

# Pardon Me Myth!

## Who Owns the Lake Bed?

By Dave Milles

Nature is fickle! Last year at this time some of you were wondering how to get the lake out of your living room. This year you may be planning a Labor Day barbecue on the thirty feet of dry lakebed in front of your cabin. The question is, when you're grilling "name-brand Brats" on the lakebed, can you exclude the general public and your neighbors from your party? The issue of who owns the lakebed has placed the Division of Waters in the middle of neighborhood disputes more than once in the past.

Lake levels and the weather have a lot more in common than simple cause and effect. You've heard the old adage "everybody talks about the weather, but nobody does anything about it". Well, in Minnesota "everybody talks about water levels, but everybody knows everything about it". In fact, many Minnesotans have collectively assembled this knowledge and created their own water law mythology. One of the best-known myths holds that the State owns a definable strip of land (commonly accepted to be 10 feet wide) around every lake and along every stream.



Another mythical law says that the State owns all the land under all of the lakes. Consequently, when a lake level drops, the exposed bed is public land available for use by anyone. Pardon me myth, but these things just aren't true!

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Who owns the land under Minnesota's lakes and what rights, if any, does the general public have to use the dry beds or shorelines of our lakes? As with most "legal" questions, there is no simple answer. A very general "rule of thumb" is that the shoreline property owner's rights follow the water level up and down. In other words, the public normally has **no right** to use the shoreline or dry lake bed unless the adjoining shoreline is already in public ownership (i.e. the shoreline is already part of a public park, beach area, access site, etc.). This does not mean that a landowner can fill, grade, build structures and otherwise alter the topography of his dry lakebed. This type of activity is strictly regulated through the Division of Waters permit program. Naturally, there are a few exceptions to this "rule of thumb", but it works 99 percent of the time.

For the purist who wants to know what happens the remaining one percent of time, the answer gets a bit more technical. First, we have to distinguish between three "legal" categories

of water. These are: 1) **“navigable”** lakes and streams, 2) **“meandered”** lakes and streams and 3) **“non-meandered”** lakes and streams.

**“Navigable”** waters are those lakes and streams that were used (or were susceptible of being used) as highways for commerce at the time Minnesota became a state. This is often times referred to as “the federal test of navigability.” These highways of commerce included most of our major rivers (the Mississippi, Minnesota, Rainy, Red River of the North, St. Croix, St. Louis, etc.) and many of our large lakes (Superior, Leech, Cass, Mille Lacs, etc.). Navigability of a water body has usually been determined by the courts by applying the federal test. The United States Army Corps of Engineers has several publications available which show most, but not all, of our navigable waters on a map. Surprisingly, very few of our 11,842 lakes and 5,564 streams are considered “navigable” waters. This does not rule out the possibility that a water body now considered to be “not navigable” could in the future be determined to be navigable.

When Minnesota became a state in 1858 the federal government gave the ownership of the beds of all “Navigable” waters to the State. In particular, the State of Minnesota owns the bed of all navigable waters below a point called the **“natural ordinary low water level”**. In most cases, a detailed survey would be needed to establish this level. However, it is clear that if Lake Superior (or any other “navigable” water) were to completely dry up, the land under the lake would be public property.

**“Meandered”** waters are the lakes and streams that were surveyed and plotted (meandered) on the original Government Land Office surveys of Minnesota. These surveys were done primarily in the mid 1800’s. There are 5,480 “meandered” lakes shown on these surveys. The lands surrounding these “meandered” lakes and streams may be in private or public ownership. However, the land inside the “meander line” of the lake or stream (the boundary shown on the original survey) has not been assigned to a particular owner. Consequently, the lake bed is jointly owned by all of the landowners surrounding the lake. If a lake has been drained or goes dry permanently, the owners may go to court to subdivide the land within the meander line and show the portion they own on their deeds. In the past, this process has led to some interesting property boundary configurations. All the remaining lakes and streams (those that are not “Navigable” or “Meandered”) are considered **“Non-meandered”** waters. Since these waters were not surveyed in the mid 1800’s they did not show up on the Government Land Office’s maps. The land under these lakes and streams belongs to whomever holds the deed(s) to the lands that surround them. In fact, many people who own the beds of non-meandered lakes pay nominal property taxes on their lake beds. Since they have always held title to the land under the lake, there is no question as to their ownership if the lake dries up.

Keep in mind that most of our lakes and streams are not “meandered” or “navigable” waters. Consequently, whoever owns the shoreline also owns the land under the water. While a boater may run watercraft over the entire surface of the water body, **when the bed is dry...keep off.** Sorry myth, but that’s the way it is!