

Missouri Navigability Report

Summary

In Missouri, a navigable stream generally is defined as one which can be floated without undue difficulty in the lawful pursuit of commerce or recreation. The public right to navigation extends to recreational boating. Acceptable recreational activities include not only boating but also fishing and swimming.

State Test of Navigability

Missouri, through its case law, has adopted a state test of navigability that makes streams navigable that are “navigable in fact,” very similar to the federal commerce test.¹ The “navigable in fact” test looks to see whether streams are navigable 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.”² But the “definition of ‘navigable’ does not include . . . rivers which may only be floatable by small crafts like rowboats and canoes,” nor does the ability to float logs make a river navigable.³

Extent of Public Rights in Navigable and Non-Navigable Rivers

Public waters are “public highways;” therefore the public has a right to navigate along these waters and to make reasonable use of the waters.⁴ As a public highway, public waters are “subject to an easement” that encompasses “travel and passage by floating and by wading, for business or for pleasure.”⁵ Though navigable rivers are public waters, so too are non-navigable waters if supported by “facts concerning the capacity, suitability and use of the river at the place in question for public and commercial purposes.”⁶

In Missouri there are no statutes that directly define riparian water rights, but state courts have adjudicated this issue. The Missouri Supreme Court in *Elder v. Delcour* observed that the beds of rivers, including those that are a public highway, may be held privately, but subject to the public’s navigation easement.⁷ But as the Court later explained in *Conran v. Girvin*, “the riparian owner [of a navigable river] only owns to low-water mark, and that the title to the land constituting the bed of the Missouri or other navigable river is in the state.”⁸ On non-navigable waters, the riparian owner has title to bed to the center of the river.⁹ Thus, the distinction

¹ *Tonkins v. Monarch Bldg. Materials Corp.*, 347 S.W.2d 152 (Mo. 1961); *Elder v. Delcour*, 269 S.W. 2d 17, 22 (Mo. 1954).

² *Tonkins*, 347 S.W.2d at 156.

³ *Skinner v. Osage Cty.*, 822 S.W.2d 437, 444 (Mo. Ct. App. 1991) (citing *Elder*, 269 S.W. 2d at 26).

⁴ *Elder*, 269 S.W. 2d at 22.

⁵ *Id.* at 24, 27.

⁶ *Id.* at 26.

⁷ *Id.*

⁸ *Coran v. Girvin*, 341 S.W.2d 75, 80 (Mo. 1960) (*en banc*); *accord* *Sibley v. Eagle Marine Indus., Inc.*, 607 S.W.2d 431, 435 (Mo. 1980) (*en banc*) (citations omitted).

⁹ *Skinner*, 822 S.W.2d at 444

between navigable and non-navigable waters appears to be who owns the bed below the low-water mark, and not the existence of the public's easement to use the waters.

Generally, Missouri law states that a riparian owner has a right of "reasonable use" of the water flowing in its natural condition, "without diminution or obstruction," but has no ownership in the water itself.¹⁰ For example, a riparian owner does not have a right to the rocks or fish in the stream. The riparian land owner is entitled to the right of access and the right of use of the surface of the waterway.¹¹ Additionally, the right to use the surface of a stream or waterway is not restricted to the surface water adjacent to the riparian's land.¹² Instead, a riparian has the right to use the surface of the entire watercourse.¹³ This right, however, is subject to the public's dominant right of navigation.¹⁴ The public's rights can interfere with and overcome private riparian rights.¹⁵ For example, even though a riparian can construct a dock in an adjacent river or stream, the dock must not interfere with the public right of navigation.¹⁶ The court held that a riparian owner may not obstruct or encroach along the water so as to impede the public's right of navigation and travel.¹⁷ Even in non-navigable waters, the public retains an "interest in the use of the water and the control of the land constituting the bed and banks of the stream[, and as such, a riparian] landowner cannot divert the water in a natural watercourse to the exclusion of others."¹⁸

The Missouri Supreme Court in *Elder v. Delcour* suggested that boaters on waters do have the right to portage around obstacles on public waters, irrespective of whether navigable or whether above the low-water mark.¹⁹

Miscellaneous

A person commits trespass in the first degree if he or she "knowingly enter[s] unlawfully or knowingly remains unlawfully in a building or inhabitable structure or upon real property."²⁰ In order to commit the crime of trespass upon real property, the property must be "fenced or otherwise enclosed in a manner designed to exclude intruders" or as to which notice is given by "actual communication to the actor" or posting "reasonably likely to come to the attention of

¹⁰ See Missouri State Water Plan Series Volume VII, A Summary of Missouri Water Laws, compiled by Richard Gaffney and Charles Hays, with contributions by William J. Bryan IV, J.D., and Amy E. Randles, J.D. (2000) (citing *Tyler v. Wilkinson*, 4 Mason 397, 24 F. Case 472 (1827)) (hereinafter Summary of Missouri Water Laws).

¹¹ *Myers v. City of St. Louis*, 8 Mo. App. 266 (Mo. Ct. App. 1880).

¹² *Greisinger v. Klinhart*, 9 S.W.2d 978 (Mo. 1928).

¹³ See *id.*

¹⁴ See *id.*

¹⁵ See Summary of Missouri Water Laws, *supra* note 8.

¹⁶ *State ex. rel. Citizens Elec. Lighting & Power Co. v. Longfellow*, 69 S.W. 374 (1902).

¹⁷ See *id.*

¹⁸ *Edmondson v. Edwards*, 111 S.W.3d 906, 910 (Mo. Ct. App. 2003) (quoting *Elder*, 269 S.W.2d at 24); see also *Bollinger v. Henry*, 375 S.W.2d 161, 165 (Mo. Ct. App. 1964) (*per curiam*).

¹⁹ *Elder*, 269 S.W.2d at 26 ("Appellant has made no attack upon that part of the judgment dealing with matters directly incident and necessary to the use of the stream [previously held to be non-navigable in the portion at issue] as a public highway for travel, including the right to carry around obstructions in the channel of the river which preclude the passage of boats, but subject to liability for damage to appellant's property.").

²⁰ Mo. Rev. Stat. §569.140.1 (2006).

intruders.”²¹ Missouri law also provides for no civil liability for injuries to persons or property of persons who are trespassing on private lands adjoining streams or rivers.²²

For more information on water rights in Missouri, please refer to the Missouri Department of Natural Resources, Water Resource Center found at www.dnr.mo.gov. For additional information on boating or fishing in Missouri, visit <https://www.mo.gov/outdoors>.

²¹ *See id.*

²² Mo. Rev. Stat. §258.200 (2006) (“Any person owning land adjoining navigable or nonnavigable free-flowing stream or river shall be immune from civil liability for injuries to persons or property of persons trespassing or entering on such person’s land without implied or expressed permission, invitation, or consent...”).