

Riparian Rights/Piers and Docks: Federal Court Addresses Ownership of Mississippi River Submerged Waterbed



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The United States District Court for the Western District of Wisconsin (“Court”) addressed in an August 22nd Opinion a riparian rights issue. See *Clott et al., v. U.S. Fish and Wildlife Service*, 2024 WL 3905069.

The question considered was whether certain landowners had the right to maintain docks and piers on a portion of submerged waterbed in the Mississippi River near La Crosse, Wisconsin known as “Bluff Slough.”

14 residential owners of 2 types of property along Bluff Slough. They are denominated in the Opinion “deeded plaintiffs.” They own shoreline directly abutting Bluff Slough and maintain docks and piers in Bluff Slough.

Another group of landowners were denominated “non-deeded plaintiffs.” This group owned easements allowing them access to the shoreline.

The United States purchased two submerged parcels of waterbed in Bluff Slough in 2005 and 2006. Subsequently, the United States Fish and Wildlife Service (“Service”) began administering the parcels as part of the Upper Mississippi River National Wildlife and Fish Refuge.

The Service commissioned a survey of its parcels and discovered plaintiffs’ docks and piers on the parcels. It demanded that the referenced landowners remove the docks and piers.

The landowners (collectively, “plaintiffs”) filed suit in the United States District Court asserting several causes of action. These included:

- Quiet Title Act (against the United States)
- Declaratory Judgment (against the United States and Service).
- Administrative Procedure Act (against Service).

The United States first argued that all claims were preempted under 50 C.F.R. §27.92. This federal regulation provides that “no person shall without proper authority construct, install, occupy, or maintain any building, log boom, pier, dock, fence, wall, pile, anchorage, or other structure or obstruction in any National Wildlife Refuge.”

State laws are preempted by federal law for one of two reasons: either it would be physically impossible to comply with both federal and state law or the state law creates an obstacle to Congress’s objectives in drafting the law.

50 C.F.R. §27.92 does not ban piers and docks. Therefore, it was not impossible to comply with both state and federal law. Further, the United States failed to show that it needed to remove all docks and piers to accomplish Congress's objective of protecting wild animals and plants in the Upper Mississippi River. Therefore, plaintiffs' claims were not preempted.

For each of the plaintiffs' claims against the United States and the Service to survive, plaintiffs were required to identify a statute that waived the government's sovereign immunity.

The Quiet Title Act (the basis of the plaintiffs' claims against the United States) is the exclusive means by which the United States' title to real property can be challenged. Courts have interpreted the exclusivity rule broadly. Any claim requiring resolution of a disputed claim to real property in which the United States claims an interest must be brought under the Quiet Title Act. Therefore, the plaintiffs identified a waiver of sovereign immunity for their claims under this Act.

Nevertheless, neither the Declaratory Judgment Act nor the Administrative Procedure Act have such provisions. These Acts are the only means by which the plaintiffs could bring claims against the Service. Consequently, the Service was dismissed from suit.

Plaintiffs' remaining claims under the Quiet Title Act were grounded in Wisconsin common law property rights.

First plaintiffs asserted a riparian right to maintain the structures. Second, they asserted that title to the parcels was obtained through adverse possession.

Owners of shoreland abutting natural waterways are presumptively entitled to riparian rights. Their deeds do not have to grant this right. However, owners of shoreland abutting manmade waterways are not presumed to have riparian rights. As a result, their deeds do have to grant the right.

Bluff Slough was originally a natural tributary of the Mississippi River. However, it was expanded in the 1930s by flooding from the installation of a dam. It is now considered man-made flowage. Consequently, the plaintiffs are not presumed to have riparian rights.

Plaintiffs argued that Wisconsin common law granted these rights and later Wisconsin statutes protected the rights. Nevertheless, the United States acquired the parcels long before a relevant judicial opinion or statute was issued or enacted respectively. None of the relevant judicial opinions or statutes were retroactive in their protection. Therefore, none extinguished the United States property rights.

The non-deeded plaintiffs argued that Wisconsin Statute §30.131 permitted them to maintain their piers and docks even if their easements did not establish riparian rights. The Court disagreed. The Wisconsin statute did not create affirmative property rights. Rather the statute simply clarified that structures maintained and placed by property owners without riparian rights did not violate state law.

The Court dismissed plaintiffs' claim for riparian rights.

Finally, the Court considered whether either group of plaintiffs had adverse possession of Bluff Slough.

To plead a claim for adverse possession, a plaintiff must allege "actual continued occupation" of real property "under a claim of title, exclusive of any other right" for a period of 20 years. The property must be "protected by a substantial enclosure" or the plaintiff must cultivate and improve the property.

The Court determined that the plaintiffs had not established continuous and exclusive use of Bluff Slough.

Plaintiffs alleged that they "maintained docks and piers and/or used the underlying" land. The mere use of the land does not satisfy the continuity and exclusivity elements of adverse possession. It is also not sufficient to prove Bluff Slough was protected by a substantial enclosure, cultivated, or improved. Further, the plaintiffs did not satisfy the 20-year requirement. Only 2 plaintiffs met this requirement. The others failed to name their predecessors-in-interest to be able to "tack" the time periods of ownership together. As such, all of the plaintiffs failed to allege adverse possession.

The Court did hold that the plaintiffs could amend their Complaint to name their predecessors-in-interest.

The non-deeded plaintiffs alleged adverse possession of Bluff Slough's shoreline and waterbed through their use of it for recreation. However, Wisconsin judicial opinions foreclosed this argument. As such, this claim could not be amended.

A copy of the opinion can be downloaded [here](#).