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Just Compensation and Riparian Interests

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Just Compensation and Riparian Interests

In the exercise of its power of eminent domain, the Government is frequently called upon to acquire riparian or littoral lands. Unless a mutually satisfactory price is reached by negotiation, the question of "just compensation" must be litigated in the courts.

While the value of land is a factual question, a substantial body of law has grown up to assist the fact-finder. Just compensation is the market value[1]: "the price which might be obtained by negotiation and mutual agreement, after ample time to find a purchaser, as between a vendor who is willing (but not compelled) to sell, and a purchaser who desires to buy but is not compelled to take the particular piece of property."[2] The value to be ascertained is, not the gain to the Government, but the loss to the seller.[3] The burden of establishing this value is on the owner.[4] While evidence as to the values of separate elements of the property is admissible, as tending to show probable market value,[5] an appraisal arrived at by computing the sum of these values would be held unrealistic and inadmissible.[6]

Likewise excluded, as too speculative, are appraisals derived by the "balance sheet" method—estimating the amount and market value (after processing) of natural resources included in the property, and subtracting therefrom the expected cost of processing and distribution.[7] This type of appraisal cannot properly exclude the effects of lack of competence of managerial personnel, fluctuations in labor costs and market, etc. For example, the owner of an abandoned iron mine was not permitted to prove, in eminent domain proceedings, that, by pulling the pillars remaining in the mine, it could realize a profit of over $500,000.00.[8] Expert testimony, it was said, cannot be based on a series of conjectures.

The standard of compensation, therefore, remains the fair market value. It is generally asserted that this value must be assigned with respect to the "highest and best" use to which the property could be put.[9] But, when a reasonable man would know that it was highly improbable that the property could ever be used for the purpose claimed, this element would be excluded from consideration. Thus, where an owner claimed increased compensation for

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[1] *Washington Water Power Co. v. U. S.*, 135 F. 2d 541 (9th Cir. 1943).
[2] Black, Law Dictionary.
[3] *People v. Ocean Shore R. Co.*, 181 P. 2d 705 (Cal. 1947).
[4] *U. S. ex rel T.V.A. v. Powelson*, 319 U. S. 266 (1943).
[5] *U. S. v. 620 Acres of Land*, 101 F. Supp. 686 (W. D. Ark. 1952).
[6] *U. S. v. 5 Acres, Suffolk Co., N. Y.*, 50 F. Supp. 569 (E. D. N. Y. 1943); *U. S. v. 13.40 Acres in Richmond, Cal.*, 56 F. Supp. 535 (N. D. Cal. 1944).
[7] *U. S. v. Chandler-Dunbar Co.*, 229 U. S. 53 (1913); *U. S. ex rel T. V. A. v. Powelson, supra* Note 4; *U. S. v. 5 Acres, Suffolk Co., N. Y., supra.*
[8] *U. S. v. Certain Lands in Woodbury & Highlands*, 51 F. Supp. 66 (S. D. N. Y. 1943).
[9] *Iriarte v. U. S.*, 157 F. 2d 105 (1946), *mod.* 166 F. 2d 800 (1st Cir. 1948).

his land on the ground that it was suitable for use as a power site, evidence of this claim was excluded, after the court found as a fact that the land could not have been used for this purpose without flooding lands belonging to the United States. The court said

> Elements affecting value that depend upon events or combinations of occurrences which, while within the realm of possibility, are not fairly shown to be reasonably probable, should be excluded from consideration.[10]

Unlike inland property, riparian land carries with it a variety of incidental interests extending beyond its boundaries into the adjacent body of water. The problem in eminent domain proceedings is to determine, in each case, what these rights are, and which of them are "compensable," and therefore admissible as evidence of value. Interests generally deemed compensable are the classic "riparian rights" (enumerated *infra,* Page 37)[11] and the title to the waterbed.[12] Not compensable are special statutory privileges accorded riparian owners, such as the grant of the power of eminent domain to a water power company. As brought out in *U. S. ex rel T.V.A. v. Powelson,*[13] this is a mere revocable privilege. As the state could not be required to make compensation for such revocation, the United States should not be required to do so either. Compensation is required only for the taking of *private* property; and the delegated power of eminent domain is not private property. In the *Powelson* case, the court explained:

> That which is not private property within the meaning of the Fifth Amendment likewise may be a thing of value which is destroyed or impaired by the taking of lands by the United States. But . . . it need not be reflected in the award due the landowner unless Congress so provides.

and again:

> . . . not all losses suffered by the owner are compensable under the Fifth Amendment . . . the sovereign must pay only for what it takes, not for opportunities which the owner may lose.

For purposes of appraisal, the incidental interests attached to riparian (or littoral) property are best classified according to the nature of the adjacent water: (1) Open seas; (2) Navigable tidal rivers and harbors; (3) Navigable non-tidal rivers; (4) Non-navigable rivers and streams; (5) Lakes. The following is a brief summary of divergent views adopted by the courts of various jurisdictions.

Open Seas

Although riparian rights were once thought to be limited to property adjoining rivers and streams, this has been broadened, so that, today, the pro-

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[10] *Washington Water Power Co., v. U. S., supra* note 1.

[11] *Hilt v. Weber,* 252 Mich. 198, 233 N. W. 159 (1930); *Petraborg v. Zontelli,* 217 Minn. 536, 15 N. W. 2d 174 (1944).

[12] *Hood v. Murphy,* 231 Ala. 408, 165 So. 219 (1936).

[13] *Supra* note 4.

prietors of land bounded by the ocean are held to have "littoral rights" substantially the same as the traditional "riparian rights."[14]

The ownership of the ocean bed, between the shore and the three-mile limit, is a question that has greatly troubled courts both in England and America. Although the Crown had, from time to time, made extravagant claims of dominion over the seas,[15] the claim of the Prince of Wales, as littoral proprietor, to vast coal workings under the English Channel was only quieted by a special Act of Parliament;[16] and it was thereafter decided that the extension of the Queen's realm to include the waters within the three-mile limit was for limited purposes only.[17]

In our own country, after many dicta to the contrary,[18] it has been determined that the United States possesses paramount rights in the marginal seas and the underlying minerals, and that the States have no title or property interests therein. The decisions, however, carefully avoid any assertion of full title in the federal government; and there is a possibility that proposed legislation will throw this question back to the states to decide. The reasoning by which the Supreme Court arrived at this conclusion was that (1) dominion over the marginal seas was necessary for the proper exercise of the federal functions in the spheres of defense and diplomacy, and (2) since the original states had not, at the beginning of the Republic, asserted any property in the tidelands, and since the "three-mile belt" was a concept of international law developed thereafter as an incident of national sovereignty, states admitted after the formation of the republic must come in on an equal footing with the original states.[19]

It is therefore apparent that littoral landowners possess no compensable interests in the adjoining seas other than their classic "littoral rights."

Navigable Tidal Rivers and Harbors

At common law, only tidal waters were considered navigable. The beds of such navigable rivers and harbors were the property of the Crown until granted away.[20] As the public policy of England favors the vesting of all public land in private ownership, most English waterbeds have been so granted over the years.[21] In America, this property of the Crown became vested in the

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[14] 56 Am. Jur., Waters § 282 (1947).
[15] 28 HALSBURY, LAWS OF ENGLAND 360; GOULD, WATERS, § 7.
[16] Territorial Waters Jurisdiction Act, 41 & 42 Vict. c. 73.
[17] *Regina v. Keyne,* 2 Ex. D. 63 (1876).
[18] *Hardin v. Jordan,* 140 U. S. 370 (1891); *Illinois Central Railway Co. v. Illinois,* 146 U. S. 387 (1892).
[19] *U. S. v. California,* 332 U. S. 19, 804 (1947); *U. S. v. Texas,* 339 U. S. 707; 340 U. S. 900 (1950); *U. S. v. Louisiana,* 339 U. S. 699, 340 U. S. 899 (1950).
[20] *Hardin v. Jordan, supra* note 18; *State ex rel Rice v. Stewart et al,* 184 Miss. 202, 184 So. 44, 185 So. 247 (1938); *Angelo v. R. Comm.,* 194 Wisc. 543, 217 N. W. 570 (1928).
[21] *Hardin v. Jordan, supra* note 18; *Angelo v. R. Comm., supra*; See Note, 23 A. L. R. 757 (1923).

original states at the time of the Revolution, by virtue of their succession to the sovereignty.[22] Under the Commerce Clause[23] and the Admiralty Jurisdiction Clause[24] of the Constitution, however, the states relinquished to the federal government the power to promote and regulate navigation.[25] This power, because of its dual derivation, is not restricted to situations affecting interstate commerce; "in maritime matters, it extends to all matters and places to which the maritime law extends."[26] Nor is it, as was at first asserted,[27] confined to navigation in tidal waters. It empowers the federal government to do whatever is necessary and proper for the promotion and control of navigation in the Great Lakes[28] or any other water which is, in fact, navigable;[29] and even to cut off navigation completely in one body of water for the benefit of navigation in another.[30] As new states were admitted to the Union, each was permitted to retain sovereignty over its navigable riverbeds (subject to the above-mentioned federal power), in order that they might enter "on an equal footing" with the original states.[31]

In no state is property in the beds of navigable tidal waters vested in the riparian proprietors. It is generally held that the beds of these rivers are held "in trust" by the states for the benefit of the public.[32] In interpreting this "trust theory", there is little uniformity. Some courts assert that the States are without power to grant away the riverbeds;[33] others, that the proceeds of any grant must be used for a public purpose;[34] while some merely assert that such grants must be strictly construed.[35] In some states, the scope of riverbed and lakebed leases is limited by statute.[36]

Although the soil beneath the river remains the property of the state, the riparian proprietors have certain traditional "riparian rights" incident to the ownership of the shore, which are valuable property and can neither be taken nor destroyed without compensation.[37] Among those frequently mentioned are

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[22] *Ibid;* cf. *State v. Loy,* 74 N. D. 182, 20 N. W. 2d 668 (1945).
[23] U. S. Const., Art. I, § 8.
[24] U. S. Const., Art. III, § 2.
[25] *Gibbons v. Ogden,* 9 Wheat. 1 (1824); *The Genesee Chief,* 12 How. 443 (1851); *Hawkins Point Lighthouse Case,* 39 Fed. 77 (D. Md. 1889), rev'd on other grounds, 155 U. S. 102 (1894); *U. S. v. Chandler-Dunbar Co., supra* note 7; *Mason Co. v. Tax Commission,* 302 U. S. 186 (1937); *Greenleaf Johnson Lumber Co., v. U. S.,* 204 Fed. 489 (E. D. Va. 1913); *Bailey v. U. S.,* 62 Ct. Cl. 77 (1926).
[26] *In Re Garnett,* 141 U. S. 1, 12 (1891).
[27] *The Thomas Jefferson,* 10 Wheat. 428 (1825).
[28] *The Genesee Chief,* supra note 25.
[29] *The Daniel Ball,* 10 Wall. 557 (1871).
[30] *U. S. v. Commodore Park,* 324 U. S. 386 (1945).
[31] *U. S. v. Oregon,* 295 U. S. 1 (1935); *U. S. v. Ashton,* 170 Fed. 509 (W. D. Wash. 1909); *State v. Loy,* 74 N. D. 182, 20 N. W. 2d 668 (1945).
[32] *Pollard's Lessee v. Hagan,* 3 How. 212 (1845).
[33] *Home v. Richards,* 4 Call (8 Va.) 441 (1798).
[34] *City of Long Beach v. Morse,* 31 Cal. 2d 254, 188 P. 2d 17 (1948); *Taylor v. Commonwealth,* 102 Va. 759, 47 S. E. 875 (1904).
[35] *Darling v. City of Newport News,* 123 Va. 157, 96 S. E. 315 (1918).
[36] E. g., 62 Va. Code 1.
[37] *Greenleaf Johnson Lumber Co. v. U. S., supra* note 24; *Hilt v. Weber, supra* note

(1) the right to be and remain a riparian proprietor and to enjoy the natural advantages thereby conferred, (2) the right of access, (3) the right to build a pier or wharf out to the channel, (4) the right to accretions or alluvium, (5) the right to make reasonable use of the water or, in certain jurisdictions, to appropriate it (see Page 38 *infra*), and (6) the right to occupy, improve, and reclaim the surface of the submerged land for any private purposes, subject to the public interest.[38]

These riparian rights are, however, servient both to the federal navigation power[39] and to the public right of navigation;[40] and where the deprivation results from the exercise of these dominant interests, no compensation is allowable. Thus, when a breakwater, erected by the City of Santa Barbara, for the purpose of aiding navigation, caused the water to flow in such a way as to erode the beach of a littoral proprietor, this was not deemed a "taking," and he was denied compensation.[41] "Acts done, as here, in the proper exercise of governmental powers and not directly encroaching upon private property, though their consequences may impair its use, are not a taking within the meaning of the constitutional provision," said the Court.

Again, where a federal dam raised the water level seven feet, endangering a railroad embankment built in the bed of a navigable stream, the proprietor was denied recovery, on the grounds that

> One who builds in the bed of a navigable stream, builds subject to the power of the United States, without compensation to erect structures in the interest of improving navigability which may endanger the privately constructed structure.[42]

It has been said that the state cannot defeat riparian rights by a grant of land under water, nor cut off the owner's access to the water by construction of a highway, nor grant to strangers the right to erect wharves in front of the property.[43] On the other hand, where the federal government builds a lighthouse obstructing the access of a littoral proprietor, he is not entitled to compensation, because of the federal navigation power.[44]

Regarding the right to the use of the water, the Restatement of Torts cites three theories: the "natural flow" theory (in effect in England) that the owner

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11; *State v. Korrer,* 127 Minn. 60, 148 N. W. 617, 1095 (1914); *Petraborg v. Zontelli, supra* note 11; *Taylor v. Commonwealth, supra* note 29.

[38] *Hilt v. Weber, supra* note 11; *Nelson v. DeLong,* 213 Minn. 425, 7 N. W. 2d 342 (1942); *State v. Longyear Holding Co.,* 224 Minn. 451, 29 N. W. 2d 657 (1947); *Taylor v. Commonwealth, supra* note 29.

[39] See note 24 *supra.*

[40] *Hardin v. Jordan, supra* note 18; *People v. Southern Pac. R. Co.,* 166 Cal. 627, 138 Pac. 103 (1913); *Miramar Co. v. City of Santa Barbara,* 23 Cal. 2d 170, 143 P. 2d 1 (1943); *Oliver v. City of Richmond,* 165 Va. 538, 178 S. E. 48, opinion adhered to 165 Va. 538, 183 S. E. 513 (1936).

[41] *Miramar Co. v. City of Santa Barbara, supra.*

[42] *U. S. v. Chicago . . . R. Co.,* 312 U. S. 592 (1941).

[43] *Hilt v. Weber, supra* note 11.

[44] *Hawkins Point Lighthouse Case, supra* note 24.

has a right to an undiminished supply of water, which may be used only on or in connection with the riparian land; the "reasonable use" theory, that any riparian owner may have full beneficial use of the water so long as he does not unreasonably interfere with the use by others; and the "appropriation" theory (in force in several arid states) that the right of each claimant shall be determined by his priority of appropriation.[45]

The sole compensable interest of the riparian proprietor in waters adjacent to his land on a navigable tidal river or harbor, is, therefore, in the preservation of his "riparian rights."

Non-Navigable Rivers and Streams

Since pre-Revolutionary times, it has been well settled that he who owns the bank of a non-navigable stream owns the bed to the thread of the stream.[46] Where an American river is, in fact, incapable of navigation, it belongs to the riparian proprietors as fully as the upland.[47] This is true, even though under the original patent from the federal government, the first grantee paid only for the land contained within the surveyor's meander line.[48] The possibilities of this rule were illustrated in *Oklahoma v. Texas*,[49] when the Supreme Court was called on to decide the conflicting claims of the United States, the States of Texas and Oklahoma, sundry riparian proprietors, and placer miners, to the bed of the Red River, where oil had just been discovered. Finding the river non-navigable, the court rendered a decision favorable to the riparian owners.

Navigable Non-Tidal Rivers

There is a division among the states as to whether non-tidal rivers which are, in fact, navigable should be deemed navigable in law for purposes of determining ownership of the riverbed. In Mississippi, Illinois, Michigan, Kentucky, Wisconsin, and West Virginia, the English rule that only tidal waters are navigable is followed.[50] As in England, these states consider their great fresh water rivers highways, subject to public easement for purposes of travel.[51]

Ownership of these riverbeds is also servient to the federal power to control and promote navigation which governs any waterway navigable in fact.[52] But the riparian owners have sufficient title to maintain trespass against intruders who attempt to remove sand and gravel,[53] even though, by federal statute, no

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[45] 4 Restatements, Torts § 342.

[46] *Oklahoma v. Texas*, 258 U. S. 574 (1922); *Hood v. Murphy*, 231 Ala. 408, 165 So. 219 (1936).

[47] I Thompson, *Real Property* § 96.

[48] *Hardin v. Jordan, supra* note 18.

[49] 258 U. S. 574 (1922).

[50] *Archer v. Gravel Co.*, 233 U. S. 60 (1914); *U. S. v. Willow Run Power Co.*, 324 U. S. 499 (1945); *Kessinger v. St. Oil Co. of Ind.*, 245 Ill. App. 376 (1925); *McMorran Co. v. Little Co.*, 201 Mich. 301 167 N. W. 990 (1918).

[51] *Hardin v. Jordan*, supra note 18; *State v. Korrer*, supra note 32.

[52] *McMorran Co. v. Little Co., supra* note 45.

[53] *Archer v. Gravel Co., supra* note 45; *Union Sand & Gravel Co. v. Northcott, supra* note 45.

one, not even the riparian owner, may dredge the riverbed without an Army permit.[54] It is competent for riparian owners in the states following the English rule to grant to others their interest in the riverbed.

In the majority of the states, the courts have found it illogical to continue to use the English definition. On this point, state law is controlling.[55] It is the general rule that any river which is navigable in fact is deemed navigable at law. Where this rule is adopted, the alignment of interests becomes the same as in the case of navigable tidal rivers, with the riparian landowner holding only his basic "riparian rights."

It is said that title to the Potomac River and its tributaries, within the District of Columbia, is vested in the United States, by reason of cession from Maryland and Virginia.[56]

A public right to take sand and gravel from the beds of navigable rivers for domestic purposes has been asserted.[57] However, statutes requiring those who take these materials to pay a fixed amount to the State have been upheld.[58] Some statutes forbid any but the adjacent proprietor to remove sand and gravel from the riverbed.[59] This privilege of the riparian owner is referred to as a profit a prendre.[60] No title passes until the materials have been reduced to possession. It is a permissive, rather than a property right, revocable at will, and co-extensive with the title to the land.[61] Such a right, although it might enhance the value of the upland in the eyes of a prospective purchaser, must be considered a contingent or speculative matter, not admissible as evidence of fair market value.[62] Another right ordinarily non-compensable is the statutory preference to riparian proprietors in the granting of oyster leases. Such a preference, even when exercised, has been held to give the lessee no property right as against the state or federal government in the exercise of its lawful functions. The state may, without liability, erect a sewage vent just above his oysterbeds.[63] Formerly, oyster planters must also assume the risk of destruction through federal dredging activities.[64] This injustice has been corrected by statute.[65]

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[54] 33 U. S. C. § 403 (1899).
[55] *Packer v. Bird,* 137 U. S. 661 (1891).
[56] *U. S. v. Groen,* 72 F. Supp. 713 (1947).
[57] *Bohn v. Gerdes,* 309 Ill. App. 206, 32 N. E. 2d 1000 (1941).
[58] *State v. Southern Sand & Mat. Co.,* 113 Ark. 149, 167 S. W. 854 (1914); *State v. Kivett,* 228 Ind. 623, 95 N. E. 2d 145 (1950); *State v. Akers,* 92 Kan. 169, 140 Pac. 637 (1914), *aff'd* 245 U. S. 154 (1917); *Petraborg v. Zontelli, supra* note 11.
[59] *Smoot Sand & Gravel Corp. v. Columbia Granite & Dredging Corp.,* 146 Md. 384, 126 Atl. 91 (1924); 62 VA. CODE §§ 178, 181.
[60] *Consumers' Sand Co. v. Exec. Council,* 126 Kan. 233, 268 Pac. 123 (1928).
[61] *Smoot Corp. v. Columbia Granite & Dredging Corp., supra* note 54.
[62] Cf. note 7 *supra.*
[63] *Darling v. Newport News, supra* note 30.
[64] *Lewis Blue Pt. Oyster Co. v. Briggs,* 229 U. S. 82 (1913).
[65] 28 U. S. C. § 1497 (1948).

In England, and in states accepting the English definition of navigability, one would presume that all lakes should be classed non-navigable, and their beds portioned out as private property. However, Halsbury states that it is "doubtful" whether this presumption is justified.[66] Examination of recent American decisions reveals an equally unsettled condition in this country. There seems to be no English authority on the question; but the House of Lords has held that title to a lakebed in Ireland could not be presumed to be in the Crown;[67] while it has held that, in Scotland, riparian owners have common rights of hunting and fishing but several rights in the lakebed for purposes of removing coal and marl.[68]

The Massachusetts Bay Colony early adopted an ordinance, which was preserved after statehood, that all ponds over ten acres in area must remain common property.[69] This was carried over into the laws of New Hampshire and Maine.[70] The beds of the Great Lakes are the property of the surrounding states. They were, at one time, compared to the sea, under the belief that the soil beneath the marginal sea belonged to the adjacent States.[71] These dicta were "clarified" (i.e., rejected) in *U.S. v. California,*[72] the first of the "Tidelands Oil" cases; but the result remains unchanged as to the Great Lakes.

Constitutional and statutory provisions in Washington, California, Louisiana, Indiana, and North Dakota[73] preserve the beds of navigable lakes as property of the state. Other states, by analogy to streams, hold navigable lakebeds to be state property.[74] In this connection, the test of navigability is, not *present* navigability, but the condition of the lake at the time when the state was admitted to the union.[75] A Louisiana statute authorizes the sale of lakebeds by the state whenever the lake has become non-navigable since statehood.[76]

The reason generally advanced for holding the beds of navigable lakes to be vested in the states is that it would be unreasonable for the owner of a few acres of shore to control hundreds of acres of lakebed.[77] But, as in the case of

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[66] 3 HALSBURY, LAWS OF ENGLAND 120.
[67] *Bristow v. Cormican,* 3 App. Cas. 641, 666 (1878).
[68] *Mackenzie v. Bankes,* 3 App. Cas. 1324, 1340 (1878).
[69] *Hardin v. Jordan, supra* note 18.
[70] Ibid; See also, Note, 23 A. L. R. 757 (1923).
[71] Ibid; *Illinois Central R. Co. v. Ill., supra* note 18.
[72] 332 U. S. 19, 804 (1947).
[73] Wash. Const., Art. 17, § 1; N. Dak. Const., § 210; Note, 23 A. L. R. 757, 773.
[74] *Hardin v. Jordan, supra* note 18, at 389; *U. S. v. Oregon,* 295 U. S. 1 (1935); *State v. Aucoin,* 206 La. 787, 20 So. 2d 136 (1944); *State v. Korrer, supra* note 32; *Anderson v. Ray,* 37 S. Dak. 17, 156 N. W. 591 (1916); *Angelo v. R. Comm. supra* note 20.
[75] *State v. Jefferson I. Salt Mining Co., Inc.,* 183 La. 304, 163 So. 145 (1935); *State v. Longyear Holding Co., supra* note 33; *Monroe v. State,* 111 Utah 1, 175 P. 2d 759 (1946).
[76] *Hall v. Bossier Levee Dist. Com'rs,* 111 La. 913, 35 So. 976 (1904).
[77] *Hardin v. Jordan, supra* note 18; *Angelo v. R. Comm., supra* note 20.

navigable rivers, state law governs the disposition of the beds of navigable lakes.[78] If a state chooses to resign to the riparian proprietors rights which properly belong to the state, in its sovereign capacity, it is not for others to raise objections. The effect of federal grants will therefore be interpreted in the light of state law.[79]

In Michigan and Indiana, it has been held that "section lines" of government surveys form underwater boundaries of the riparian lands. This may result in giving the entire lakebed to one riparian owner, to the exclusion of others.[80]

Generally, Michigan, Illinois, and Mississippi are committed to the doctrine that there are the same riparian rights to the center in the lakes (except the Great Lakes) as there are to the thread of fresh water rivers.[81]

Where the state holds title to the lakebed, whether it may dispose of substances deposited therein, depends on its interpretation of the "trust theory." In Washington, ownership of the lakebeds by the State is absolute, and they may be granted away in fee.[82] In other states where the question has arisen, mineral rights in the lakebeds may be sold to private persons for limited periods, so long as the proceeds are to be used for public benefit.

Where a lake is, in fact, non-navigable, it is generally held that title is in the riparian proprietors to the center of the water.[83] The courts presume that the federal government, in disposing of ungranted land lying on the shores of a lake, intended that the adjoining bed pass with the upland, unless evidence to the contrary appears.[84] This land, once vested, cannot be divested without compensation. Therefore, a statute attempting to appropriate certain non-navigable lakes to the state, by a fictitious definition of "navigable" has been held invalid.[85] As between the United States and a State, the title to ungranted non-navigable lakebeds remains in the federal government. The United States was thus within its rights, in declaring such a lake in the State of Oregon a national game preserve.[86]

Conclusion

In this paper, there has been no attempt to survey comprehensively the law of waters of the United States. But it is hoped that the foregoing will prove

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[78] *Ozark Mahoning Co. v. State,* 76 N. D. 464, 37 N. W. 2d 488 (1949).
[79] *Hardin v. Jordan, supra* note 18, at 382.
[80] Id. at 398.
[81] *Hardin v. Jordan, supra* note 18; *Hilt v. Weber, supra* note 11; *Richardson v. Sims,* 118 Miss. 728, 80 So. 4 (1918).
[82] *Mason Co. v. Tax Commission, supra* note 24.
[83] *Doiron v. O'Bryan,* 218 La. 1069, 51 So. 2d 628 (1951); *Richardson v. Sims, supra* note 76; *Ozark Mahoning Co. v. State, supra* note 73; *Anderson v. Ray, supra* note 69; *Monroe v. State, supra* note 70.
[84] *Ozark Mahoning Co. v. State, supra* note 73.
[85] Ibid at 492; *Angelo v. R. Comm., supra* note 20.
[86] *U. S. v. Oregon, supra* note 26.

useful in underscoring some of the problems to be investigated in the assessment of riparian property in eminent domain proceedings. Without a thorough investigation of the interests of the riparian or littoral proprietor, as expressed in the case and statute law of the situs, it would not be possible to arrive at that fair market value which constitutes his "just compensation" for the deprivation of those interests.

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