

Moving Water

Boundary Changes and Property Rights

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I chatter over stony ways,
In little sharps and trebles,
I bubble into eddying bays,
I babble on the pebbles.

With many a curve my banks I fret
by many a field and fallow,
And many a fairy foreland set
With willow-weed and mallow.

I chatter, chatter, as I flow
To join the brimming river,
For men may come and men may go,
But I go on forever.

—Alfred, Lord Tennyson; *The Brook*

For all of human history, water has naturally served as a boundary for land. Texas and Mexico once disputed the area between the Rio Grande and the Nueces River, with the Rio Grande finally winning out. The Mississippi River forms part of the borders of ten states. God even told Moses in Exodus, “I will set thy bounds from the Red Sea even unto the sea of the Philistines, and from the desert unto the river.” But a

Takeaway

Generally, when a body of water forms a boundary, gradual changes in the shore result in gradual changes in the boundary of the property, whereas sudden changes do not.

river moves, as poet John O’Donohue observed, “carried by the surprise of its own unfolding.” Likewise, ocean shorelines move. Sometimes these changes are gradual and imperceptible, and sometimes they happen abruptly. How are property rights in real estate affected by these changes?

When water serves as a boundary for land, the land generally falls into one of two categories. The term “riparian” means “belonging or relating to the bank of a river or stream.” A “riparian owner” is a person whose land is bounded by a river. The term “littoral” is similar, but it deals with land bounded by the shore of an ocean, sea, or lake.

Riparian Tracts

In riparian tracts, if the call in the deed is to a non-navigable stream, the boundary is the center or “thread” of the stream, unless the deed expresses that the parties intended otherwise. Even a description of a “meander line” does not show such an intent unless manifested in the language of the deed.

Navigable streams, on the other hand, are owned by the State of Texas. If the boundary is a navigable stream or river, the boundary is generally to a point on the shore called the “gradient boundary,” with the exception of grants affected by the 1929 “Small Bill.” A navigable river is one with an average width of 30 feet from the mouth up.

Erosion, Accretion, and Reliction on Riparian Tracts Change Boundaries

Erosion happens when the stream gradually and imperceptibly wears away the land. Accretion happens when solid material such as mud or sand (alluvion) is deposited, adding to the land. When the land is worn away by erosion, a riparian owner loses that land. In the same way, a riparian owner gains land when it increases by the process of accretion.

Reliction (sometimes called dereliction) occurs when the water permanently subsides, permanently uncovering previously submerged land. In that event, the riparian owner gains the newly exposed land. Thus, the boundary moves with the body of water.

The general rule, summarized, is when a boundary is a body of water, and it is gradually and imperceptibly changed or shifted by accretion, reliction, or erosion, the boundary moves with the body of water.

If an island is formed, ownership depends on whether the stream is navigable. In a navigable stream, it is the property of the state. In a non-navigable stream, ownership continues for the owner of that part of the stream bed. If the middle thread of the stream crosses the island, the property line also crosses the island.

These rules apply even if the accretion, erosion, or reliction is man-made. An exception to this rule is that accretion does not belong to the riparian owner when the owner directly causes the accretion by “self-help.” For example, an owner may not artificially build up submerged land until it rises above the surface and then claim that land. This exception is often called the “land-fill rule.” On the other hand, where a manmade dam

upstream affects the flow of the river, the riparian owner is entitled to the resulting accretion or reliction.

Other exceptions to this rule exist. If a property description indicates the intended boundary is an object called for at a river, then the object is the landmark. The boundary is fixed to the object and does not change when the stream moves.

It is important to note that title is not affected by the rising and falling of the stream, or by temporary or seasonal changes. The change must be permanent.

Avulsion and Subsidence on Riparian Tracts Do Not Change Boundaries

Sometimes, however, rivers and streams do not change course gradually. As any child who ever played in a creek can attest, streams can take another path quickly. When a river changes course “suddenly and perceptibly,” removing or depositing land in doing so, the process is called “avulsion.” In this case, the boundaries of the land do not change, even though the body of water has moved.

The difference depends on whether the change is a “gradual and imperceptible change.” If a person can notice, from time to time, that it is changing/moving, that can be gradual and imperceptible. If it can be detected *while it’s going on*, it is not gradual and imperceptible but sudden and perceptible.

There is an exception to this rule, as well. If a *navigable* stream leaves its bed and cuts a new bed, the boundaries are not otherwise changed, but the new bed is owned by the state. If the avulsion creates an island, the state owns only the new riverbed; the island belongs to its original owner. Any accretions to the island belong to the owner of the island.

When the surface of land sinks, it is called “subsidence,” and it has no bearing on the boundaries of the land, regardless of whether the change is gradual or sudden.

Littoral Tracts

When dealing with littoral tracts, a simplified definition of the “shoreline” is the average daily high-water level. A call to the shore of a lake does not include the bed. In property abutting the Gulf of Mexico, bays, or tidal waters, typically the littoral owner owns to the shoreline, and land seaward of the shoreline is covered by “navigable waters” and owned by the State of Texas.

Erosion and Accretion on Littoral Tracts Change Boundaries

As with riparian owners, each owner bears the risk that the shoreline will move over time.

The general rule is that the owner acquires or loses title to the land gradually or imperceptibly added to or taken from her shoreline. That is, if the shoreline moves inward, the littoral owner loses that land; if the shoreline moves seaward, the littoral owner's property grows.

However, the burden to show the property has accreted is on the property owner. The state is presumed to retain title to the newly exposed land, absent such a showing. As with accretion on riparian tracts, the landfill rule applies. The owner may not intentionally build up the land and then claim the dry land as her own.

Subsidence on Littoral Tracts Does Not Change Boundaries

As with subsidence on riparian tracts, when the surface of the land sinks vertically, even underneath the surface of the water, the boundaries remain unchanged.

Effect on Mineral Ownership

In most cases, the exact boundaries of land abutting rivers, streams, and coastal flats would rarely be litigated except for one thing: oil and gas.

Much of the law surrounding these boundaries exists because of boundary disputes over mineral rights. The rules regarding erosion, accretion, reliction, and subsidence apply equally to the surface and mineral estates.

Other Matters Not Addressed

These rules affect the ownership of the land and the minerals—not the water. Ownership of the water is determined by other rules. Likewise, these rules do not necessarily affect the rights of the public to access beaches and navigable waters.

Nothing in *TG* should be considered legal advice. For advice or representation on specific matters, consult an attorney. 📌

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