



2026

SURVEYORS'
Conference

Waterway Boundaries

Michael F. Brinkash, PLS

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Waterway Boundaries

Disclaimer on Legal Advice

I am not an attorney. The case laws that are mentioned here today as a part of this program were abstracted from publications found online, books written on water boundaries and surveying books describing principles and practices for locating water boundaries. These citations are not intended to provide legal advice and they are for educational purposes only. Anyone having a specific legal problem or requiring answers to specific legal questions should consult with an attorney.

About Your Presenter

I am not an attorney

Michael F. Brinkash, PLS (PA), LS (NY)

1989-1990 Past President of PLS

2011 - 2023 PLS Member of PA State Registration Board

2022-2024 President Colonial State Boards of Surveyor Registration

Authored and Published 3 Books:

- 1. County and Municipal Boundary Descriptions**
- 2. PA Boundary Commissions and Case Reviews**
- 3. Waterway Boundaries Along Riparian Lands, Canals & Islands**

WHAT IS THE DEFINITION OF NAVIGABLE

According to cases, and a publication by the National Organization for Rivers, as shown in Chapter Three, Navigable has taken on several different legal meanings.

1. On a river that is Navigable for “Title Purposes,” Ownership of the bed and banks of the river passed to the state at the time of statehood (rather than to adjacent landowners, even if the middle of the river is used as a property boundary.)

Case – **1842 - Martin v. Waddell**, Confirmation of the “Public Trust Doctrine” that states own the beds of navigable rivers for title purposes and the state holds the land in trust for the people. .

Case – **1845 – Pollard v. Hagan**, under the “Equal Footing Doctrine”, confirmed that states owned land under the water based on the public’s right to navigate.

2. On a river that is Navigable for “Commerce Clause Purposes,” the river is subject to **federal jurisdiction under the Commerce Clause of the Constitution.**

Case – **1824 –Gibbons v. Ogden**, court confirmed Federal Jurisdictions over river traffic within one state, New York in this case.

3. On a river that is **Navigable for “Admiralty Law Purposes,”** accidents and disputes on the river are governed by admiralty law. (Also called “navigable in the technical sense” or “strictly navigable” in older court decisions.)

Case – **1851 – Genesee Chief v. Fitzhugh**, deals with Admiralty and Maritime Law. Maritime Law deals with shipping and warfare on the ocean. Maritime Law governed disputes on the high Sea. Admiralty Laws governed disputes involving ships on arms of the Sea.

4. *On a river (or a stretch or segment of a river) that is **Navigable for Clean Water Act Purposes**, the river is subject to federal jurisdiction regarding **water pollution, under the Clean Water Act**. The Federal Water Pollution Control Act of 1972, A/K/A, Clean Water Act is enforced by the U.S. Army Corps of Engineers.*

*Case - **1974 – U.S. v. Ashland Oil and Transportation Company**, it had been determined that Congress does have the authority over non-navigable tributaries of rivers under the Commerce Clause.*

5. On a river that is **Navigable for “Recreational Purposes,”** the river is “held in trust for the public” for activities such as boating, fishing, and fowling. (Also called **“navigable in the ordinary sense”** or **“navigable in fact”** in older court decisions.)

Case – **1913 – Chandler v. Dunbar**, court reaffirmed that flow of a navigable stream (water) is not private property.

2.1 – WHAT IS THE DEFINITION OF NAVIGABLE

1. On a river that is **Navigable for “Title Purposes,”** **Ownership of the bed and banks of the river** passed to the state at the time of statehood (rather than to adjacent landowners, even if the middle of the river is used as a property boundary.)
2. On a river that is **Navigable for “Commerce Clause Purposes,”** the river is subject to **federal jurisdiction under the Commerce Clause of the Constitution.**
3. On a river that is **Navigable for “Admiralty Law Purposes,”** **accidents and disputes on the river** are governed by admiralty law. (Also called “navigable in the technical sense” or “strictly navigable” in older court decisions.)
4. On a river (or a stretch or segment of a river) that is **Navigable for Clean Water Act Purposes,** the river is subject to federal jurisdiction regarding **water pollution, under the Clean Water Act.** The Federal Water Pollution Control Act of 1972, A/K/A, Clean Water Act is enforced by the U.S. Army Corps of Engineers.
5. On a river that is **Navigable for “Recreational Purposes,”** the river is “held in trust for the public” **for activities such as boating, fishing, and fowling.** (Also called “navigable in the ordinary sense” or “navigable in fact” in older court decisions.)

Credit For Source Reference:

National Organization for Rivers, Public Rights on Rivers: Canoeing, kayaking, rafting, fishing, and fowling rights, river conservation and water rights (January 2014 - Kindle Locations 2274-2290). Kindle Edition.

In Order to Determine the Location of Water Boundaries the Surveyor Should Understand:

1. Definitions Associated with Water Boundaries
2. Classification of Waterways (Navigable or Non-Navigable)
3. Commerce Clause vs. Title Test (Navigability)
4. Where is the Boundary Line Along Navigable Waters?
5. Deed Calls and Phrases Along Waterways
6. Evidence to Determine Water Marks (High & Low)
7. Navigable Servitude
8. Where is the Boundary Line Along Non-Navigable Waters?
9. Canals
10. Riparian Rights
11. River Story
12. Different Water Rights
13. Frequently Asked Questions

(We will be talking about all of these items, but not necessarily in this order)

Definitions

Riparian Owner is a landowner whose property is either bounded by or traversed by a water course.

Reference: Pennsylvania Boundary Law and Adjoining Landowner Disputes, Jeffery B. Clay, Knud E. Hermansen and Paul L. Zeigler, Seminary Material, Professional Education Systems, Inc. 1986. Citations: Gibbs v. Sweet 20 Pa Superior Ct. 275 (1902) Standard Plate Glass Co, v. Butler Water Co., 5 Pa. Superior Ct. 563 (1897).

Definitions

Littoral Owner – One who owns land abutting a sea or ocean where the tide regularly rises and falls.

Reference: Glossary of BLM Surveying and Mapping Terms, Prepared by the Cadastral Survey Training Staff, Denver Service Center, 1978, U.S. Department of the Interior Bureau of Land Management – Glossaries for Surveyors, 2nd Edition 1989, Collected by Roy Minnick.

Definitions

Watercourse is a body of water, usu., of natural origin flowing in a reasonably defined channel with “bed and banks”. The term includes rivers, creeks, springs, lakes and marshes in which such flowing streams originate or through which they flow – *Also termed Waterway.*

(Cases: Waters and Water Courses 38 C.) S. Waters Section 3-8, 91). David H. Getches, Water Law in a Nutshell. 106-107 (3rd ed. 1997).

Definition

Origin of the Definition of *Navigable*

The U.S. Supreme Court, the Daniel Ball Case, 77 U.S. 557 (1870). As stated by Justice Fields: “Those rivers must be regarded as public navigable rivers in law, which are navigable in fact”. And they are navigable in fact when they are used, or susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. And they constitute navigable waters of the United States within the meaning of the acts of Congress, in contradistinction from the navigable waters of the States, when they form in their ordinary condition by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other States or foreign countries in the customary modes in which such commerce is conducted by water.”

Definition

Who or What is Daniel Ball?

The Daniel Ball is a vessel propelled by steam, of one hundred and twenty-three tons burden. In March 1868, it was engaged in navigating Grand River in the State of Michigan, between the Cities of Grand Rapids and Grand Haven, in the transportation of merchandise and passengers between those places without having been inspected or licensed under the laws of the United States and to recover the penalty provided for want of such inspection and license the United States filed a libel in the District Court for the Western District of Michigan.

Definition

1870 Definition of *Navigable Slightly Modified in 1874 to Shed Light on the Phrase - Transportation and Commerce*

In 1874 The U.S. Supreme Court, [the Montello Case](#), 87 U.S. 430 slightly refined the definition of navigability as stated by Justice Davis: “The capability of use by the public for purposes of transportation and commerce affords the true criterion of the navigability of a river, rather than the extent and manner of that use. It is capable in its natural state of being used for purposes of commerce, no matter in what mode the commerce may be conducted, it is navigable in fact, and becomes so in law, a public river or highway. Vessels of any kind that can float upon the water, whether propelled by animal power, by the wind, or by the agency of steam, are, or may become, the mode by which a vast commerce can be conducted, and it would be a mischievous rule that would exclude either in determining the navigability of a river.

Definition

Definition of *Navigable*

The two foregoing cases (Ball & Montello) go to the question of **admiralty**, however; many states have adopted these or similar variations to these rulings to determine and define navigability relative to “title” in their state.

References & Citations: Riparian Boundaries and Rights of Navigation: Rivers Lakes and Seas by Kristopher M. Kline. 1870 Daniel Ball Case & 1874 Montello Case

Definition

Additional Definitions of *Navigable*

-Wide or deep enough, or free enough from obstruction, to be traveled on by ships; as, a navigable river.

Reference: Webster's New Universal Unabridged Dictionary last copyright 1983.

-Capable of allowing vessels or vehicles to pass, and thereby usable for travel or commerce.

Reference: Navigable Waters 1. C.J.S. Navigable Waters Section 1. Reference: Black's Law Dictionary – Eight Edition – 2nd Report 2007.

-In law, the term navigable is applied to the sea, to arms of the sea, and to rivers in which the tide flows and reflows.

Reference: 5 Taunt. R. 705; S. C. Eng. Com. Law Rep. 240; 5 Pick. R. 199; Ang. Tide Wat. 62; 1 Bouv. Inst. n. 428. A Law Dictionary, Adapted to the Constitution and Laws of the United States. By John Bouvier. Published 1856.

Definition

Additional Definitions of *Navigable*

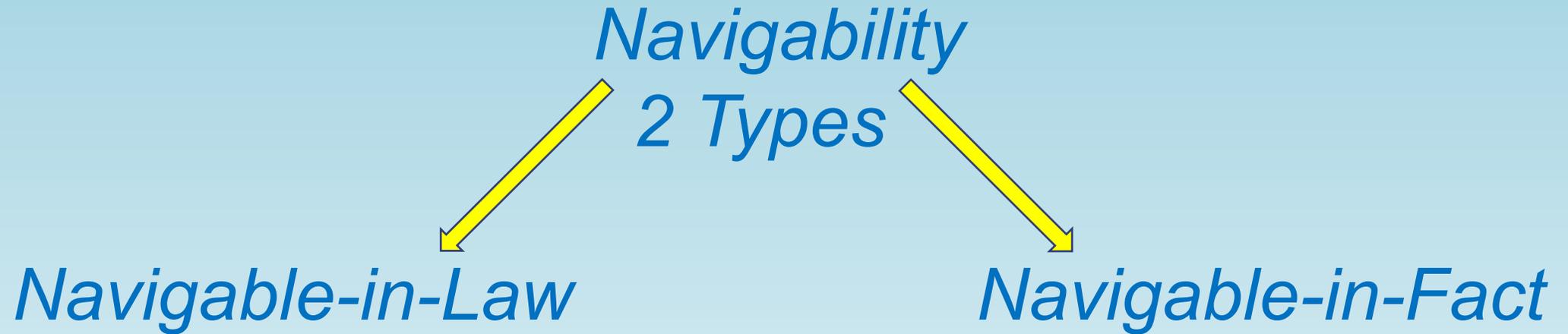
In **North Carolina**; the navigability of a river does not depend upon the ebb and flow of the tide, but a stream navigable by sea vessels is a navigable river.

1 M'Cord, R. 580; 2 Dev. R. 30; 3 Dev. R. 59; **and in Pennsylvania**; 2 Binn. R. 75; 14 S. & R. 71;

By the common law, such rivers as are navigable in the popular sense of the word, whether the tide ebb and flow in them or not, are public highways.

Ang. Tide Wat. 62; Ang. Wat. Courses, 205 1 Pick. 180; 5 Pick. 199; 1 Halst. 1; 4 Call, 441: 3 Blackf. 136.
Vide Arm of the sea.

Definitions



When a Waterway has been Determined to be Navigable-in-Fact, they are then said to be Navigable-in-Law

Definitions

Navigable-in-Law

In the 18th and 19th centuries, the Pennsylvania Legislature passed numerous acts declaring certain rivers, creeks, and streams, or parts thereof, to be public streams or highways. The purpose of these acts was to allow public fishing, navigation, and other uses (even small and seasonal waterways played a major role in the movement of logs, sawn timber, and lumber, as well as commodities such as furs, salts, grains, and manufactured goods).

In 1890, Frederick J. Geiger of the Philadelphia Bar prepared a list of the various acts declaring waterways to be public highways for the Pennsylvania Fish Protective Association. It lists the acts alphabetically by stream name.

Definitions

Navigable-in-Law

If the stream is not actually navigable, so that there is no public right of way therein, **a declaration by the legislature that it shall be regarded as navigable is a taking of private property for public use, and unless compensation is made the statute will be in conflict with the constitutional provision requiring compensation in such cases.**

Citation & Reference: The issue of whether the legislature may statutorily render a body of water navigable was addressed in Commonwealth v. Foster, 36 Pa.Super

Definitions

Navigable-in-Law

If navigable in fact, it is so in law; it is public and no such statute need be considered. If not navigable in fact, it is not so in law and no statute can make it public, for the owners had title to the center of the waterway that cannot be divested by mere legislation.

Citation & Reference: Smoulter v. Boyd, supra. (Knud)

Definition-Navigable

Examples of Navigable-in-Law & Other Published List

Partial List of PA Legislative Acts

Date of the Act	River or Stream Declared a Public Highway
1798, March 21. Rec'd Law Book No. VI, p. 245. 1807, March 4. Rec'd Law Book No. X, p. 443, P.L. 42.	A. Allegheny River from the mouth thereof to the boundary of the State.
1873, April 2. P.L. 486.....	So much of, in the counties of Potter and McKean as lies southwardly of the north line of the State. Amis creek, in the township of Taylor, in the county of Centre, from Mount Pleasant, on the Tyrone and Clearfield Railroad, to <u>the sawmill</u> of John Copenhaver, in said township, for the passage of logs.
	Analomink river. See Broadhead's creek.*
1813, March 26. Law Book XIV, p. 1, P.L. 189	Anderson's creek. See Little Anderson's Creek. **in the county of Clearfield, from the mouth thereof ten miles up the same.
1854, May 5. P.L. <u>560</u>	Andrew's run, in Pittsfield township, Warren county.
1822, April 1. P.L. 117.....	Auchwick creek, in the counties of Huntingdon and Bedford, from the mouth thereof to John Wilde's mill.

Partial Copy of List Prepared by Commonwealth of PA

November 25, 2003

Bureau of Watershed Management

STREAM BEDS OWNED BY THE COMMONWEALTH

The beds of the following waterways have been found through legal analysis, historical research and/or in Pennsylvania court decisions to be submerged lands of the Commonwealth.

Allegheny River	Little Conemaugh River
Bald Eagle Creek	Little Juniata River
Beaver River and its "principal branches" (Shenango River & Mahoning River)	Little Schuylkill River
Big Beaver Creek	Loyalsock Creek
Big Mahoning Creek	Lycoming Creek
Big Sandy Creek	Mahanoy Creek
Big Schuylkill Branch	Mahoning River
Black Lick Creek	Monongahela River
	Muncy Creek

Definition- Navigable

Other *Published List*

Partial Copy of List Prepared by the U.S. Army Corps of Engineers

<u>APPENDIX II</u>		
<u>STREAMS DECLARED NAVIGABLE BY</u>		
<u>THE U.S. ARMY CORPS OF ENGINEERS</u>		
<u>Ohio River and Tributaries*</u>		
<u>Stream</u>	<u>Location</u>	<u>Jurisdiction</u> <u>Miles</u> <u>Above</u> <u>Mouth</u>
Ohio River (Head to mile 127.2)	Beaver, Allegheny Co.	127.2
Chartiers Creek	Allegheny Co.	1.9
Beaver River (Entire Length)	Beaver, Lawrence, Mercer Co.	21.5
Mahoning	Lawrence	41.0

Definition

Navigable-in-Fact

Rivers are navigable in fact when they are used, or susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

Reference & Citation: The U.S. Supreme Court, the Daniel Ball Case, 77 U.S. 557 (1870).
As stated by Justice Fields.

Definition

Navigable-in-Fact

Water is navigable "in fact" if, in the natural condition, the body of water can support transportation in the driest periods. As such, very few rivers are considered navigable "in fact." PA navigable rivers (in fact) have been generally limited to the Delaware, Susquehanna, Ohio, Allegheny, Monongahela, and (to a limited extent) to their tributaries.

The Allegheny, Monongahela and Ohio rivers are rivers naturally navigable, and have been classed with the Delaware and Susquehanna.

(Citation: *Wainwright v. McCullough*, 63 Pa. 66 (1869).

Definition

Navigability – Commerce Clause vs. Title Test

The Supreme Court has found that the “title” and “commerce clause” tests of navigability are the same with but two minor differences. **First**, under the commerce clause test, it is not necessary that the waterway be navigable in its “natural and ordinary” condition; it is sufficient if the waterway can be made navigable in fact by “reasonable improvements.” **Second**, unlike the title test, commerce clause navigability does not require the watercourse to be susceptible to navigation at the time of statehood; the watercourse may become navigable at some later time. United States v. Appalachian Electric Power Co., supra, 311 U.S. at 407-408. By accounting for these differences, one may argue that judicial decisions about navigability for commerce clause purposes are applicable to the question of navigability for sovereign title purposes.

Reference: Water Boundaries – Demystifying Land Boundaries Adjacent to Tidal or Navigable Waters, by Bruce S. Flushman

Definition

Navigable & Non-Navigable

The intent of the courts has been that the difference between navigable and non-navigable rivers should be a practical matter that can be understood by ordinary people such as settlers, fur trappers, and riverside landowners. The courts have confirmed that even logs and small boats such as canoes, kayaks, and rafts qualify as navigation for title purposes. Therefore, a navigable river is one on which you can use a small boat, and a non-navigable river is one on which you can't.

In other words, non-navigable is the opposite of navigable. The waterway is not capable of allowing vessels or vehicles to pass, and thereby is not usable for travel or commerce.

Reference: National Organization for Rivers

Where is the Boundary Line Along Navigable Waters?

(Pennsylvania Example)

Transfers along navigable water limit the title to the low-water mark (rivers) or water's edge (lake). The title to the soil beyond the low-water mark (under the waters) was never meant to be granted to private citizens. Furthermore, the absolute title of the riparian owners is fixed at the high-water line. Therefore, the area between the high- and low-water lines is a conditional title in favor of the public.

Reference: Navigable waters in Pennsylvania (Knud Hermansen)

Ordinary high-water mark (along a navigable river) is the boundary of absolute title, ordinary low-water mark that of the qualified right.

Reference: (Hartley v. Crawford, 81 Pa. 486 (1876)).

What to do about those Streams Declared Navigable-in-Law by The PA Legislature ?

(Pennsylvania Example- This is What Knud has said.)

If a stream **is in fact navigable, or has been declared a navigable stream by the Legislature**, grantee of land . . .takes (conditional) title merely to the **low-water mark**. . .

With this statement Knud is suggesting that Navigable-in-Law streams should be treated as Navigable Streams.

The condition is: there exist an easement in favor of the public between the low and high water marks for navigational purposes.

Reference: (Leaf v. Pennsylvania Co., 268 Pa. 579, 112 A. 243 (1920) as cited by Knud.

What to do about those Streams Declared Navigable-in-Law by The PA Legislature ? The following is the “why” position the State has taken:

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The Legislature has, since its organization, and prior to the adoption of the Constitution of 1874, passed numerous acts declaring certain rivers, creeks and streams, or parts thereof, public streams or highways, for the purpose of navigation. These acts show that the Legislature claims the right to itself to pass laws giving the public the right to use the streams as highways, in spite of the fact of the ownership of the bed of the streams by private ownership. In 1890, Frederick J. Geiger, Esq., of the Philadelphia Bar, prepared for the Pennsylvania Fish Protective Association, a list of various acts declaring streams, etc., public highways, and this was published as a matter of general information at that time.

*****At the time it had been reported by the Department of Fisheries that “*many of these acts are over a century old and by their unopposed usage can no longer be attacked.*” As early as April 8, 1867, the Legislature passed an act “that Lake Pleasant in the county of Erie, Commonwealth of Pennsylvania, and the outlet of said lake, to French Creek, be and the same are hereby declared forever a public highway, open and free to all of the people of said Commonwealth for fishing, navigation, and all purposes whatsoever.”

Should the Surveyor Attempt to Determine if a Stream is Navigable or Non-Navigable

I would suggest the following and remember survey cost could be a factor:

1. If you are employed to “specifically” make a determination of a Navigable or Non-Navigable Waterway, perform the Historical Search starting with Legislative Acts and Historical Books. Consider if the stream as viewed today and as viewed in the driest part of the year, appear to be navigable within context of the previously defined. Take into consideration how the boundary lines are called out in the deeds and chain of title. A search of title back to the warrant may prove helpful in your decision making. Remember only courts can determine Navigability and as a surveyor you are rendering a Professional Opinion.
2. If you are employed to perform a boundary survey and for which one or more of the boundary lines are along a waterway; rely on the deed as close as possible to point you in a given direction, render your professional opinion and report all of the facts that you are aware of. If you have any doubts about your determination make your client aware of these doubts, preferably in writing. Report everything!
3. Surveys to determine the location of an original boundary line that has been changed due to Avulsion are often difficult to prove. As a part of your investigation talk with neighbors or elders of the area for verbal information on the history of the waterway channel. Document their statements and possibly get a signed affidavit. It will be necessary, in most cases, to perform an Historical Search of the records and boundary lines.

Where is the Boundary Line Along Navigable Waters?

(New York)

New York Example of “Original” Title along Navigable Waters (Colonial States)

In New York a patent from the crown of lands bounded by navigable tide water has been held to convey no title to land below high water, but merely jurisdiction over the same which is to be held and administered for the crown

Citation: DeLancey v. Piepgras 138 N.Y. 26, 33 N.E. 822 - **Skelton Boundaries and Adjacent Properties 1930**

A similar grant to the city of New York was held to convey the land between high and low water to the city in trust for the public; so that a later conveyance by the city to a private person describing the land as bounded by the Hudson River was limited to the line of high water.

Citation: In re Mayor of New York, 182 N.Y. 361, 75 N.E. 156, 108 Am. St. 809. - **Skelton Boundaries and Adjacent Properties 1930**

Where is the Boundary Line Along Navigable Waters?

(New York)

New York Example of “Original” Title along Navigable Waters (Colonial States)

A grant from a colonial governor which described land as “following the seashore to another small creek (Flushing) then along the course thereof” has been ruled as limiting the grant to high water

Citation & Reference: Clark v. New York, 165 App. Div. 873, 151 N.Y.S. 714 - **Skelton Boundaries and Adjacent Properties 1930**

Where the colonial patent included all “woods, beaches, marshes, pastures, creeks, waters, lakes, fishing, hunting and fowling” title to land under the water passed to the grantee

Oakes v. DeLancey, 71 Hun 49, 24 N.Y.S. 539, 54 N.Y. St. 87, affd. 143 N.Y. 673, 39 N.E. 21. - **Skelton Boundaries and Adjacent Properties 1930**

Where is the Boundary Line Along Navigable Waters?

(New York)

New York Example of “Original” Title along Navigable Waters (Colonial States)

A subsequent conveyance of a portion of the land describing the water boundary as “along the shore” was construed to include the land between the high and low water where the quantity and monuments confirmed the intention to take to the outer line.

Oakes v. DeLancey, 133 N.Y. 227, 30 N.E. 974, 28 Am. St. 628. See also Section 206 supra - **Skelton Boundaries and Adjacent Properties 1930.**

How Do We Know If We Are Dealing With Navigable Waters? 40

For Pennsylvania Consider the Following:

1. List of Rivers and Streams Declared Navigable as Public Highway by **Legislative Acts**. Reference: **1890 compilation by Frederick J. Geiger** of the Philadelphia Bar of the various acts declaring waterways to be public highways for the Pennsylvania Fish Protective Association.
2. List of Waterways Determined by the PA Bureau of Watershed Management
Published November 25, 2003.
3. List of streams declared Navigable by the U.S. Corp of Engineers
4. Streams declared Navigable by Case Citations (See: *Wainright v. McCullough*)
5. Depending on circumstances of survey, you may have to do a historical search to determine if the waterway was ever used as a Navigable Stream.

1. List of Rivers and Streams Declared Navigable as Public Highway by Legislative Acts.

Reference: 1890 compilation by Frederick J. Geiger of the Philadelphia Bar of the various acts declaring waterways to be public highways for the Pennsylvania Fish Protective Association.

Partial List of Legislative Acts

Date of the Act	River or Stream Declared a Public Highway
1798, March 21. Rec'd Law Book No. VI, p. 245. 1807, March 4. Rec'd Law Book No. X, p. 443, P.L. 42.	A. Allegheny River from the mouth thereof to the boundary of the State. So much of, in the counties of Potter and McKean as lies southwardly of the north line of the State.
1873, April 2. P.L. 486.....	Amis creek, in the township of Taylor, in the county of Centre, from Mount Pleasant, on the Tyrone and Clearfield Railroad, to the sawmill of John Copenhaver, in said township, for the passage of logs.
	Analomink river. See Broadhead's creek.*
1813, March 26. Law Book XIV, p. 1, P.L. 189	Anderson's creek. See Little Anderson's Creek. **in the county of Clearfield, from the mouth thereof ten miles up the same.
1854, May 5. P.L. 560.....	Andrew's run, in Pittsfield township, Warren county.
1822, April 1. P.L. 117.....	Auchwick creek, in the counties of Huntingdon and Bedford, from the mouth thereof to John Wilde's mill.

2. List of Waterways Determined by the PA Bureau of Watershed Management Published November 25, 2003.

Partial Copy of List Prepared by Commonwealth

November 25, 2003

Bureau of Watershed Management

STREAM BEDS OWNED BY THE COMMONWEALTH

The beds of the following waterways have been found through legal analysis, historical research and/or in Pennsylvania court decisions to be submerged lands of the Commonwealth.

Allegheny River	Little Conemaugh River
Bald Eagle Creek	Little Juniata River
Beaver River and its "principal branches" (Shenango River & Mahoning River)	Little Schuylkill River
Big Beaver Creek	Loyalsock Creek
Big Mahoning Creek	Lycoming Creek
Big Sandy Creek	Mahanoy Creek
Big Schuylkill Branch	Mahoning River
Black Lick Creek	Monongahela River
	Muncy Creek

3. List of streams declared Navigable by the U.S. Corp of Engineers

Partial Copy of List Prepared by the Corps

<u>APPENDIX II</u>		
<u>STREAMS DECLARED NAVIGABLE BY</u>		
<u>THE U.S. ARMY CORPS OF ENGINEERS</u>		
<u>Ohio River and Tributaries*</u>		
<u>Stream</u>	<u>Location</u>	<u>Jurisdiction</u> <u>Miles</u> <u>Above</u> <u>Mouth</u>
Ohio River (Head to mile 127.2)	Beaver, Allegheny Co.	127.2
Chartiers Creek	Allegheny Co.	1.9
Beaver River (Entire Length)	Beaver, Lawrence, Mercer Co.	21.5
Mahoning	Lawrence	41.0

4. Streams declared Navigable by Case

Citations (See: *Wainright v. McCullough*)

The Allegheny, Monongahela and Ohio rivers are rivers naturally navigable, and have been classed with the Delaware and Susquehanna.

(Citation: *Wainwright v. McCullough*, 63 Pa. 66 (1869).

5. Depending on circumstances of survey, you may have to do a historical search to determine if the waterway was ever used as a Navigable Stream

The following three slide represent suggestions to be used for a historical search.

How Do We Know If We Are Dealing With Navigable Waters?

Determination of Navigable Waterways is a Historical Test

Test of Navigability-in-Fact for title purposes (Depends on State)

Here are some of the facts and elements used to determine if a waterway is navigable?

1. Waterway is affected by ebb and flow of tide (does not apply in PA; this PA abstract may not be totally true due to, i.e. Delaware River, etc.)
2. The waterway is navigable in its “natural and ordinary” condition.

Where is the Boundary Line Along Navigable Waters?

What facts or elements are used to determine if a waterway is navigable?

-Historical Test-

3. The waterway is susceptible to navigation at time of statehood.
This most likely would require a historical search
4. The body of water can support transportation in the driest periods.
5. It must be used or have been used for commercial transportation.

Where is the Boundary Line Along Navigable Waters?

What facts or elements are used to determine if a waterway is navigable?

-Historical Test-

6. It must have been used as a "public road" for the transportation of goods between centers of commerce and not just a source of recreation.

7. Water is used or usable as a broad highroad for commerce and transport in quantity of goods and people.

8. Recreation is normally excluded as a requirement, however; some states include recreational use as enacted by state laws.

9. Consult History Books, Legislative Acts, & Other Published List.

Once Shown to be Navigable, Always Navigable

(Remember The Following)

A body of water once shown to be navigable in its natural state is presumed to be navigable and “forever free”.

United States v. Appalachian Electric Power Co., 311 U.S. 377, 408, 61 S.Ct. 291, 299, 85 L.Ed. 243, 253 (1940); Nekoosa Edwards Paper Co. v. Railroad Commission, 201 Wis. 40, 46, 228 N.W. 144, 147 (1929), affirmed, 283 U.S. 787, 51 S.Ct. 352, 75 L.Ed. 1415 (1931); Re Pennsylvania Water & Power Co., 31 P.U.R. 1, 5 (1938).

The character of a navigable water is not changed by any subsequent economic or geographic developments resulting in a commercial disuse of a river for navigation.

Economy Light & Power Co. v. United States, 256 U.S. 113, 123-24, 41 S.Ct. 409, 412, 65 L.Ed. 847, 855 (1921); Pennsylvania Environmental Council, Inc. v. Bartlett, 315 F.Supp. 238 (1970), affirmed, 454 F.2d 613 (1971).

Navigability, in the sense of the law, is not destroyed because a water course is interrupted by occasional natural obstruction.

Montana Power Co. v. Federal Power Commission, supra at 494; Re Pennsylvania Water & Power Co., supra at 5 (citing Arizona v. California, supra at 453, 51 S.Ct. at 525, 75 L.Ed. at 1165); State of Wisconsin v. Federal Power Commission, 214 F.2d 334, 337 (1954), cert. denied, 348 U.S. 883, 75 S.Ct. 124, 99 L.Ed. 694

In 1954, a court case stated the fact that a river had not been used for transportation of logs since 1924 was of little moment in deciding the navigability of a river.

High Water Mark: The line that the river impresses on the soil by covering it long enough to deprive it of agricultural value – Also termed high-water line.

Black's Law Dictionary, 8th Edition

Low-water mark: In a river, the point to which the water recedes at its lowest stage.

Black's Law Dictionary, 8th Edition – PA Courts have defined the low water mark as the height of water at ordinary stages of low water unaffected by drought and unchanged by artificial means..... PA Fish & Boat Comm.

High-Water Line (Boundary): The line of normal high water, generally where the vegetation ceases to grow.

Knud Hermansen

The most reliable indicator of mean (ordinary) high water elevation is the evidence made by the water's action at its various stages, which are generally well marked in the soil. In timbered localities, a very certain indication of the locus of the various important water levels is found in the belting of the native forest species.

Water Boundaries – George M. Cole

How to identify the High Water Mark Along Navigable Waters

I like Knud's' Definition to Help Identify The High Water Line, It is Simple and Straight Forward:

High-Water Line (Boundary): The line of normal high water, generally where the vegetation ceases to grow.

Where in the Navigable Stream, is the Municipal Boundary Line Located?

TOWNSHIPS "FIRST CLASS TOWNSHIP CODE" Act of Jun. 24, 1931, P.L. 1206, No. 331 Cl. 73 (Reenacted and amended May 27, 1949, P.L.1955, No.569) *New law enacted amending Title 53 (Municipalities 53 PA C.S.), Act of July 7, 2022, P.L. 455, No.41, Cl. 53, Session of 2022, No. 2022-41, SB 47, referred to as the new law.*

AN ACT: Concerning townships of the first class; amending, revising, consolidating, and changing the law relating thereto. ARTICLE III

TOWNSHIP LINES AND BOUNDARIES *Old law and new law same, stream boundaries.*

Section 301. Stream Boundaries. Whenever any township is bounded by the nearest margin of any navigable stream, and the opposite township, borough, or city, as the case may be, is also bounded by the nearest margin of the same stream, the middle of such stream shall be the boundary between such township and the opposite township, borough or city. Nothing contained in this section shall be construed to repeal any local or special law providing to the contrary.

Navigable Servitude

Navigable servitude is a doctrine in United States constitutional law that gives the federal government the right to regulate “navigable waterways” as an extension of the Commerce Clause in Article I, Section 8 of the Constitution. It is also sometimes called federal navigational servitude.

The Commerce Clause gives Congress the power to regulate "commerce . . . among the several states." In Gibbons v. Ogden (1824), the United States Supreme Court ruled unanimously that this power extended to regulation over navigable waterways, which were an important hub of transportation in the early years of the Republic.

One court has held that a federal agency can restrict individuals paddling on a stream, finding boating is not a 'federally protected right'. 8:09-2665-MGL 4th circuit (2013). This servitude does not extend beyond the navigable waterway. It does not extend to the banks of a navigable stream.

The Government has the power to reroute a waterway, block a navigable creek, completely dewater a river, deny riparian owners access to a stream, and devalue a riparian owner’s land without paying any compensation.

Boundary Lines Along Non-Navigable Waters

