rights under trust. Consider BIA.
5. Acquisition of riparian rights for public purposes. Consider State, Federal, and local agencies.
6. Legal aspects and defense of riparian rights. Consider Federal Solicitor, State Attorney General, and private attorneys.