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CRAIG, MAYES AND ROGERS COUNTIES

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Sheriff of Mayes County
Pryor
Ok 74361

Re: Ownership of lands lying under nonnavigable streams

Dear Sheriff Berry,

You have requested an opinion from the Office of the District Attorney addressing issues involving the ownership of lands underlying nonnavigable streams located within Mayes County, Oklahoma. Review of Oklahoma law indicates the following:

Questions presented.

1. Who holds title to land underlying nonnavigable streams?
2. What rights are held by owners of submerged lands?

Discussion

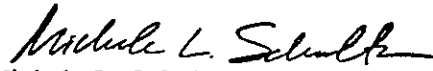
Generally, the land under nonnavigable streams is subject to private ownership and title thereto is vested in the owners of the land surrounding or adjoining the streambed. Thus, those remedies available to an owner of "dry" land are, in most instances, available for the protection and enforcement of rights in respect to submerged lands. Simply put, a property owner whose rights in a streambed are wrongfully injured may maintain an action for damages, injunction, quiet title or ejectment involving the streambed in a proper case.

In some instances, however, the interests of a riparian owner in submerged land may not be as full or complete as is that to the abutting "dry" land. For example, title held in submerged land and the water flowing over such land is subject to use in a manner consistent with or demanded by the public right of navigation or in the interest of commerce, ie. if such stream is deemed navigable public use must be allowed. Similarly, Oklahoma has recognized that although the owner of the submerged land, a riparian owner does not own the water flowing over the land or fish or other material present in the water. Accordingly, situations may arise wherein an owner

of a streambed may have no right to eject "users" of the streambed if the "user" does not encroach upon the landowner's adjacent land in any manner.

As detailed, the above discussion indicates that an owner of a nonnavigable streambed possess all rights to the submerged land which he/she holds in the adjacent "dry" land. The owner's rights, however, may be limited. It is therefore the opinion of the District Attorney that individuals utilizing waterways in Mayes County may do so, so long as the use is of the waterway only and there is no contact with the streambed or land adjacent thereto. Should a nonowner user of a stream make contact with the streambed or bank the riparian owner may take all actions, including ejectment/trespass, available to the owner against the user as if such were "dry" land.

Sincerely,



Michele L. Schultz
Assistant District Attorney
12th District

MLS/bc