



ROB STAFSHOLT

STATE REPRESENTATIVE • 29th ASSEMBLY DISTRICT

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P.O. Box 8953
Madison, WI 53708-8953

DATE: January 16, 2020
RE: **Testimony on Assembly Bill 551**
TO: Members of the Committee on Housing and Real Estate
FROM: Representative Rob Stafsholt

Thank you Chairman Jagler and members of the Assembly Committee on Housing and Real Estate for hearing Assembly bill 551 relating to the presumption of riparian rights on navigable waterways.

Last year, a Wisconsin Supreme Court ruling (Movrich v. Lobermier) dealt a devastating blow to citizens who own land on one of Wisconsin's 240 flowages. Ultimately, the court ruled that the public trust doctrine does not allow landowners whose deed does not explicitly grant access to the water bed of flowages, the ability to erect and maintain a pier. Meaning that, unless a landowner's deed explicitly grants the right to the water bed beneath a flowage, a landowner potentially cannot erect a pier.

As Justice Rebecca Bradley stated in her dissent on the court's decision, "riparian rights in Wisconsin are sacred." This bill will protect the presumed riparian rights that many Wisconsinites believe they are currently entitled to. To ensure the rights of these citizens are protected, LRB 2608 establishes that landowners, who's land abuts a flowage or artificial water way, has the ability to exercise all riparian rights established under law, unless the deed to the property explicitly states otherwise.

The bill changes no environmental standards that are found under current law. All land that abuts flowages will be treated as is under current law. LRB 2608 does not make it any easier to erect or maintain piers and does not change any language relating to siting, zoning, or mitigation relating to Wisconsin's shoreline zoning laws. This is a common sense bill that makes riparian rights a priority.

Again, thank you for allowing me to testify on Assembly Bill 551. I would appreciate your support.



PATRICK TESTIN

STATE SENATOR

DATE: January 16, 2020

RE: **Testimony on 2019 Assembly Bill 551**

TO: The Assembly Committee on Housing and Real Estate

FROM: Senator Patrick Testin

Thank you to Chairman Jagler and members of the Assembly Committee on Housing and Real Estate for accepting my testimony on Assembly Bill 551 (AB 551).

AB 551 is a simple bill that restores waterfront owners' rights to what they were for 140 years of the state's history.

According to the Department of Natural Resources (DNR), there are 260 flowages in the state of Wisconsin. For more than a century, thousands of property owners had a presumption of riparian rights on these bodies of water, and with that presumption, the ability to place a pier in the water. These rights were challenged when the Supreme Court ruled that flowages were not natural bodies of water. I believe that this ruling is a mistake, and have taken the step of introducing this bill not for the purpose of attacking any individuals or organizations, but instead to defend property owners.

Thank you again for listening to my testimony and I hope that you will join me in supporting this bill.

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
101 S. Webster Street
Box 7921
Madison WI 53707-7921

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Assembly Committee on Housing and Real Estate

2019 Assembly Bill 551 *The Presumption of Riparian Rights* *January 16, 2020*

Good morning Chairman Jagler and members of the Committee. My name is Amanda Minks, and I am the Waterway and Wetland Section Chief with the Wisconsin Department of Natural Resources. Thank you for the opportunity to testify for informational purposes on Assembly Bill 551, related to the presumption of riparian rights.

It is the Department's understanding that the intention of this proposal is to provide clarification regarding the placement of waterway structures on inland waters, specifically flowages and artificial impoundments. The agency believes that statutory changes consistent with that scope would offer a reasonable pathway for common sense decision-making. As currently drafted, however, the Department finds that the proposed language is broader than its intended scope.

The Department recommends that clarification be given to the types of navigable waters that the legislation could apply to. More specifically, it is recommended that the legislation clarifies that it does not apply to historical lakebed fills along the Great Lakes. DNR has suggested language to the bill authors to address this concern, and we appreciate their consideration of that modification.

DNR also welcomes the introduction of Assembly Amendment 1, which provides that the presumption of riparian rights cannot supersede a Federal Energy Regulatory Commission (FERC) agreement with a public utility or a paper mill.

On behalf of the DNR and the Waterways Bureau, we would like to thank you for your time today. I would be happy to answer any questions you may have.

Opposed

Jan 15th - Rev 1

Hello. I'm Dave Lobermeier. Mywife and I were sued by a group of people wanting to take our property rights and land. One of the group was violating zoning and Chapter 30 regulations while at the same time damaging our property and important environmental habitat. Thus the family squable.

The neighbors and us lived as good neighbors prior and various solutions were offered by us. Our reward, sued.

Wisconsin Supreme Court heard the case. Did their research, property law, case law (state & Federal), deeds, surveys, public Trust Doctrine and heard opposing arguments. Result - a decision upholding property law.

the minority judge's dissention spoke of opinion, what ifs, possibilies , the ruin of the "up north family experience" and the collapse of the state's real estate industry with plummeting property values. Again, let's fact check this. It hasn't happened nor will it. The Supreme Court decision is now 2 years old. Has anyone seen the sky fall yet? I haven't. One of the parties of the case sold his property even with a Lis Pendins attached to his deed. Seems like a good market if that happens. The judge's dissention echo's the WRA's position. Wisconsin Homeowners Alliance, the legal mouth piece for WRA is running a state wide ad campaign spreading the same

propaganda. How about showing the facts rather than attempting to stir up the public.

ONLY flowage property MAY be affected. Not natural lakes, rivers or streams and certainly not "all docks or piers".

Now 8 years later my wife and I again stand to defend our rights from people attempting to steal it and our rights giving them to someone else. I stand in front of this group of Wisconsin State Legislators defending my fee simple rights. You know the law is on my side otherwise we would not be here debating these proposed "new" laws that dismantle property rights. Shame on you.

Do any of you think you have the conviction to defend what is right? Facing slander, harassment, property being burned to the ground (including a new log home). I am not accusing anyone since we cannot prove who did it or why but we also can't prove it wasn't related. The job was well done leaving no evidence to be found in the ashes. Are you willing sacrifice your health, sleep and life savings? All simply to keep what you already own? Now you, our state Legislators are being asked to take part in these poorly thought out bills to take our rights and land. Current law prohibits it.

You as Legislators have nothing to lose if you propose or even pass a terrible law. You are not investing your personal time, your money or even stand to pay restitution. No skin in the

game yet you hold the cards. We found that numerous legislators support this bill yet know very little or nothing at all about the case. They told us they were told it was good so they got on board. Really? I'll bet if there was accountability in place a lot more research and caution would exist "before" supporting crazy changes.

Do your fact checks. Look at the county GIS maps to see for yourselves how few property owners DO NOT already have deeds protecting legal access. You will also see that this not a big issues. Unless perhaps it impacts some future plans that are much larger. I don't know. May be one of you know what's really behind this. I do know it doesn't make sense for all of us to be here today unless someone has a lot to lose. I just want my land. My land as my deed describes along with the rights that are granted by this same deed. I do not want anything from anyone that is not legally mine to have.

Having the law on our side keeps our information open and honest. We don't need to make up tales of doom and gloom. advertise words without factual backing. The other guys have nothing BUT opinion, emotion and "presumptions". Please check the facts.

Don't steal our land.

Don't create more litigation.

Don't make misinformed decisions.

Don't support Senate bill 501.

Don't support Assembly bill 551.

Do the right thing. Keep property law as property law described by deed. No presumptions.

Thank you,

Questions?

Good morning,

My name is Diane Lobermeier and I am in opposition of Assembly Bill 551 & Senate Bill 501 regarding The presumption of riparian rights.

For the past 8+ years my husband and I have been fighting for the basic property rights given to all property owners, including ours on the Sailor Creek Flowage. As with most fights, this one started when one individual wanted more than he purchased and was destroying our property in the process of improving his.

During this legal process we were told by an opposing attorney that this would cost us a lot- and it did. My husband was called an extortionist when he attempted to sell the flowage bed property and all its rights to most of the adjacent property owners. The initial price was \$3500 each and not only gave these individuals the land but all the rights they so coveted. We were not involved in any of the real estate transactions when these individuals purchased their property nor in how the property was originally divided. My husband was then sued by these same owners.

We heard the WRA and a Supreme Court judge claim that the Supreme Court's ruling would be a devastating blow to the

Wisconsin economy, property value and riparian rights. This ruling simply affirmed property rights and property law that has been in place for hundreds of years, it did not change any property law or practice currently in place. These proposed bills do that.

During our legal fight to retain our deeded property rights we lost far more than we gained. In fact the only thing we did gain was the Supreme Court's affirmation of the property rights we already had. In speaking with many Wisconsin citizens regarding our case, we were constantly asked why we continued since it appeared it was costing us so much and we were only getting what we already had. Our response was always that it was the right thing to do for our children, grandchildren and future generations of all property owners. We were hoping that others wouldn't have to endure the emotional, family, health and financial burden we did over the years. We only wanted what every property owner gets when owning property - the land and the rights that belong to the deed, nothing more, nothing less.

After the Supreme Court's ruling, the WRA advised their members that they need to be aware that not all bodies of water should be treated equal. Now it appears they are attempting to reverse that. As professionals in real estate I would assume that this should be something they were aware

of much like all property is not treated equal - example: commercial, residential, farm land, land in conservation trust, forest land.

We have been told that this legislation is not intended to overturn the Supreme Court's ruling but to make it more transparent. This leaves me completely baffled as it appears to be stating that an adjacent landowner can now presume he has the right to install a structure over our privately owned flowage bed property without our permission, unless HIS deed expressly states he does not have riparian rights. This is completely opposite of the Supreme Court ruling.

Laws based upon presumptions are never good and transparency can never be achieved based upon assumptions. Riparian rights are privileges given to certain property owners in Wisconsin but should never supersede the property rights given to every property owner under basic property law.

I am presuming that our legislature will not pass these bills for the good of all citizens but my heart tells me that my presumption will be wrong and that property laws & rights will be forgotten. Please do the right thing and do not pass Assembly Bill 551 nor Senate Bill 501.

Thank you, any questions?



44 East Mifflin Street • Suite 402 • Madison, Wisconsin 53703 • 608/257-3151

To: Assembly Committee on Housing & Real Estate

**From: Bill Skewes, Executive Director
Wisconsin Utilities Association**

Re: Opposition to AB 551

Date: January 16, 2020

Good morning Mr. Chairman and members of the Committee. Thank you for the opportunity to testify this morning. My name is Bill Skewes and I am the Executive Director of the Wisconsin Utilities Association (WUA), representing our state's investor-owned gas and electric energy providers. Joining me is Brad Jackson, WUA's attorney from Quarles & Brady to assist in answering questions of a legal nature.

We're here today to express our opposition to AB 551, which would create a presumption that the owner of land abutting a navigable waterway is a riparian owner and can exercise riparian rights, including the placement of structures and deposits on the bed of the waterway, even if the bed is owned by another. Though we are reluctant to wade into such a sensitive issue, our members are in a unique position regarding the ownership and management of federal, state and locally regulated lands submerged by dams and **we respectfully request that the Committee not advance this bill in its current form.**

In my testimony, we will detail the legal basis of why we oppose AB 551 but it is important to understand that utilities historically have worked cooperatively with their neighbors regarding pier agreements and will continue doing so regardless of the Supreme Court ruling.

Wisconsin utilities operate dozens of hydroelectric facilities across the state that provide low cost, renewable energy and storage to their customers. Under this bill, they would lose important property rights they have always enjoyed and could introduce significant operating challenges for them.

Now let's examine the legal problems with this bill. First and foremost, the enactment of AB 551 would be unconstitutional. The proposed legislation would violate the U.S. and Wisconsin constitutions by a **taking of property rights** without just compensation. Under current Wisconsin law, specifically section 30.10(4)(b), "The boundaries of lands adjoining waters and the rights of the state and of individuals with respect to all such lands and waters shall be determined in conformity to *the common law* so far as applicable." See *Mushel v. Town of Molitor*, 123 Wis 2d. 136 (Ct. App. 1985) (applying statute and holding that common law does not recognize presumption that road abutting navigable lake is publicly owned). In its recent decision in *Movrich v. Lobermeier*, 2018 WI 9, the Wisconsin Supreme Court clarified the common law and held that an owner of land that abuts land owned by another that has been artificially flooded is not a riparian owner and he may not place structures and deposits on the submerged land absent the specific right do so in his deed.

The enactment of AB 551 would be contrary to the statute and would effect a **taking of the private property** rights recognized in the *Movrich* case. *See, e.g., Noranda Exploration, Inc. v. Ostrom*, 113 Wis. 2d 612 (1983) (statute requiring disclosure of confidential materials amounted to unconstitutional taking of private property without just compensation).

WUA member utilities would be among the private property owners whose **rights would be taken** by AB 551. WUA members own and operate a number of storage and hydroelectric dams and flowages. In some cases the owner of the dam owns the land flowed and in other cases the owner holds the right to flow private property by easement. In those cases, under *Movrich* the owners of land abutting the flowages do not have riparian rights and can use flowed lands only with the *permission of the dam owner*.

Indeed, many WUA member dams are regulated by the Federal Energy Regulatory Commission (FERC), which **requires the dam operator to maintain sufficient property rights to manage project lands and protect and maintain the project purposes set forth in the FERC license. FERC project licensees have a responsibility to ensure that reservoir shorelines within the project boundaries are managed in a manner that is consistent with project purposes, license conditions and operations.**

The obligation to manage the shoreline in these projects is so important that when a hydro licensee sells land out of its project, FERC requires the licensee to maintain either ownership of, or rights over, the shoreline of the flowage. Owners of land along the flowage need the licensee's permission to put in docks and other structures, which my members do currently allow. In addition to contradicting the licensee's property rights, the proposed legislation **would create a conflict between the new rights granted owners of lands along flowages and the licensee's obligations to manage the project shoreline. Thus, the bill would needlessly interfere with the relationship between the licensee and FERC and could threaten the licensee's compliance with the conditions of its license.**

I would also note that there are some dams in Wisconsin that are not regulated by FERC but by the State of Wisconsin and/or local governments. In these cases, too, the owners of those dams are subject to regulation of the lands underlying and along the shore of the flowages. The bill would create the same conflict between the landowner's new rights and the dam owner's obligations under state and local law.

While we very much appreciate the authors (and other stakeholders) willingness to listen to our concerns and engage in discussions regarding a change in the bill that would exclude our facilities, those changes have not been accepted to date.

If an amendment were adopted to exempt dams and flowages under federal, state and local jurisdiction we could drop our opposition. Our hydro dams are a very important source of renewable energy and having their FERC license compliance called into question could threaten their ability to operate and provide emission free electricity to Wisconsin citizens.

We look forward to further discussions with the authors (and other stakeholders) and would respectfully request that the bill be amended to exempt hydro dams and flowages that are regulated under federal, state or local jurisdiction."

Thank you and we'd be happy to attempt to answer your questions.

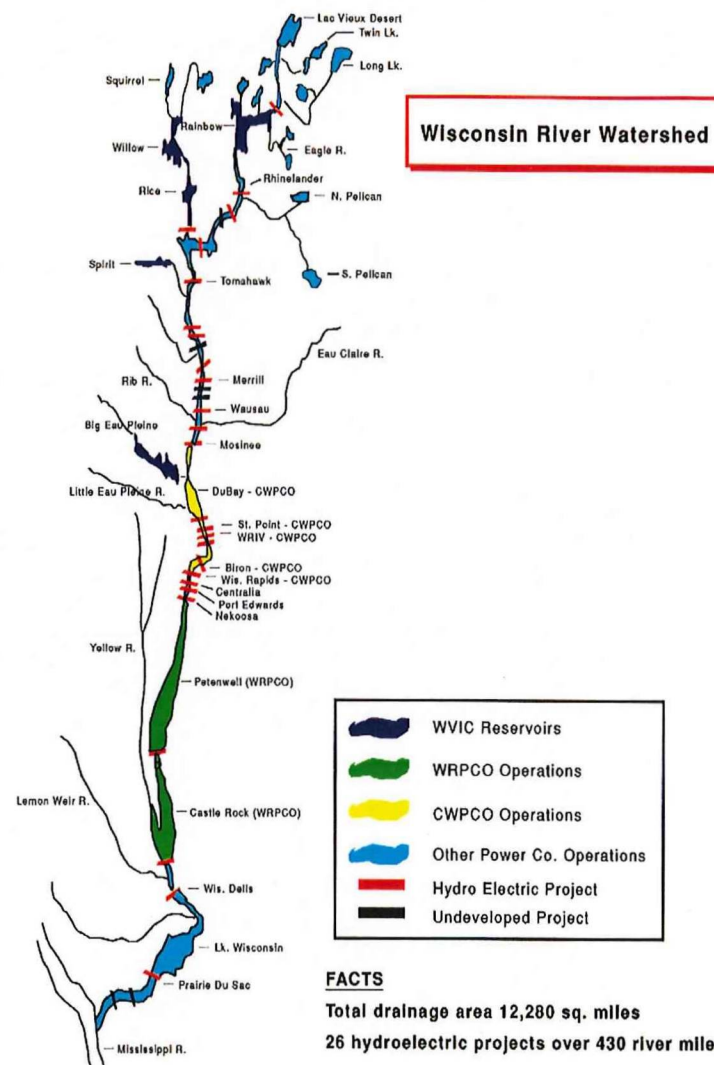
**Consolidated Water Power
Company**

January 16, 2020



CWPCo Background

- **Consolidated Water Power Company, (CWPCo) is a wholly owned subsidiary of Verso Corporation.**
 - Serves 3 paper mills and the Village of Biron
 - Utility regulated by the Wisconsin Public Service Commission (PSCW)
- CWPCo owns and operates five hydro-electric dams (projects) on **32 miles of the Wisconsin River.**
 - Own/operate/maintain 5 dam structures, 39 hydroelectric generators, 87 gates, **214 miles of shoreline**, 34,200 feet of dikes, 19 boat landings with 11 boat docks/piers, 3 swim areas, 6.4 miles of walking or portage trails, and 10 picnic areas with 8 having toilet facilities
 - CWPCo also owns 24% of Wisconsin Valley Improvement Company which operates 21 northern reservoirs to uniformly release water to allow downstream owners to generate clean, renewable hydropower.
 - Land ownership is ~ 20,000 ac
 - 8300 acres upland
 - **Balance submerged ~ 12,000 acres**





Wisconsin Rapids



Biron



Whiting



Stevens Point



DuBay

FERC Licenses 101

- **Hydroelectric *projects* are licensed by the Federal Energy Regulatory Commission (FERC) which issues, regulates, and enforces compliance and conditions**

- **What does a "project" include?**
 - All physical, mechanical and operational features necessary for the operation of the facility (generators, turbines, dikes, gravity walls, drainage ditches, ***plus lands we own or have a controlling interest – flowage rights – which allow us to maintain higher water levels than what the free-flowing river would normally flow.***)

- **What obligations does a FERC licensee have?**
 - Operational limits (headwater elevations, peaking vs. run-of-river)
 - Land management
 - Wildlife management
 - Archaeological protection (cultural and historical)
 - Recreational management
 - Exotic species monitoring and control (purple loosestrife, Eurasian milfoil, zebra mussels, etc.)
 - Water quality considerations / fisheries
 - ***Shoreline management, including erosion control, habitat protection, protect public use of water***

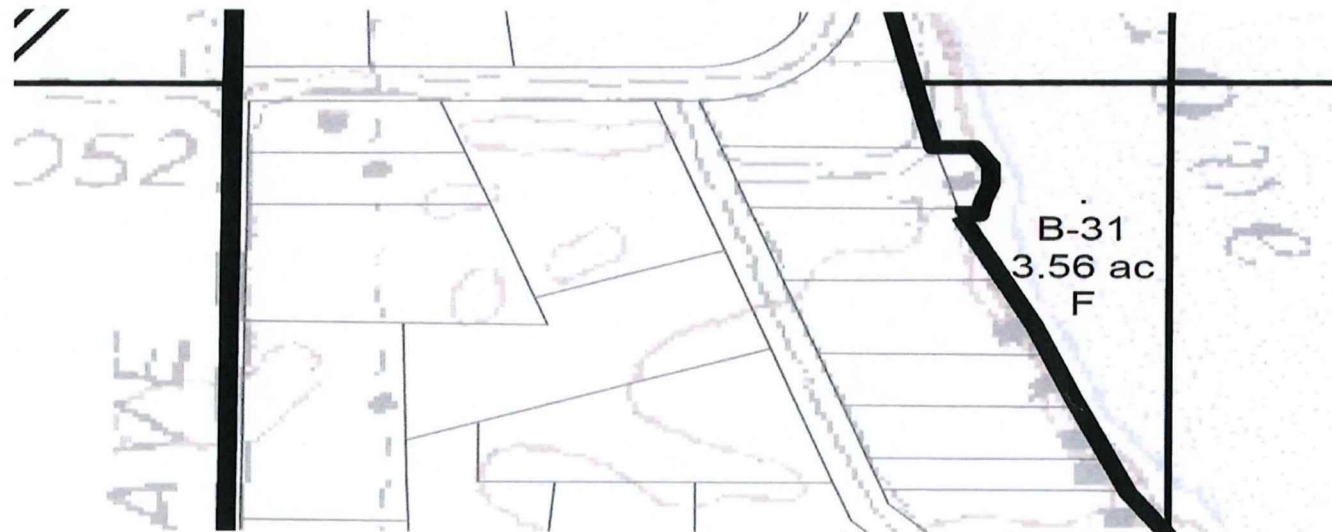
AB 551 is a solution in search of a problem

- Property rights of hydro project owners and shoreland owners are well understood
- CWP works with landowners and flowage landowner associations
- **For decades**, CWP has maintained a permit program that allows shoreland owners to install docks
 - Small fee (\$200/yr) that partially covers administrative costs (including costs of surveys and property record reviews) **This is not new**
- CWP allows docks as long as they don't conflict with other project requirements (almost always) and the right of the public to use/access the project.
- *Movrich* case confirmed and did not change long standing property rights on flowages
- Legislation would upset the status quo:
 - Would give shoreland owners property rights they don't currently have and take property rights away from CWP
 - Would create confusion and conflict where shoreland owners on flowages assume they have riparian rights and object to CWP's efforts to manage its flowages
 - **Would force CWP to pay for property rights that it currently has (and paid for previously) under existing law.**

Common land ownership on a flowage

Shoreland owner owns to project boundary, CWP owns submerged land

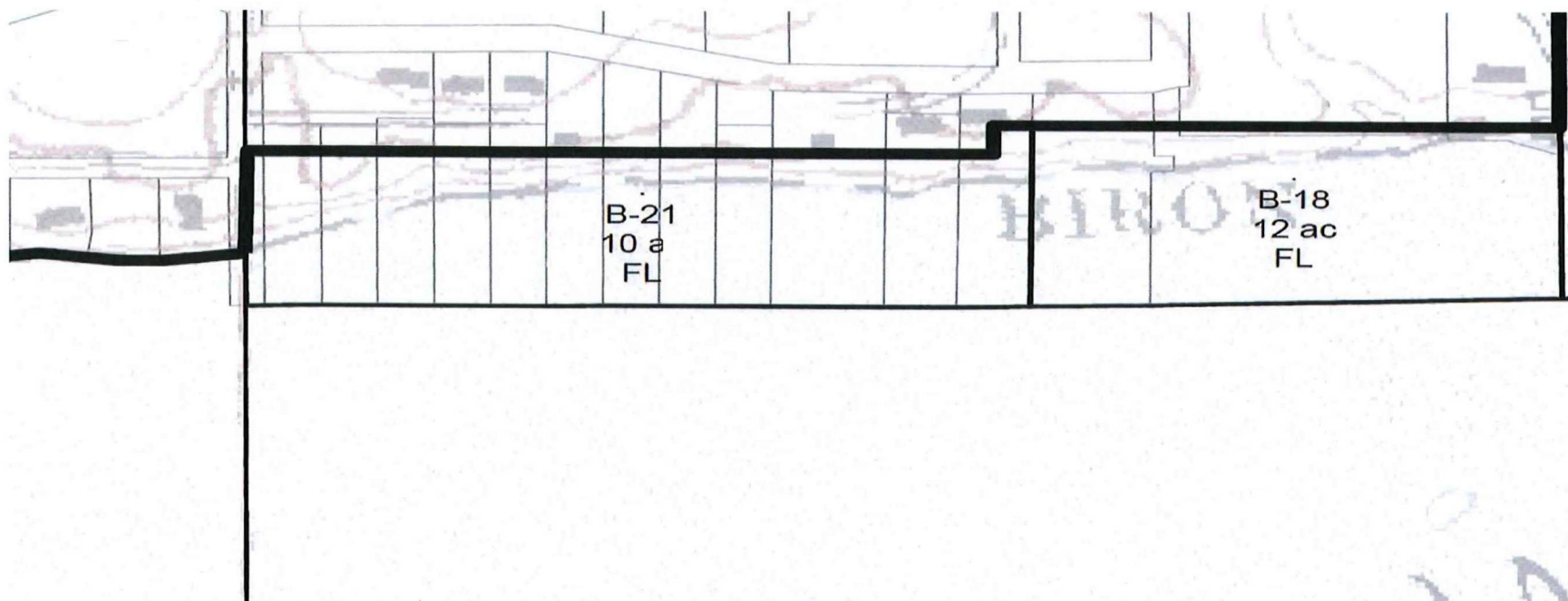
Shoreland owner needs CWP's permission to place dock on CWP property



Less common ownership

Shoreland owner's lot extends past project boundary and includes submerged land

Shoreland owner has right to place dock on his own property



30.132 Presumption of riparian rights. An owner of land that abuts a navigable waterway is presumed to be a riparian owner and is entitled to exercise all rights afforded to a riparian owner, subject to the requirements of this chapter, including the right to place a pier, other structures, or deposits, even if the bed of the waterway is owned in whole or in part by another, unless either of the following apply:

(1) Those rights are specifically prohibited by the deed to the land abutting the navigable waterway.

(2) The navigable waterway is a flowage and the owner or operator of the dam that created the flowage is subject to a federal, state or local requirement to manage the use and occupancy of the bed or shoreline of the flowage.



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Public Hearing Testimony
Assembly Committee on Housing and Real Estate
400 Northeast
Thursday, January 16, 2020

RE: Concerns with AB 551- Presumption of Riparian Rights

Good morning, my name is Ben Niffenegger and I am the Manager of Environmental Affairs with Wisconsin Valley Improvement Company (WVIC). WVIC is a private corporation that was publicly chartered by the State of Wisconsin in 1907. WVIC has 21 storage reservoirs in northern Wisconsin that control the flow of the Wisconsin and Tomahawk Rivers. The purpose of WVIC's reservoir system is to maintain uniform flows in the river to control flooding, generate clean, renewable electricity, provide recreational opportunities for the public, and to protect the environment. (Slide 1)

To that point, during heavy precipitation or high flow events our storage capabilities can reduce peak river flows by up to 30%. On the other hand, water can be released to supplement river flows during times of drought to enhance recreation and maintain water quality. The municipalities, businesses, wastewater treatment plants, and others that discharge into the river; along with the fish, wildlife, public recreational users, tourism, and jobs that rely on Wisconsin's waterways, would all have a much different experience than what you see today if it wasn't for the uniform river flows and public benefits provided by WVIC's reservoir system which spans more than 61,000 surface acres and 800 miles of shoreline. (Slide 2)

The public benefits of the Reservoir System came at a cost with more than a century of private investment. WVIC is owned and funded by the owners of the hydroelectric generating facilities on the Wisconsin River, a combination of utilities and paper companies and include; Wisconsin Public Service Corporation, Consolidated Water Power Company, Wisconsin River Power Company, Alliant Energy, Domtar Paper Company, Ahlstrom Munksjo, Packaging Corporation of America, and Tomahawk Power and Pulp Company. (Slide 3)

I want to focus on WVIC's five man-made reservoirs because these would be the most negatively affected by the proposal to create new property rights for those who own land along the reservoirs. These reservoirs account for 75% of the storage capability of WVIC's system.

In order to create the 5 man-made flowages, in the early 1900's WVIC purchased the private lands that would be needed for the construction of dams and the operation of the flowages. The land purchased was a mixture of farmland, forest, and wetlands, however, not everyone was willing to sell their land and some property owners retained fee ownership of the lands that would eventually be submerged by the reservoirs. In those cases, WVIC obtained easements to flood the land. Whether or not an individual sold their land to WVIC is why you will notice a patchwork of ownership interests in plat books. Slide # 9 exemplifies the variety of ownership interests depending on what lands were purchased by WVIC prior to the creation of the flowage. (Slides 4-9)

WVIC's storage reservoir system is licensed and regulated by the Federal Energy Regulatory Commission or FERC. Under its FERC license WVIC has obligations and responsibilities to protect, maintain, or mitigate for a variety of environmental elements, including; fish and wildlife habitat (spawning areas for walleye and gamefish), historic and cultural resources (Euro-American settlements, logging camps, archaeological sites), rare, threatened or endangered plants and animals and other emerging issues that may be in the public interest and develop 10, 20, or 30 years down the road. If the land rights we currently have are taken by the proposed legislation, then addressing issues involving the shoreline and beds of the reservoirs will involve a host of unnecessary challenges, acquisitions, expenses and regulatory complications. (Slide 10) The additional costs will be passed on to the utilities and paper companies who rely on the WVIC system for hydroelectric generation and, ultimately, to their customers.

Historically at WVIC's reservoirs, the rights of landowners along the shore to place structures or deposits on submerged land have been based on the fee ownership history of the parcels. WVIC invested the funds necessary to purchase the lands and easements needed to create and operate its reservoirs. Private property rights that accompany fee ownership of land (whether inundated by water or upland) should not be taken through legislative action. Maintaining all of the rights necessary to comply with current and future federal, state and local regulatory requirements is essential to WVIC's operations and the requirements of its FERC license. WVIC supports Wisconsin Utilities Association's position.

Thank you for the opportunity to testify.

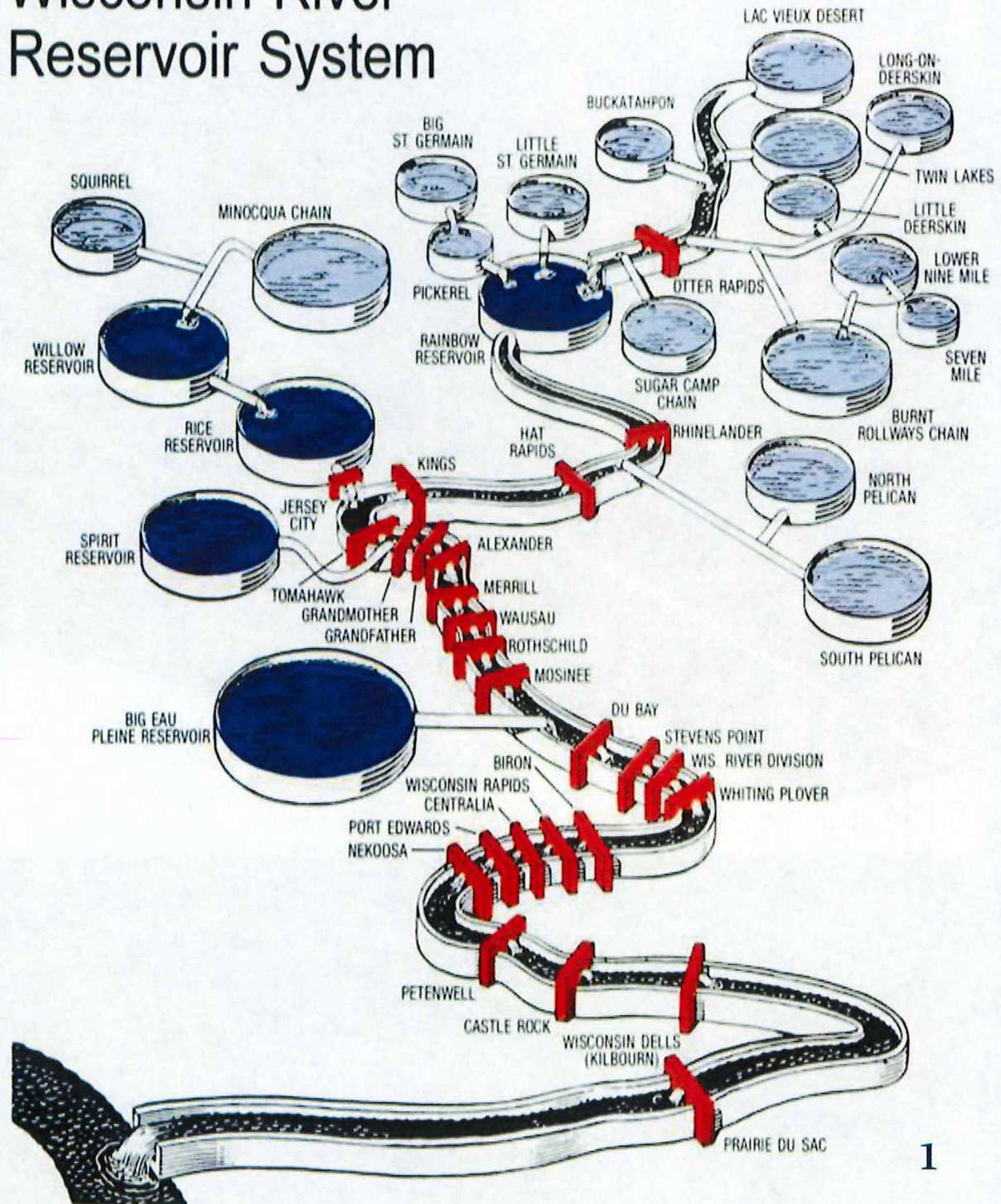
WVIC Owns & Operates: 21 Storage Reservoirs

5 Man Made Flowages (dark blue) Represent 75% of Useable Water Storage. WVIC has Ownership Interests in Flowage Bottom That would be Impacted by AB 551

16 Natural Lake Reservoirs (light blue)-limited fee ownership of reservoir bottom

- Store Water during High-Flow Periods
- Release Water During Low-Flow Periods
- Coordinate Communications with Hydroplants (Not Owned by WVIC) Pictured in Red

Wisconsin River Reservoir System



Reservoir System Benefits

- Flood control
 - Reduce River Peak Flows 20-30% by Storing Water
- Water Quality
 - Flows & oxygen
 - Wasteload allocation
 - Municipalities
 - Wastewater Treatment Plants
 - Industry & Businesses
- Public Recreational Opportunities
 - 61,265 Surface acres
 - 800+ Miles of Shoreline
- Additional Hydropower Production From Stored Water
 - 150 MWH/YEAR



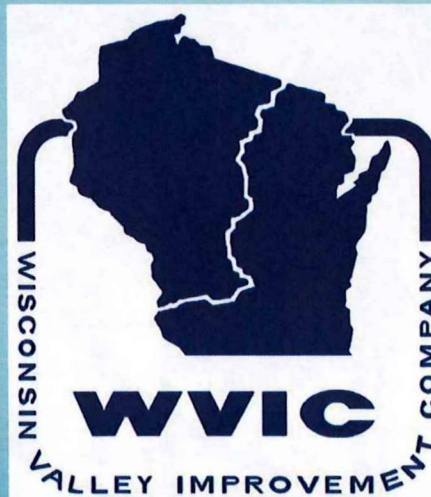
WI River Hydroplant Owners WVIC Owners & Tollpayers



Energy for your Lifestyle

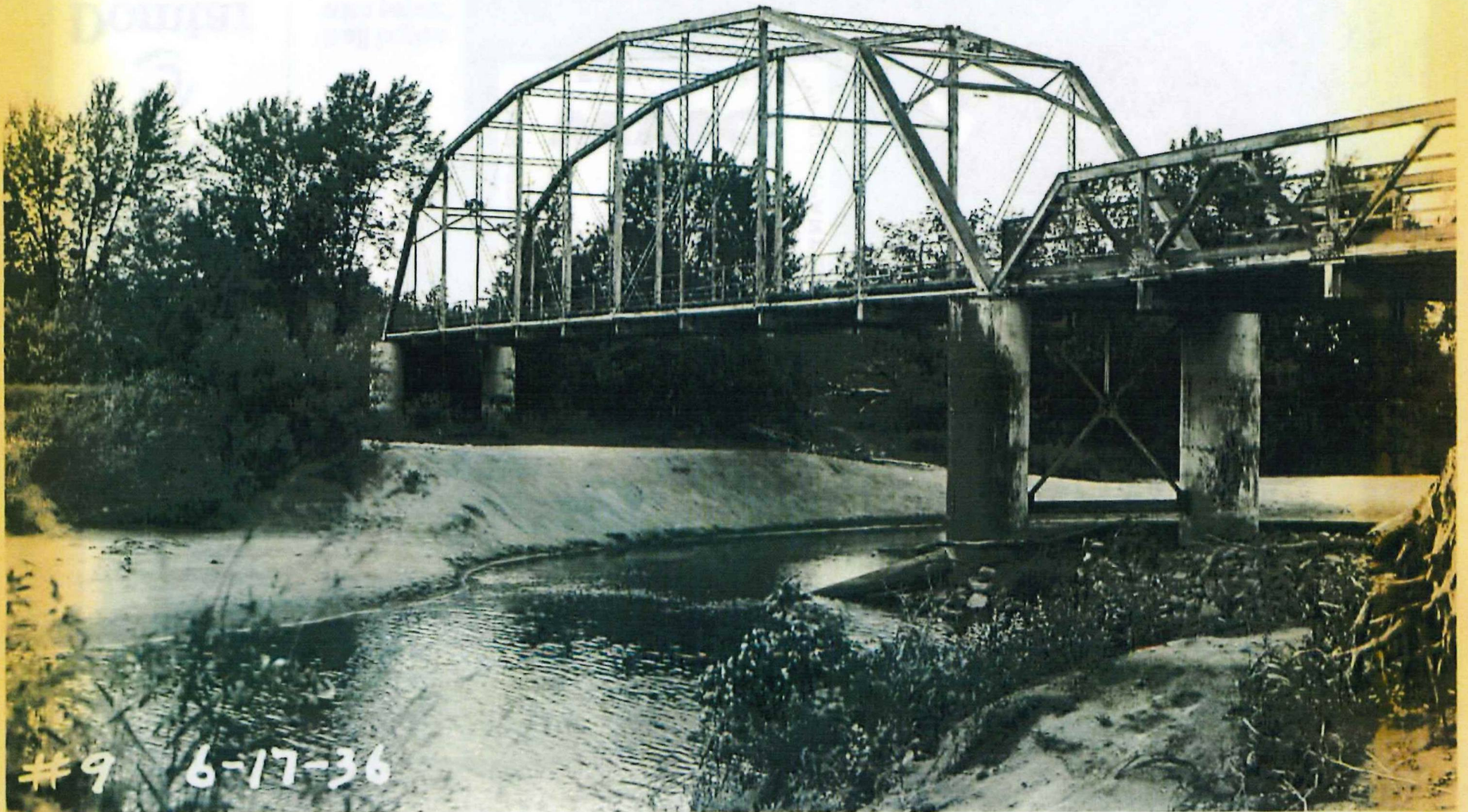


Wisconsin River
Power Company



Tomahawk Power & Pulp

Eau Pleine River 1936 (Pre-Dam)

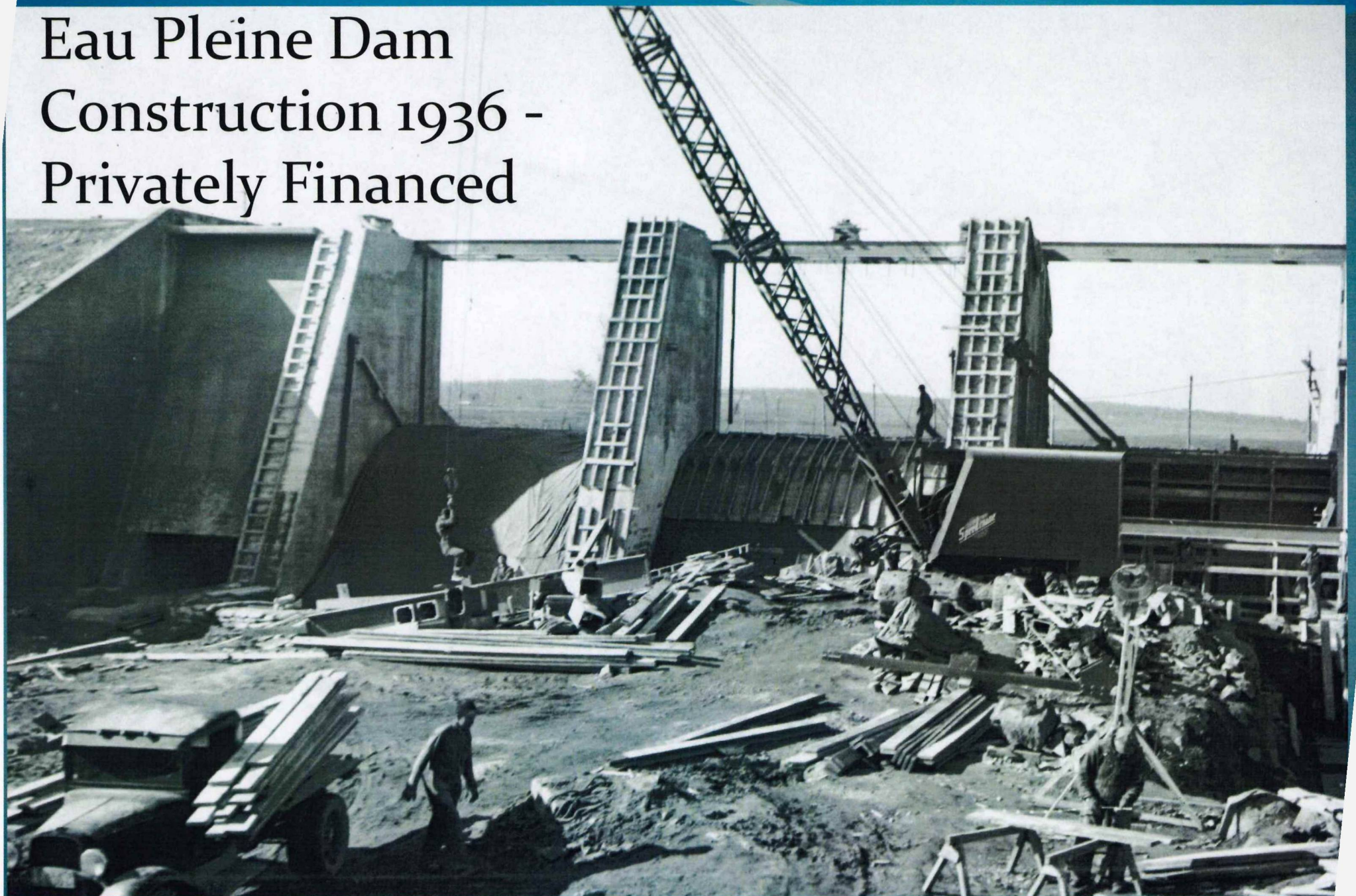


1936-018-9

WVIC Purchased Private Lands That Would Be Inundated By Dam



Eau Pleine Dam Construction 1936 - Privately Financed



Land purchased was a mixture of farmland, forest, and wetlands.

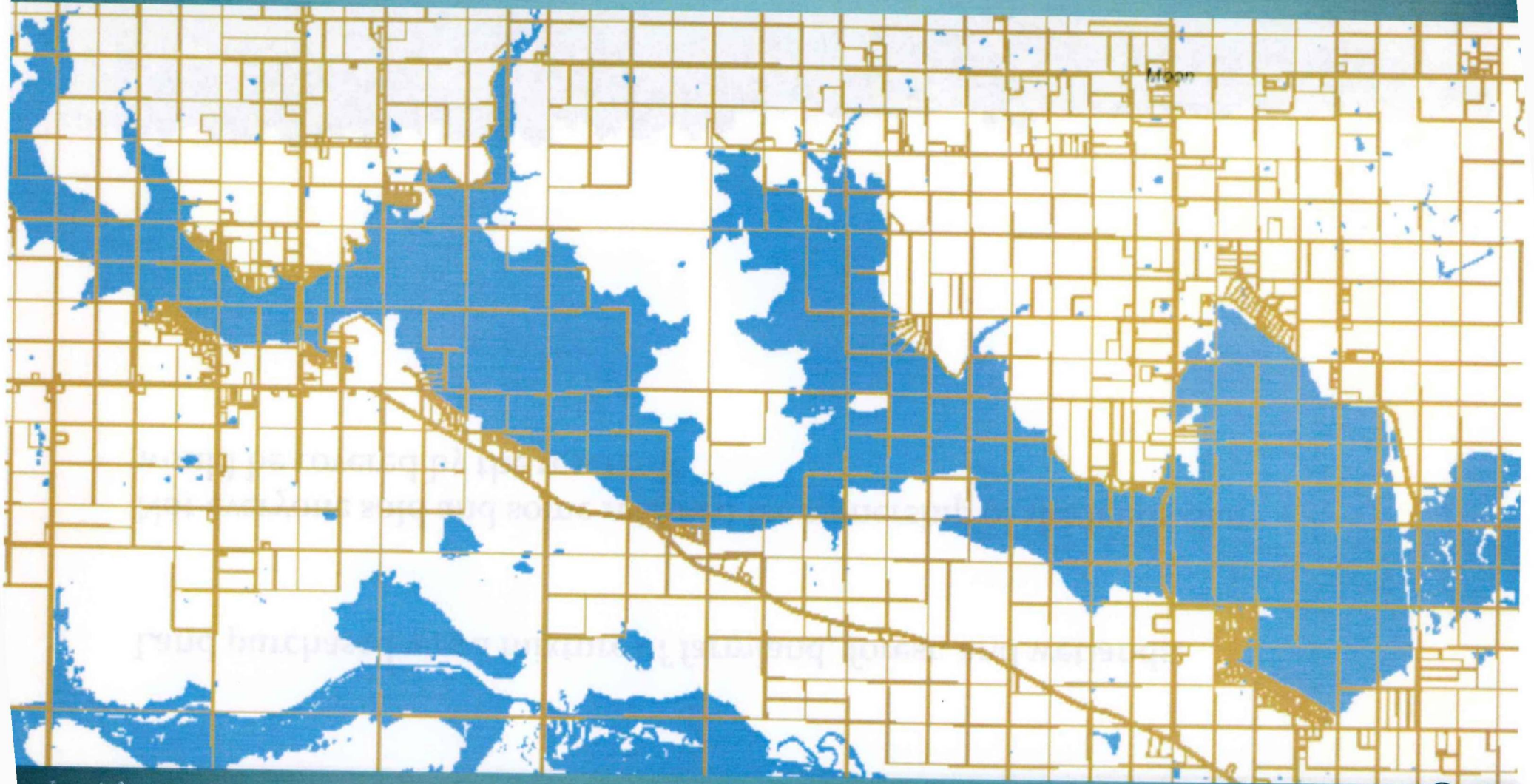
Not everyone sold and some retained fee ownership of the lands that would be covered by the reservoir.



#11 6-17-36

1936-018-11

Private Parcels Within Reservoir Mostly WVIC Owned



The Right to Place Structures/Deposits Historically Based on Fee Ownership History of the Parcel in Question

Example 1.
Reservoir Bottom
Owned by Upland
Riparian Owner

Example 2.
WVIC Owned
Reservoir Bottom

Example 3.
Reservoir Bottom
Owned By Non-
Riparian Owner



FERC/State Regulations Where Fee Ownership of Flowage Bottom May Be Needed:

- Requirements to Protect, Maintain, and/or Mitigate:
 - Fish and Wildlife Habitat
 - Walleye & Gamefish Spawning Areas
 - Waterfowl Feeding/Nesting Areas
 - Historic and/or Cultural Resources
 - Logging Camps, Fur Trading Outposts, Archaeological Sites
 - Rare, Threatened, or Endangered Plants & Animals
 - Mussels, Turtles, Fish, Aquatic Plants etc.
 - Other Environmental Issues That Are Identified in The Future
 - Unknown what the flowage bottom may be needed for 10, 20, or 30 years from now.



I want to make it clear from the outset that our organization has been, and continues to be, willing to work with other stakeholders, including the Wisconsin Realtors Association on this issue. We have had conversations with the Realtors and will continue to work toward common ground on this matter.

Mr. Chairman, we do have serious concerns regarding AB 551 as currently drafted. We share many of the same concerns that the Wisconsin Utilities Association has outline to this committee.

Maintaining our Federal Emergency Regulatory Commission (FERC) license for hydroelectric dams is critical to our overall operations. As WUA has already stated, FERC requires our members to adhere to strict guidelines and standards. Maintaining sufficient property rights is an essential part of this management.

As federal licensees, our companies are required to ensure that reservoir shorelines are managed in accordance with our license conditions. FERC takes these conditions seriously, as they should. This bill, as currently drafted, could cause significant management issues for our members that are required to maintain this property.

For us, this is not merely an issue limited to Central Wisconsin, this is a statewide issue for many of our members. Our members manage hundreds of miles of shoreline under their FERC licenses, the balance of which is submerged.

Thus, Mr. Chairman, this does become a property rights matter with potential takings concerns as well. As you will also hear from my colleagues, there are also environmental concerns which come into play with this legislation, as currently drafted. Mr. Niffenegger will be addressing those concerns in his testimony.

On behalf of the 30,000 working men and women who we proudly represent want to thank you for listening to our concerns today. We look forward to working with each of you on this important matter going forward.

Thank you again for your time and consideration.



WISCONSIN INDUSTRY ECONOMIC IMPACT

EMPLOYMENT

Forestry & Logging	5,354
Wood Products	19,244
Pulp & Paper	<u>30,537</u>
Total Employment	55,135

ANNUAL PAYROLL INCOME

(in thousands of dollars)	
Forestry & Logging	\$41,144
Wood Products	\$886,463
Pulp & Paper	<u>\$2,472,111</u>
Total Compensation	\$3,399,718

NUMBER OF MANUFACTURING FACILITIES

Sawmills, Millwork, Treating	10
Engineered Wood and Panel Products	5
Other Wood Products	<u>2</u>
Total Wood Products	17
Pulp, Paper & Paperboard Mills	35
Converted Paper Products	<u>187</u>
Total Paper Manufacturing	222
Total All Segments	239

VALUE OF INDUSTRY SHIPMENTS

(in thousands of dollars)	
Wood Manufacturing	\$5,169,226
Paper Manufacturing	<u>\$13,805,709</u>
Total Value of Industry Shipments	\$18,974,935

TAX PAYMENTS

(in millions of dollars)	
Estimated State & Local Taxes	\$214

LAND AREA

(in thousands of acres)	
Total Land Area	34,661
Forests	17,074
Forests as Percent of Total	49.3%
Federal Lands	1,618
National Forest System	1,424

TIMBERLAND

(in thousands of acres)	
National Forest System	1,369
Other Federal	51
State, County and Municipal	3,296
Private Corporate	1,500
Private non-Corporate	<u>10,332</u>
Total Timberland	16,548

*Source: afandpa.org (State Industry Economic Impact Wisconsin, Aug 2018)

The Wisconsin Paper Council advocates for and represents its members in public affairs and public relations matters, serves as a center for the exchange of ideas, and disseminates news and information concerning the industry; this includes proposed legislation and job opportunities.



To: Members, Assembly Committee on Housing and Real Estate
From: Tom Larson, WRA Senior Vice President of Legal and Public Affairs
Date: January 16, 2020
Re: AB 551/SB 501 – Restoring the Right to Place a Pier on Flowages

The Wisconsin REALTORS® Association (WRA) supports AB 551/SB 501, legislation seeking to clarify that all waterfront property owners, even those with land abutting flowages and artificial waterways, have the right to place a pier subject to the regulations in Chapter 30 of the Wisconsin Statutes.

Background – For over 140 years, Wisconsin law has recognized that owners of waterfront property have riparian rights, including the right to place a pier. See *Cohn v. Wausau Boom Co.*, 47 Wis. 314, 322, 2 N.W. 546 (1879). In 1959, the Wisconsin Legislature codified this right of waterfront property owners to place a pier. See Wis. Stat. § 30.13(1). In recent years, the legislature has further protected this right from permit requirements and enforcement actions if certain conditions are met. See Wis. Stat. §§ 30.12(1g)(f) and 30.12(1k).

In 2018, the Wisconsin Supreme Court, in *Movrich v. Lobermeier*, 2018 WI 9, ¶3, 379 Wis. 2d 269, 905 N.W.2d 807, declared that some waterfront property owners do not have a right to place a pier. Specifically, the Court held that owners of waterfront property along flowages and artificial waterways do not have the right to place a pier. *Id.* Because the lake beds of flowages and artificial waterways are privately owned, the Court reasoned that the owners of the lake beds can prohibit any pier from touching the bed or floating above it. *Movrich*, at ¶55.

Potential Impacts of Case – The *Movrich* case will likely have far-reaching impacts, possibly impacting a large number of waterfront property owners and businesses. Consider the following:

- **Thousands of waterfront property owners are impacted** -- The Court's ruling applies to all flowages and potentially other "man-made" waterbodies in Wisconsin.
 - According to the Wisconsin DNR's website, Wisconsin has approximately 260 flowages. <http://dnr.wi.gov/lakes/lakepages/Results.aspx?location=ANY&page=ANY&name=flowage&letter=ANY>.
 - Thousands of lakes in Wisconsin are considered "man-made" resulting from either the artificial raising of water levels or the damming of rivers and streams, including large water bodies such as Lake Koshkonong, Lake Wisconsin, and the various "chain of lakes" in areas like Minocqua and Eagle River.

- **All piers are prohibited, including floating piers** -- The Court's ruling applies broadly to (a) all piers, even floating piers, (b) existing piers that have been placed for decades, and (c) waterfront property that has been assessed for property tax purposes as having pier rights for years. Because of the Court's ruling, affected property owners may now be forced to either remove their pier or pay several hundred dollars for "dock license fee" to keep their existing pier.
- **Affected waterfront property owners have made significant investments in piers and watercraft** -- Affected property owners have invested thousands of dollars on piers, boats and other recreational vehicles with the expectation they could be used to directly access the water from their property. Waterfront businesses such as restaurants, marinas and gas stations rely exclusively on customers who access their businesses by boat. These businesses have invested thousands of dollars on piers, decks, retaining walls, and other improvements to their property to attract these boating customers to their businesses.

This legislation would restore the rights of affected waterfront property that existed prior to the *Movrich* case.

We respectfully request that you support AB 551/SB 501. Please contact us at (608) 241-2047 if you have any questions about this legislation.

Movrich v. Lobermeier dissent

1. Mistakes made by the majority opinion.

- a. Determining that Movriches are not riparians and do not have riparian rights because their deed does not explicitly mention “riparian rights.” ¶ 77
- b. Misclassifying flowages as artificial/man-made waterbodies and equating them to privately owned gravel pits filled with water. ¶¶ 81-82.
 - i. “Artificial waterbody” is “a body of water that does not have a history of being a lake or stream or of being part of a lake or stream.” Wis. Stat. § 30.19(1b)(a).
 - ii. Flowages are lakes created by damming a stream.
- c. Failing to recognize that the of presence of navigable water over Lobermeier’s property is a game changer, limiting their fee simple rights, and creating rights for both the public and riparians. ¶66.

2. Unprecedented decision

- a. “The majority adopts an unprecedented holding that a fee simple interest in land submerged by water cancels riparian rights presumptively recognized under the common law for at least 140 years.” ¶ 67
- b. “No authority in Wisconsin or in any other jurisdiction has adopted the majority’s reasoning or otherwise restricted placement of a pier on navigable waters by a riparian owner in favor of non-riparian, fee simple ownership of the waterbed.” ¶ 90.

3. Impact of majority opinion

- a. “[T]he court effectively extinguishes the rights of thousands of waterfront property owners along flowages, while jeopardizing the rights of waterfront property owners on all bodies of water in Wisconsin.” ¶ 94

379 Wis.2d 269
Supreme Court of Wisconsin.

Jerome MOVRIK and Gail Movrich,
Plaintiffs-Respondents,

v.

David J. LOBERMEIER and Diane Lobermeier,
Defendants-Appellants-Petitioners.

No. 2015AP583

Oral Argument: September 20, 2017

Opinion Filed: January 23, 2018

Synopsis

Background: Owners of property upland of creek flowage brought action against owners of waterbed property, seeking declaration of their riparian rights incident to their property ownership and their ability to access the flowage and to install a pier or dock. The Circuit Court, Price County, Patrick J., Madden, J., entered judgment against waterbed property owners, and waterbed property owners appealed. The Court of Appeals, Curley, P.J., 372 Wis. 2d 724, 889 N.W.2d 454, affirmed, and waterbed property owners petitioned for review.

Holdings: The Supreme Court, Patience Drake Roggensack, C.J., held that:

^[1] upland property owners were not entitled to riparian rights incidental to property ownership;

^[2] public trust doctrine conveyed no private property rights to upland property owners; and

^[3] upland property owners' property rights were sufficient to access and exit creek flowage from their property.

Affirmed in part and reversed in part.

Rebecca Grassl Bradley, J., filed an opinion concurring in part and dissenting in part in which Shirley S. Abrahamson, J., joined in part.

West Headnotes (31)

^[1] Appeal and Error
Property in General

Whether prior court decisions properly applied the principles of property law, riparian rights, and the public trust doctrine are questions of law that the Supreme Court independently reviews.

^[2] Estates in Property
Fee simple

An owner in fee simple is presumed to be the entire, unconditional, and sole owner of any buildings as well as the land; this is true regardless of whether the property has positive economic or market value.

^[3] Trespass
Trespass to Real Property

One who intentionally steps from his or her own property onto the property of another, irrespective of whether he or she thereby causes harm to any legally protected interest of the other, is liable for trespass.

^[4] Trespass
Nature and elements of trespass in general

Actual harm occurs in every trespass.

owner of property bordering the Flowage.

III. CONCLUSION

¶ 58 There are three issues presented in this review. First, we conclude that while Movriches' property *300 borders the Flowage, they are not entitled to those riparian rights that are incidental to property ownership along a naturally occurring body of water where the lakebed is held in trust by the state. Rather, any rights Movriches may enjoy in regard to the man-made body of water created by the flowage easement must be consistent with Lobermeiers' property rights or the flowage easement's creation of a navigable body of water. Because the placement of a pier is inconsistent with Lobermeiers' fee simple interest and does not arise from the flowage easement that supports only public rights in navigable waters, Movriches' private property rights are not sufficient to place a pier into or over the waterbed of the Flowage without Lobermeiers' permission based on the rights attendant to their shoreline property.

¶ 59 Second, we consider the nature of the Flowage waters, to which all agree the public trust doctrine applies, and whether the public trust doctrine grants Movriches the right to install a pier directly from their property onto or over the portion of the Flowage whose waterbed is privately owned by Lobermeiers. In answering this inquiry, we consider whether and to what extent the existence of navigable waters over Lobermeiers' privately-owned property affects Lobermeiers' rights.

¶ 60 On this issue, we conclude that the public trust doctrine conveys no private property rights, regardless of the presence of navigable water. In a flowage easement such as is at issue here, title to the property under the flowage may remain with the owner. While the public trust doctrine provides a right to use the flowage waters for recreational purposes, that right is held in trust equally for all. Furthermore, although the Lobermeiers' property rights are modified *301 to the extent that the public may use the flowage waters for recreational **822 purposes, no private property right to construct a pier arises from the public trust doctrine.

¶ 61 Third, we consider whether the public trust doctrine, when combined with the shoreline location of Movriches' property, allows Movriches to access and exit the flowage waters directly from their abutting property; or, whether, because Lobermeiers hold title to the flowage waterbed,

Movriches must access the Flowage from the public access. On this issue, we conclude that as long as Movriches are using the flowage waters for purposes consistent with the public trust doctrine, their own property rights are sufficient to access and exit the Flowage directly from their shoreline property.

¶ 62 Accordingly, we affirm the court of appeals in part and reverse it in part.

By the Court.—The decision of the court of appeals is affirmed in part; reversed in part.

SHIRLEY S. ABRAHAMSON, J. (concurring in part, dissenting in part).

¶ 63 I join Justice Rebecca G. Bradley's separate writing except for Part II.

REBECCA GRASSL BRADLEY, J. (concurring in part; dissenting in part).

¶ 64 Riparian rights in Wisconsin are sacred.¹ For many, waterfront property *302 in Wisconsin provides more than merely a place to live—it affords a lifestyle. The proverbial cottage “up north” offers the opportunity for fishing off the pier in the morning, waterskiing with children or grandchildren in the afternoon, and an early evening ride on the pontoon boat with friends and neighbors. None of this is possible absent riparian rights. Traditionally, these rights have included “the right to build piers, harbors, wharves, booms, and similar structures, in aid of navigation, and such right is also one which is incident to the ownership of the upland.” Doemel v. Jantz, 180 Wis. 225, 231, 193 N.W. 393 (1923). The majority opinion sweeps away these cherished and longstanding property rights and extinguishes riparian rights for those with cottages or homes on Wisconsin's waters called flowages.

¶ 65 The issues before this court are (1) whether Jerome and Gail Movrich may maintain a pier resting over David and Diane Lobermeiers' flowage bed property either as part of their riparian rights or under the public trust doctrine, and (2) whether the Movriches have the right to cross the Lobermeiers' flowage bed from their own property to use and enjoy the flowage waters for recreational purposes. As to the first issue, the majority reverses the court of appeals, concluding the Lobermeiers

own the flowage bed in fee simple absolute, entitling them to exclude the Movriches from erecting a pier. As to the second issue, the majority *303 affirms the court of appeals and holds that the Movriches nevertheless have the right to access and enjoy the flowage bed from their property pursuant to the public trust doctrine.

**823 ¶ 66 I agree with the majority's conclusion that the Movriches may access the flowage from their property; I too would affirm the court of appeals on this issue.² I disagree, however, with the majority's conclusion that the Movriches are prohibited from erecting a pier. In defining the Lobermeiers' property rights in terms of fee absolute ownership, the majority ignores the most salient fact of this case: the presence of navigable water over the Lobermeiers' property. The presence of navigable water for over three quarters of a century alters the Lobermeiers' property rights in the waterbed, subordinating them to the riparian rights of the Movriches and the rights of the public under the public trust doctrine. Accordingly, I would affirm the court of appeals on this issue, although I would clarify that riparian rights are independent private property rights, which are not conferred under the public trust doctrine.

¶ 67 The majority opinion overlooks the interplay between private property rights, riparian rights and the public trust doctrine. Although separate and distinct, these competing rights intertwine and the majority opinion errs in its rigid approach toward applying them to the Movriches' and the Lobermeiers' property interests. The majority adopts an unprecedented holding that a fee simple interest in land submerged by water cancels riparian rights presumptively *304 recognized under the common law for at least 140 years. The consequences of what began as a family squabble are not confined to the parties before us but fundamentally transform property rights for thousands of Wisconsin property owners along hundreds of flowages.³ Such a dramatic change in the law should be the legislature's prerogative, not that of the four justices comprising the majority.

¶ 68 Ultimately, I conclude the Lobermeiers' title to a portion of the waterbed beneath the Sailor Creek Flowage is qualified by the existence of navigable water; the Movriches are entitled to erect and maintain a pier as part of the bundle of rights they enjoy as riparian owners; and the public trust doctrine confers rights on the public to use the flowage. Accordingly, I respectfully concur in part and dissent in part.

I

¶ 69 From its beginnings, Wisconsin prioritized public access to the watercourses across the state. This preference is richly embodied in the public trust doctrine, which finds roots in the Northwest Ordinance and materialized upon statehood through the adoption of Article IX, Section 1 of the Wisconsin Constitution.⁴ *305 Under **824 the public trust doctrine, the state holds the waters and beds of navigable lakes in trust for all of its citizens.⁵ Conversely, the public trust doctrine has been interpreted to "give[] riparian owners along navigable streams a qualified title in the stream beds to the center of the stream, while the state holds the navigable waters in trust for the public. In reality, the state effectively controls the land under navigable streams and rivers without actually owning it."⁶ *306 Rock-Koshkonong Lake Dist. v. DNR, 2013 WI 74, ¶ 78, 350 Wis. 2d 45, 833 N.W.2d 800. "The rule is different with respect to the beds under streams[] in part because streams can change course, streams can become unnavigable over time, and navigable streams can be very narrow and shallow, so that state ownership of stream beds could be problematic and impractical." Id., ¶ 82 (footnote omitted).

¶ 70 The public trust doctrine applies to lakes and streams that are "navigable in fact for any purpose." Wis. Stat. § 30.10 (providing that lakes and streams, if navigable in fact, are public waterways); see State v. Bleck, 114 Wis. 2d 454, 459–60, 338 N.W.2d 492 (1983). In the absence of a legislative declaration applying specifically to a certain type of watercourse, "navigability is a question of fact." Klingeisen v. DNR, 163 Wis. 2d 921, 931, 472 N.W.2d 603 (Ct. App. 1991) (citing Angelo v. Railroad Comm'n, 194 Wis. 543, 552, 217 N.W. 570 (1928)) (holding that "[t]he public trust doctrine, to be effective, must also extend to public, artificial waters that are directly and inseparably connected with natural, navigable waters"). A finding of navigability in fact is a fairly low bar to meet and thousands of waterways in Wisconsin are considered navigable. Here, it is not disputed that the Sailor Creek Flowage is navigable. Majority op., ¶ 10, n.4.

¶ 71 If a body of water is navigable in fact, then its use is subject to the public trust doctrine, which permits all people to use the waters in aid of navigation and for hunting, fishing, and other recreational purposes. Diedrich v. Nw. Union Ry. Co., 42 Wis. 248, 264 (1877); Ill. Steel Co. v. Bilot, 109 Wis. 418, 425, 84 N.W. 855 (1901); Diana Shooting Club v. Husting, 156 Wis. 261, 271–73, 145 N.W. 816 (1914). If a body of water is not navigable, "the public has no easement; *307 and the riparian owner may, in general, put his estate under the water to any

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proper use he may please, not infringing upon the rights of other riparian owners, and not violating any public law.” Diedrich, 42 Wis. at 264.

****825 ¶ 72** The applicability of the public trust doctrine does not purport to give a riparian owner more rights than those of the public; indeed, the public trust doctrine does not confer riparian rights at all. Riparian rights exist under the common law as private property rights, independent of and subject to the public trust doctrine. Indeed, the public’s right to use the waters for purposes recognized under the public trust doctrine may supersede a riparian owner’s various rights of use. Bleck, 114 Wis. 2d at 467, 338 N.W.2d 492 (“[Riparian] rights, however, are still subject to the public’s paramount right and interest in navigable waters.”). Nevertheless, by virtue of owning property on the banks of navigable water, the public trust doctrine puts a riparian owner’s exercise of otherwise public rights in a unique position.

[A] riparian owner upon navigable water, whether or not he own the soil usque ad medium filum aquæ, and unless prohibited by local law, has a right to construct in shoal water, in front of his land, proper wharves or piers, in aid of navigation, and at his peril of obstructing navigation, through the water far enough to reach actually navigable water; this being held to further the public use of the water, to which the public title under the water is subordinate; and therefore to be, in the absence of prohibition, passively licensed by the public, and not a pourpresture.

Diedrich, 42 Wis. at 262.

***308 ¶ 73** If the Lobermeiers owned the entire waterbed beneath the flowage, the Movriches would not be able to maintain and erect a pier because they would enjoy no riparian rights under the common law. Mayer v. Grueber, 29 Wis. 2d 168, 176, 138 N.W.2d 197 (1965). Of course, the owner of land who creates an artificial body of water not originating from natural, navigable water may permit members of the public, as well as owners of land abutting the waterbody, to use the water but under those circumstances such rights of use arise solely from the prerogative of the waterbed owner rather than common

law riparian rights or the public trust doctrine. See id. (citing Haase v. Kingston Coop. Creamery Ass’n, 212 Wis. 585, 588, 250 N.W. 444 (1933)). However, the Lobermeiers own only a portion of the waterbed, the public trust doctrine applies to the flowage because it originates from the public, natural, and navigable waters of Sailor Creek, and the Movriches have a fundamental right to place a pier in the water as riparian owners whose land abuts natural, navigable waters.

¶ 74 “Riparian owners are those who have title to the ownership of land on the bank of a body of water.” ABKA Ltd. P’ship v. DNR, 2002 WI 106, ¶ 57, 255 Wis. 2d 486, 648 N.W.2d 854 (emphasis added) (citing Ellingsworth v. Swiggum, 195 Wis. 2d 142, 148, 536 N.W.2d 112 (Ct. App. 1995)); see also Diedrich, 42 Wis. at 262 (1877) (“Riparian rights proper are held to rest upon title to the bank of the water, and not upon title to the soil under the water.”); Doemel v. Jantz, 180 Wis. 225, 230, 193 N.W. 393 (1923); Mayer v. Grueber, 29 Wis. 2d 168, 173, 138 N.W.2d 197 (1965) (“Riparian *309 land is land so situated with respect to a body of water that, because of such location, the possessor of the land is entitled to the benefits incident to the use of the water.” (Citations omitted.)); Stoesser v. Shore Drive P’ship, 172 Wis. 2d 660, 660, 494 N.W.2d 204 (1993) (citing ****826** 78 Am. Jur. 2d Waters § 260 (1975)). Riparian rights “are not dependent upon the ownership of the soil under the water, but upon his title to the banks.” Doemel, 180 Wis. at 230, 193 N.W. 393 (first citing Diedrich, 42 Wis. at 248; then citing Delaplaine v. Chi. & Nw. Ry. Co., 42 Wis. 214 (1877); then citing Green Bay & Miss. Canal Co. v. Kaukauna Water Power Co., 90 Wis. 370, 61 N.W. 1121 (1895); then citing State ex rel. Wausau St. Ry. Co. v. Bancroft, 148 Wis. 124, 134 N.W. 330 (1912)).

¶ 75 A riparian owner is presumptively entitled to certain rights, including:

the rights of the owner of lands upon water to maintain his adjacency to it, and to profit by this advantage, and otherwise as a right to preserve and improve the connection of his property with the water. Those rights are not common to the citizens at large, but exist as incidents to the right of soil itself contiguous to and attingent on the water. In such ownership they have their origin, and not out of the ownership of the bed, and they are

the same whether the riparian owner owns the soil under the water or not.

Doemel, 180 Wis. at 230–31, 193 N.W. 393. “The riparian owner also has the right to build piers, harbors, wharves, booms, and similar structures, in aid of navigation, and such right is also one which is incident to the ownership of the upland.” Id. at 231, 193 N.W. 393; Hicks ex rel. Askew v. Smith, 109 Wis. 532, 540, 85 N.W. 512 (1901) (“the right to erect such a pier is simply an incident of riparian ownership”). For 140 years, title to the waterbed has been entirely irrelevant to determining riparian ownership *310 under Wisconsin law. Doemel, 180 Wis. at 230, 193 N.W. 393. And the law presumes that riparian owners may construct a pier in aid of navigation.

¶ 76 As a preliminary matter, the law presumes the Movriches are riparian owners because they own property that abuts the banks of the Sailor Creek Flowage, a navigable body of water. Nevertheless, “[r]iparian rights do not necessarily follow as a matter of course the ownership of the adjacent land.” Mayer v. Grueber, 29 Wis. 2d 168, 175, 138 N.W.2d 197 (1965) (citing Allen v. Weber, 80 Wis. 531, 536, 50 N.W. 514 (1891)). “No property owner’s riparian rights are absolute.” Rock-Koshkonong Lake Dist., 350 Wis. 2d 45, ¶ 110, 833 N.W.2d 800. While an owner may be riparian in nature, his ability to exercise riparian rights may be qualified by a number of factors. Mayer, 29 Wis. 2d at 175, 138 N.W.2d 197 (citing Allen, 80 Wis. at 536, 50 N.W. 514). As determinative here, these factors include the classification of the waterbody with which the Movriches’ upland property is contiguous coupled with the private ownership of that waterbody’s bed, as well as the language in the Movriches’ deed.

¶ 77 The Movriches are unquestionably riparian owners because their property lies on the banks of the flowage. The legal description of their property extends “to the shoreline” of the flowage. Yet, the majority holds that the Movriches are not riparians, contrary to every definition of riparian ownership existing in this state’s pertinent precedent, dating back to 1877. See supra ¶74. Relying on Mayer, the majority points out that “when Movriches took title to their land, the legal description on their deed made no reference to riparian rights.” Majority op., ¶ 54. The majority equates the deed’s silence on riparian rights to the nonexistence of either riparian ownership or riparian rights. This conclusion is patently incorrect.

*311 ¶ 78 It is true “that one who acquires land abutting a

stream or body of water may acquire no more than is conveyed by **827 his deed.” Mayer, 29 Wis. 2d at 174, 138 N.W.2d 197. It is also true, however, that an owner of waterfront property possesses certain riparian rights under the common law and the common law provides that “a transfer of the property without any reference whatsoever to [riparian] rights automatically conveys and includes them.” Doemel v. Jantz, 180 Wis. 225, 230, 193 N.W. 393 (1923) (citing Ill. Cent. R.R. Co. v. Illinois, 146 U.S. 387, 13 S.Ct. 110, 36 L.Ed. 1018 (1892)); Stoesser v. Shore Drive P’ship, 172 Wis. 2d 660, 667, 494 N.W.2d 204 (1993) (citations omitted); Mayer, 29 Wis. 2d at 175, 138 N.W.2d 197. The only way to eliminate riparian rights tied to the property under the common law is “by the clear language in the deed.” Mayer, 29 Wis. 2d at 174, 138 N.W.2d 197. In other words, unless the deed expressly disavows riparian rights, property adjacent to navigable water retains presumptive riparian rights, notwithstanding the conveyance documents’ silence on this issue.

¶ 79 The majority acknowledges the Movriches’ deed does not mention riparian rights.⁸ Therefore, the riparian rights attached to the property were conveyed to the Movriches under common law when they purchased their waterfront property. The deed does not need to expressly mention the status of riparian ownership because the presumption of riparian rights exists by operation of law unless the deed expressly excludes riparian rights.

*312 ¶ 80 Wisconsin qualifies a riparian owner’s rights based on the classification of the waterbody to which the riparian property is contiguous. In the case of a natural body of water, “one who acquires land abutting a stream or body of water may acquire no more than is conveyed by his deed,” which, as already discussed, means that a deed that expressly severs riparian rights will unequivocally strip the owner of those rights. Id. at 174, 138 N.W.2d 197. In the case of an artificial body of water, as was the case in Mayer, ownership of the waterbed may qualify the existence of riparian rights. Id.

¶ 81 In Mayer, we held that “the purchaser of property abutting an artificial lake acquires no rights as a riparian owner by virtue of the land acquisition alone.” Id. at 179, 138 N.W.2d 197. Rather, “[u]nless the vendor conveys the right to use the lake, the purchaser is precluded from either the right of access or use.” Id.

¶ 82 The majority’s characterization of the flowage as a “man-made” body of water similar to the property in Mayer is incorrect.⁹ The flowage was an artificial condition created by a dam, which over time became a natural condition. Regardless, “man-made” lakes and

streams are by law artificial waterbodies. Under Wis. Stat. § 30.19(1b)(a), an artificial waterbody is “a body of water that does not have a history of being a lake or stream or of being part of a lake or stream.” (Emphasis added.) In Mayer, the artificial lake was *313 “formed as the result of gravel excavations.” 29 Wis. 2d at 170, 138 N.W.2d 197. Thus, it had no history of being a lake before seepage **828 filled up the excavation site and created a lake. Id. In contrast, a flowage arises from the damming of a stream already in existence.¹⁰ Here, the Sailor Creek Flowage was created and is currently maintained by the damming of Sailor Creek, a natural, navigable stream, by the Town of Fifield in 1941 (a fact both parties and the majority concede). Majority op., ¶ 9. As the flowage has a history of being part of Sailor Creek, it is not an artificial waterbody and Mayer does not apply.

¶ 83 In a case where a dam overflowed previously dry lands owned in fee, this court held that “the public and the riparian owners enjoy the same rights in and upon such artificial waters,” regardless of the fact that the particular body of water on which those rights are subsequently exercised were artificially created by the dam. Haase v. Kingston Coop. Creamery Ass’n, 212 Wis. 585, 587, 250 N.W. 444 (1933) (emphasis added). This concept, now discarded by the majority, was recognized over 100 years ago in Johnson v. Eimerman, 140 Wis. 327, 330, 122 N.W. 775 (1909) (“The artificial condition originally created by the dam became by lapse of time a natural condition.”) More recently, the “well settled” principle was reiterated: “If the volume or expanse of navigable waters is increased artificially, the public right to use the water *314 is increased correspondingly.” Klingeisen v. DNR, 163 Wis. 2d 921, 927, 472 N.W.2d 603 (Ct. App. 1991). In that case, the court also recognized that title to the waterbed underlying navigable waters “is entirely subordinated to and consistent with the rights of the state to secure and preserve to the people the full enjoyment of navigability and the rights incident thereto.” Id. at 928, 472 N.W.2d 603 (citing Diana Shooting Club v. Husting, 156 Wis. 261, 271, 145 N.W. 816 (1914)).

¶ 84 Subject to the public trust doctrine, “Wisconsin has ... recognized the existence of certain common law rights that are incidents of riparian ownership of property adjacent to a body of water.” R.W. Docks & Slips v. DNR, 244 Wis. 2d 497, 511, 628 N.W.2d 781 (2001) (citing Bleck, 114 Wis. 2d at 466, 338 N.W.2d 492). Such rights include “the right, now conditioned by statute, to construct a pier or similar structure in aid of navigation.” Id. (citing Cassidy v. DNR, 132 Wis. 2d 153, 159, 390 N.W.2d 81 (Ct. App. 1986)). Subject to a few exceptions not relevant here, “nothing in [Wis. Stat. ch. 30] applies to an artificial waterbody, as defined in s. 30.19(1b)(a), that

is not hydrologically connected to a natural navigable waterway and that does not discharge into a natural navigable waterway except as a result of storm events.” Wis. Stat. § 30.053. As the Sailor Creek Flowage is hydrologically connected to Sailor Creek, it is not an artificial waterbody. While Wis. Stat. ch. 30 was enacted after the creation of the flowage, “[t]he statute did not claim to alter the common law” and “[i]t is fundamental that a statute should be construed in harmony with the common law ... unless a different construction is plainly expressed.” Klingeisen v. DNR, 163 Wis. 2d 921, 930, 472 N.W.2d 603 (Ct. App. 1991).

*315 ¶ 85 In attempting to distinguish the flowage from other natural waterbodies subject to Wis. Stat. ch. 30, the majority mistakenly limits the holding in Doemel v. Jantz to waterbodies that are public, navigable, and natural. Assuming that “[Lake **829 Winnebago] is a naturally occurring lake,” the majority holds that Doemel is not dispositive. Majority op., ¶ 43. Setting aside the fact that Doemel is silent on the nature of Lake Winnebago’s hydrological makeup or the ownership of Lake Winnebago’s lakebed, Doemel controls the outcome here because the flowage in this case is entirely analogous to Lake Winnebago for the purpose of determining whether the Movriches should be able to install a pier. Like Lake Winnebago, Sailor Creek Flowage is navigable under the public trust doctrine and therefore it is public. And while its existence depended upon human intervention, it is hydrologically connected to a natural navigable waterway (i.e., Sailor Creek) and therefore it is not an artificial waterbody under Wis. Stat. § 30.19(1b)(a). Mayer, therefore, does not extinguish the Movriches’ common law riparian rights.

¶ 86 The next question is whether the Lobermeiers’ private property rights in the waterbed trump the Movriches’ riparian rights, preventing the Movriches from maintaining a pier anchored in the waterbed adjacent to the Movriches’ shoreline property. The right of a riparian to maintain a pier is subject to the following statutory limitations:

1. “A wharf or pier which interferes with public rights in navigable waters constitutes an unlawful obstruction of navigable waters unless the wharf or pier is authorized under a permit issued under s. 30.12 or unless other authorization *316 for the wharf or pier is expressly provided.” Wis. Stat. § 30.13(4)(a) (emphasis added).
2. “A wharf or pier which interferes with rights of other riparian owners constitutes an unlawful obstruction of navigable waters unless the wharf or pier is authorized under a permit issued under s.

30.12 or unless other authorization for the wharf or pier is expressly provided.” Wis. Stat. § 30.13(4)(b) (emphasis added).

Notably, the right to maintain a pier is in no way statutorily limited by the rights of non-riparian owners.”

¶ 87 The nature of the flowage bed’s title is also distinguishable from that of the private lakebed in Mayer, which was entirely owned by a single owner. In Mayer, this court recognized that in the case of an artificial waterbody, like the artificial lake in Mayer, “the title to the land remains in the owner and does not become vested in the state.” 29 Wis. 2d at 176, 138 N.W.2d 197 (citing Haase v. Kingston Coop. Creamery Ass’n, 212 Wis. 585, 588, 250 N.W. 444 (1933)). Mayer’s holding is limited to “[a]n artificial lake located wholly on the property of a single owner.” Id. Here, although title to a portion of the flowage bed remains with the Lobermeiers, their title is qualified because of the presence of navigable water over the bed.

¶ 88 This principle arises from Minehan v. Murphy, 149 Wis. 14, 134 N.W. 1130 (1912), where the plaintiff brought an action for ejectment when the *317 defendant adversely occupied the bed of an artificially enhanced stream by crossing over from his side of the stream’s thread and onto the plaintiff’s submerged property.¹² The stream in question had previously been non-navigable, but upon damming of the mouth and flooding of the privately-owned **830 former uplands the stream was rendered navigable, such that “the former private title had become changed to the same character of qualified title as that of riparian proprietors to the beds of navigable rivers in general.” Id. at 16, 134 N.W. 1130 (emphasis added). Likewise, damming a stream and creating a flowage, which in character and shape may resemble a lake, does not transfer ownership of the bed to be held in trust to the state. Rather, like that of a streambed, the title of the flowage bed is privately-held, but qualified by the presence of navigable waters. See e.g., Ne-Pee-Nauk Club v. Wilson, 96 Wis. 290, 295, 71 N.W. 661 (1897); Rock-Koshkonong Lake Dist., 350 Wis. 2d 45, ¶ 78, 833 N.W.2d 800.

¶ 89 The plaintiff’s action for ejectment was ultimately successful in Minehan, based in part upon her status as a riparian whose title to the bed of the navigable water bounding the banks of her land was “incidental to her title to the bank.” Minehan, 149 Wis. at 14, 134 N.W. 1130. The court’s articulation of the rule that title to private property submerged by navigable waters becomes qualified in the same sense as the qualified title of riparians to the beds of navigable waters, is particularly instructive here. Private title enjoys no heightened status

vis-à-vis riparian title; rather, “the former private title had become changed to the same character of qualified title as that of riparian proprietors to the beds of navigable rivers in general.” Id. at 16, 134 N.W. 1130. *318 Unlike the riparian plaintiff in Minehan, who not only owned the waterbed, but also had title to the upland property along the banks, the Lobermeiers merely own the flowage bed. The crux of the issue is whether the Lobermeiers may exclude the Movriches from erecting and maintaining a pier by virtue of owning only a portion of the flowage bed.

¶ 90 Because the Lobermeiers do not own property on the bank of a waterbody, they are not riparian owners. And while they retain ownership of a portion of the flowage bed in fee simple, that title is qualified by the presence of navigable waters. The majority wholly relies upon the Lobermeiers’ ownership of the flowage bed in fee simple absolute to reach its conclusion that the Movriches are not entitled to erect and maintain a pier. Majority op., ¶¶ 18–21, 32 n.7. The majority cites a string of cases that do not contemplate the presence of navigable water over the land. Id. No authority in Wisconsin or in any other jurisdiction has adopted the majority’s reasoning or otherwise restricted placement of a pier on navigable waters by a riparian owner in favor of non-riparian, fee simple ownership of the waterbed. The presence of navigable waters qualifies the Lobermeiers’ title to the flowage bed subject to the public trust doctrine and the rights of riparian owners along the banks of the flowage. As riparian owners, the Movriches are entitled to exercise riparian rights to access the surface waters and to have their pier rest on the flowage bed.

¶ 91 Over one hundred years ago, this court expounded the “well settled” principle that “if the volume or expanse of navigable waters be increased artificially, the public right is correspondingly increased.” Vill. of Pewaukee v. Savoy, 103 Wis. 271, 277, 79 N.W. 436 (1899). Specifically, the court in Savoy *319 expanded the state’s ownership rights in natural waterbeds to artificially submerged lands maintained for more than 20 years at an artificially high water level, concluding that “an artificial condition, by lapse of time ... becomes the natural condition.” Id. at 275, 79 N.W. 436. Three decades later, the court determined it was unnecessary to vest title to the artificially submerged land in the state in order to protect the public’s rights under the public trust doctrine. **831 Haase, 212 Wis. at 587, 250 N.W. 444. Nevertheless, the court in Haase reiterated the rule of law the majority should have applied here: “It is true that, where the waters of a natural, navigable lake are artificially raised, the public and the riparian owners enjoy the same rights in and upon such artificial waters.” Id.

¶ 92 The Sailor Creek Flowage was created 76 years ago and has been maintained for more than 50 years beyond the 20-year timeframe deemed sufficient to qualify the fee simple rights enjoyed by the owners of the underlying lakebed. The flowage, created artificially by construction of a dam, submerged privately owned land with the permission of the owner. Over time, during the three quarters of a century this land has remained submerged, both riparian rights as well as public trust rights extended to this artificial expansion of Sailor Creek. While the creation of the flowage did not transfer any property rights from the Lobermeiers to either the state or the Movriches, it subordinated the Lobermeiers' property rights to riparian rights under the common law as well as public rights under the public trust doctrine. While this reconciliation of three distinct rights perhaps leaves the Lobermeiers with property of limited value, this construction of the law takes nothing from the Lobermeiers and preserves what has always been, as reflected in the *320 \$400 assessed value of the flowage bed owned by the Lobermeiers. In contrast, the majority strips the Movriches of their riparian rights and reallocates them to the Lobermeiers.

¶ 93 Unfortunately, the majority's opinion diminishes not only the value of the Movriches' property, but also potentially guts the values of all properties abutting flowages throughout Wisconsin. The breadth of the majority's opinion calls into question the terms of deeds to such waterfront properties, the validity of prior conveyances, and the extent of ownership interests. The majority's transfiguration of the common law governing riparian rights disturbs the reliance on access that induced purchases of waterfront property in Wisconsin for over a century.

Footnotes

1 The Honorable Patrick J. Madden of Price County presided.

2 Lobermeiers do not own the entire waterbed.

3 The Movrich property is legally described as Lot One (1) of Sailor Creek Subdivision. A surveyor's description of the Sailor Creek Subdivision provides that the lots run "to the shoreline" of the Flowage and thence "along said shoreline."

4 The Flowage is navigable, meaning that it is capable of supporting at least light water craft at some time during the year. It is considered a public water pursuant to Wis. Stat. § 30.10 (2013-14). It is undisputed that the public trust doctrine applies to the Flowage.

All subsequent references to the Wisconsin Statutes are to the 2013-14 version unless otherwise indicated.

II

¶ 94 By eschewing decades of controlling precedent in order to elevate fee simple property rights in a waterbed, unattached to shoreline property ownership, the court effectively extinguishes the property rights of thousands of waterfront property owners along flowages, while jeopardizing the property rights of waterfront property owners on all bodies of water in Wisconsin. A change in the law of this magnitude should come from the legislature, not this court. Accordingly, I respectfully dissent from that part of the majority opinion that effectuates such a redistribution of property rights with no compensation to those left with substantially diminished property values and concur only in that part of the majority opinion that preserves the public's right to access the flowage waters.

¶ 95 I am authorized to state that Justice ANN WALSH BRADLEY joins this opinion.

*321 ¶ 96 I am also authorized to state that Justice SHIRLEY S. ABRAHAMSON joins this opinion except for Part II.

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5 See, e.g., Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 435, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982) (“Property rights in a physical thing have been described as the rights ‘to possess, use and dispose of it.’”) (“The power to exclude has traditionally been considered one of the most treasured strands in an owner’s bundle of property rights.”).

6 In Mayer v. Grueber, explained in further detail below, plaintiff Mayer sought an injunction to prevent Grueber from trespassing onto the waters of a man-made lake, the bed of which was entirely owned by Mayer. Mayer v. Grueber, 29 Wis. 2d 168, 170, 138 N.W.2d 197 (1965). Grueber counter-claimed, insisting that as a “riparian owner” he was entitled to the beneficial use and enjoyment of the lake. Id.

7 Loretto, 458 U.S. at 434, 102 S.Ct. 3164 (“The power to exclude has traditionally been considered one of the most treasured strands in an owner’s bundle of property rights.”); Lycoming Fire Ins. Co. of Muncy, Pa. v. Haven, 95 U.S. 242, 245, 24 L.Ed. 473 (1877) (concluding that landowners under a fee simple title are presumed to be the “entire, unconditional, and sole owners of the buildings as well as the land”); Walgreen Co. v. City of Madison, 2008 WI 80, ¶ 44, 311 Wis. 2d 158, 752 N.W.2d 687 (concluding that fee simple rights include the right of exclusion); Christensen v. Mann, 187 Wis. 567, 581, 204 N.W. 499 (1925) (“[P]roperty rights extend upwards from the surface to an unlimited extent”); Burnham v. Merch. Exch. Bank, 92 Wis. 277, 280, 66 N.W. 510 (1896) (holding that courts must protect the right of the owner to his property); Brownell v. Durkee, 79 Wis. 658, 663, 48 N.W. 241 (1891) (concluding that property rights should be “protected and secured as far as possible.”); ABKA Ltd. P’ship v. DNR, 2001 WI App 223, ¶ 28, 247 Wis. 2d 793, 635 N.W.2d 168 (concluding that an interest in fee simple is the broadest interest allowed by law).

8 As discussed above, the public trust doctrine has been “expansively interpreted to safeguard the public’s use of navigable waters for purely recreational purposes such as boating, swimming, fishing, hunting, recreation, and to preserve scenic beauty.” R.W. Docks & Slips v. State of Wis., 2001 WI 73, ¶ 19, 244 Wis. 2d 497, 628 N.W.2d 781 (2001).

9 Specifically, in Doemel we held that “[t]he riparian owner also has the right to build piers, harbors, wharves, booms, and similar structures ... incident to the ownership of the upland.” Doemel v. Jantz, 180 Wis. 225, 231, 193 N.W. 393 (1923).

1 “Riparian” is defined as “relating to or living or located on the bank of watercourse (as a river or stream) or sometimes a lake.” Webster’s Third New International Dictionary of the English Language (3d ed. 1986). “Sacred” as used in this context, as in other riparian rights cases, is used to describe something secured against violation or infringement rather than in the religious sense. See, e.g., Chapman v. Oshkosh & Miss. River R.R. Co., 33 Wis. 629, 637 (1873) (“And he holds every one of these [riparian] rights by as sacred a tenure as he holds the land from which they emanate.”); Avery v. Fox, 2 F. Cas. 245, 247 (C.C.W.D. Mich. 1868) (“This right of private persons to the use of water as it flows by or through their lands, in any manner not inconsistent with the public easement, is as sacred as is the right of a person to his land, his house, or his personal property.”).

2 See also deNava v. DNR, 140 Wis. 2d 213, 222, 409 N.W.2d 151 (Ct. App. 1987) (“Since the riparian owner has the exclusive right of access to and from navigable waters to his shore, the riparian owner has exclusive riparian rights.”).

3 See generally Wis. Dep’t of Nat. Res., Wisconsin Lakes (2009), <http://dnr.wi.gov/lakes/lakebook/wilakes2009bma.pdf>.

4 “The United States [S]upreme [C]ourt in Barney v. Keokuk (1876), 94 U.S. 324, 24 L.Ed. 224 ... declared that the individual states have the right to determine for themselves the ownership of land under navigable waters.” Rock-Koshkonong Lake Dist. v. DNR, 2013 WI 74, ¶ 79, 350 Wis. 2d 45, 833 N.W.2d 800 (quoting Muench v. Pub. Serv. Comm’n, 261 Wis. 492, 492, 53 N.W.2d 514, adhered to on reh’g, 261 Wis. 515b, 55 N.W.2d 40 (1952)). Article IX, Section 1 states: “The state shall have concurrent jurisdiction on all rivers and lakes bordering on this state so far as such rivers or lakes shall form a common boundary to the state and any other state or territory now or hereafter to be formed, and bounded by the same; and the river Mississippi and the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free, as well to the inhabitants of the state as to the citizens of the United States, without any tax, impost or duty therefor.”

5 The doctrine was “originally designed to protect commercial navigation,” but its applicability has since “been expanded to safeguard the public’s use of navigable waters for purely recreational and nonpecuniary purposes.” State v. Bleck, 114 Wis. 2d 454, 465, 338 N.W.2d 492 (1983) (citing Muench, 261 Wis. 492, 53 N.W.2d 514); see also Diedrich v. Nw. Union Ry. Co., 42 Wis. 248 (1877); Illinois Steel Co. v. Bilot, 109 Wis. 418, 425, 84 N.W. 855 (1901); Joseph D. Kearney & Thomas Merrill, The Origins of the American Public Trust Doctrine: What Really Happened in Illinois Central, 71 Univ. Chic. L. Rev. 799 (2004). “The legislature has the primary authority to administer the public trust for the protection of the public’s rights, and to effectuate the purposes of

the trust.” Hilton ex rel. Pages Homeowners’ Ass’n v. DNR, 2006 WI 84, ¶ 19, 293 Wis. 2d 1, 717 N.W.2d 166 (citing Bleck, 114 Wis.2d at 465, 338 N.W.2d 492).

- 6 “It is said that the controlling distinction between a stream and a lake or pond is that in the one case the water has a natural motion,—a current,—while in the other the water is, in its natural state, substantially at rest, and this entirely irrespective of the size of the one or the other.” Ne-Pee-Nauk Club v. Wilson, 96 Wis. 290, 295, 71 N.W. 661 (1897) (citation omitted).
- 7 “Usque ad medium filum aquæ” means “up to the middle of the stream.” Usque Ad Filum Aquæ, Black’s Law Dictionary (1st ed. 1891). A “pourpresture,” also spelled “purpresture,” is “[a]n inclosure by a private party of a part of that which belongs to and ought to be open and free to the public at large.” Purpresture, Black’s Law Dictionary (1st ed. 1891).
- 8 The majority suggests the possibility of a different outcome if the “Movriches had purchased their property from Lobermeiers.” Majority op., ¶ 52. However, even if the Movriches had acquired their property from the Lobermeiers, if the deed were silent on riparian rights, as it actually is in this case, riparian rights are nevertheless conveyed under the common law.
- 9 “The artificial condition originally created by the dam became by lapse of time a natural condition.” Haase v. Kingston Coop. Creamery Ass’n, 212 Wis. 585, 250 N.W. 444 (1933) (citing Johnson v. Elmerman, 140 Wis. 327, 330, 122 N.W. 775 (1909)); see also Alvin E. Evans, Riparian Rights in Artificial Lakes and Streams, 16 Mo. L. Rev. 93, 108 n.63 (1951) (citing Minehan v. Murphy, 149 Wis. 14, 134 N.W. 1130 (1912)).
- 10 A “flowage” is defined as “[t]he natural movement of water from a dominant estate to a servient estate.” Flowage, Black’s Law Dictionary (10th ed. 2014); see also Flowage Easement, Black’s Law Dictionary (10th ed. 2014) (“A common-law easement that gives the dominant-estate owner the right to flood a servient estate, as when land near a dam is flooded to maintain the dam or to control the water level in a reservoir”).
- 11 Wisconsin Stat. § 30.13 provides limited means by which non-riparian owners may maintain a pier. This section mainly considers the rights of easement holders and is not relevant here.
- 12 The court does not elucidate the exact details of the defendant’s impermissible occupancy.

List of 260* Flowages In Wisconsin

(Note – This list includes only flowages with “flowage” in the name. Other flowages called “lake” (e.g., Petenwell Lake) are not included in this list.

Statewide - All Flowages

Lake Name	Size (Acres)	County
Abbot Ranch Flowage	3	Clark
Apple Falls Flowage	62	Saint Croix
Apple River Flowage	604	Polk
Bagley Flowage 1061	245	Marinette
Barron Flowage No. 1	52	Barron
Barron Flowage No. 2	2	Barron
Barron Flowage No. 3	62	Barron
Battle Point Flowage	27	Jackson
Beaver Creek Flowage	4	Price
Beaver Flowage	7	Clark
Beaver Flowage	95	Juneau
Berkhahn Flowage (Townline)	445	Marathon
Big Bear Flowage	16	Jackson
Big Falls Flowage	281	Rusk
Big Quinnesec Falls Flowage	101	Marinette
Billy Boy Flowage	71	Sawyer
Birch Creek Flowage No. 1	3	Chippewa
Birch Creek Flowage No. 2	6	Chippewa
Birch Flowage	4	Marathon
Biron Flowage	2187	Wood, Portage
Black Brook Flowage	69	Polk
Black Duck Flowage	16	Jackson
Black River Flowage 1610	190	Jackson
Brule River Flowage	297	Florence
Bullgrass Flowage	75	Wood
Cadott Flowage	20	Chippewa
Cameron Flowage	59	Barron
Camp Eight Flowage	13	Taylor
Casey Creek Flowage	36	Washburn
Centralia Flowage	274	Wood
Chalk Hill Flowage	378	Marinette
Chequamegon Waters Flowage	2366	Taylor
Chippewa Falls Flowage 5555	954	Chippewa, Eau Claire

Statewide - All Flowages

Lake Name	Size (Acres)	County
Clam Falls Flowage	119	Polk
Clam River Flowage	412	Burnett
Colton Flowage	47	Washburn
Coon Fork Flowage	62	Eau Claire
Cornell Flowage	897	Chippewa
Cranberry Creek Flowage	346	Douglas
Cranberry Flowage	7	Burnett
Cranberry Flowage	47	Jackson
Cranberry Flowage	32	Jackson
Creeds Flowage	18	Iron
Crowley Flowage 802	354	Price
Currey Flowage	0.48	Burnett
Dallas Flowage	28	Barron
Danbury Flowage	242	Burnett
Dandy Creek Flowage	140	Monroe
Daniels Flowage	33	Burnett
Davis Flowage	199	Washburn
Deer Lake Flowage	6	Forest
Dike 1 Flowage	30	Burnett
Dike 2 Flowage	29	Burnett
Dike 3 Flowage	26	Burnett
Dike 4 Flowage	113	Burnett
Dike 6 Flowage	50	Burnett
Dry Land Flowage	13	Jackson
Dueholm Flowage	179	Burnett
Eagle Nest Flowage	350	Juneau
East Potts Flowage	5	Wood
East Potts Flowage	21	Wood
Eau Claire Flowage	79	Marathon
Eau Claire River Flowage	56	Douglas
Ellis Flowage	3	Taylor
Erickson Flowage	12	Burnett
Figors Mill Flowage	18	Columbia
Fisher Flowage	24	Marathon

Statewide - All Flowages

Lake Name	Size (Acres)	County
Flowage C1-Pershing	7	Taylor
Flowage C2-Pershing	5	Taylor
Flowage C3-Pershing	4	Taylor
Forestville Flowage	94	Door
Foulds Creek Flowage	43	Price
Frederick Flowage	105	Oneida
Funmaker Flowage	9	Jackson
G Flowage	37	Wood
Garski Flowage	7	Langlade
Gile Flowage	3138	Iron
Glen Loch Flowage	39	Chippewa
Grand Rapids Flowage	307	Marinette
Grandfather Flowage	184	Lincoln
Grandmother Flowage	208	Lincoln
Grassy Creek Flowage	23	Vilas
Grettum Flowage	249	Burnett
Grimh Flowage	62	Sawyer
Hanson Flowage	4	Langlade
Harkner Flowage	53	Jackson
Hat Rapids Flowage	295	Oneida
Hay Creek Flowage	34	Burnett
Hay Creek Flowage	95	Iron
Hay Meadow Flowage	24	Chippewa
Hay Meadow Flowage	75	Forest
Hay Meadow Flowage No. 1	16	Chippewa
Hay Meadow Flowage No. 3	2	Chippewa
Hay Meadow Flowage No. 4	11	Chippewa
Hill Trail Flowage	15	Rusk
Holcombe Flowage	2881	Chippewa, Rusk
Holzer Flowage	7	Taylor
Honey Island Flowage	125	Marathon
Horseshoe Flowage	7	Chippewa
Horseshoe Flowage	5	Marathon
Indianhead Flowage	413	Polk

Statewide - All Flowages

Lake Name	Size (Acres)	County
Iron Run Flowage	7	Clark
Jersey City Flowage	423	Lincoln
Joel Flowage	80	Polk
Johnson Falls Flowage 647	145	Marinette
Kilbourn Flowage	1868	Juneau, Adams
Kingsford Flowage Wi-Mi (491)	223	Florence
Kingston Flowage	56	Juneau
Knapp Flowage	33	Polk
Ladysmith Flowage	268	Rusk
Lea Flowage (Lea Lake)	222	Rusk
Leigh Flowage	238	Oconto
Little Bear Flowage	64	Iron
Little Bear Flowage	9	Jackson
Little Eau Pleine Flowage	127	Portage
Little Quinnesec Falls Flowage	323	Marinette
Little Tamarack Flowage	236	Vilas
Little Thunder Flowage	11	Jackson
Little Turtle River Flowage	30	Iron
Loretta Lake (U Brunet Flowage)	130	Sawyer
Lower Nienow Flowage	5	Marathon
Lower Park Falls Flowage 762	62	Price
Lower Wilson Marsh Flowage	10	Jackson
Machickanee Flowage (Stiles)	436	Oconto
Main Flowage	108	Marathon
Mallard Flowage	14	Chippewa
Mallard Flowage	28	Jackson
Maunsha Flowage	79	Dane, Jefferson
Meadow Valley Flowage	439	Juneau
Medford Flowage	18	Taylor
Merrill Flowage	284	Lincoln
Middle North Fork Flowage	30	Burnett
Millhome Flowage	51	Manitowoc
Minong Flowage	1587	Washburn, Douglas
Mondeaux Flowage	411	Taylor

Statewide - All Flowages

Lake Name	Size (Acres)	County
Monroe County Flowage	513	Monroe
Monson Flowage	28	Taylor
Moose Branch Flowage	46	Douglas
Mosinee Flowage	716	Marathon
Murphy Flowage	173	Rusk
Musser Flowage	503	Price
Nekoosa Flowage	486	Wood
New Richmond Flowage	20	Saint Croix
North Flowage	237	Monroe
North Fork Flowage	310	Burnett
North Gallagher Flowage	195	Wood
North Honey Island Flowage	340	Marathon
North Smoky Hill Flowage	16	Marathon
North Townline Flowage	123	Marathon
O'Neil Creek Flowage # 2	70	Chippewa
O'Neil Creek Flowage Number One	32	Chippewa
Partridge Crop Flowage	17	Jackson
Paulson Flowage	5	Burnett
Pershing WA Flowage Shoulder Creek	71	Taylor
Peshtigo Flowage 1086	232	Marinette
Phantom Flowage T39n R19w S36	932	Burnett
Phipps Flowage	134	Sawyer
Pigeon Creek Flowage	39	Jackson
Pine River Flowage	123	Florence
Pixley Flowage	182	Price
Plover River Flowage	47	Portage
Port Arthur Flowage	285	Rusk
Port Edwards Flowage	131	Wood
Potato Creek Flowage	25	Rusk
Potter Flowage	255	Jackson
Prairie Farm Flowage	33	Barron
Prentice Flowage	16	Price
Quail Point Flowage	25	Wood
Radigan Flowage	150	Douglas

Statewide - All Flowages

Lake Name	Size (Acres)	County
Radisson Flowage	178	Sawyer
Rainbow Flowage	3153	Oneida
Range Line Flowage	9	Jackson
Rangeline Flowage	85	Marathon
Rhinelanders Flowage	1372	Oneida
Rice River Flowage*(Nokomis)	764	Lincoln, Oneida
Riverdale Flowage	68	Saint Croix
Rockville Flowage	76	Manitowoc
Rocky Run Flowage	165	Oneida
Rynearson Flowage No. 1	555	Juneau
Sailor Creek Flowage	201	Price
Sandberg Flowage	8	Burnett
Sandstone Flowage	127	Marinette
Saxon Falls Flowage	68	Iron
Schmuland Flowage	89	Price
Scott Flowage	50	Monroe
Scott Flowage	139	Marinette
Seventeen Flowage	214	Jackson
Sharptail Flowage	1	Jackson
Sharptail Flowage #2	3	Jackson
Sharptail Flowage #3	0.33	Jackson
Sharptail Flowage #4	1	Jackson
Shiloh Flowage	25	Polk
Simes Creek Flowage (Willow)	0.97	Clark
Skinner Creek Flowage*	55	Sawyer, Rusk
Slim Creek Flowage	106	Washburn
Smoky Hill Flowage	41	Marathon
Sotak Flowage	20	Taylor
South Gallagher Flowage	237	Wood
South Refuge Flowage	239	Burnett
Spider Creek Flowage	55	Langlade
Spirit River Flowage	1220	Lincoln
Sprague-Mather Flowage	810	Juneau
Spring Creek Flowage	58	Price

Statewide - All Flowages

Lake Name	Size (Acres)	County
Spring Creek Flowage No. 1	9	Chippewa
Spring Creek Flowage No. 2	7	Chippewa
Squaw Creek Flowage	84	Price
Squaw Mound Flowage	14	Jackson
St Croix Flowage	2247	Douglas
Staffon Flowage (School)	21	Jackson
Starks Flowage	120	Oneida
Steve Creek Flowage, Lower	12	Price
Stevenson Creek Flowage	44	Vilas
Sturgeon Falls Flowage	255	Marinette
Sugarbush Flowage	14	Iron
Suk & Cerney Flowage	59	Juneau
Superior Falls Flowage	189	Iron
Tanner Flowage	16	Jackson
Teal Flowage	370	Marathon
Teal Flowage	16	Jackson
Teal River Flowage	66	Sawyer
Theresa Marsh Flowage	203	Dodge
Thornapple Flowage	266	Rusk
Tiger Cat Flowage	1012	Sawyer
Totagatic Flowage	453	Washburn, Sawyer
Town Line Flowage	131	Jackson
Town Road Flowage	4	Burnett
Townsend Flowage	445	Oconto
Township Corners Flowage	7	Price
Turtle Flambeau Flowage	12942	Iron
Twin Falls Flowage	570	Florence
Upper Hay Creek Flowage	2	Burnett
Upper North Fork Flowage	276	Burnett
Upper Park Falls Flowage 760	310	Ashland, Price
Upper Phantom Flowage	9	Burnett
Upper Scott Flowage 4060	124	Marinette
Upper Steve Creek Flowage	138	Taylor
Washington Creek Flowage	61	Rusk

Assembly Bill 551 Public Hearing Testimony

Thursday, January 16, 2020

Given by:

Stacy Pettit

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My husband and I own approximately 190 acres, which include 100 acres of wetland and 15 acres of Lake Alexander flowage lakebed, in Lincoln County. Our lakebed lies within a bay that is a tributary to the Wisconsin River via Lake Alexander. Our wetlands take in water from miles around us. That water flows through our property and over it as it enters the bay. We own, pay property taxes and pay for property and liability insurance on all of this, including 3,300 feet of lake frontage. Remarkably, even though we have every right as lakebed property owners and opportunity to place a pier, WE HAVEN'T! WHY? BECAUSE YOU DON'T NEED A PIER OR ANY OTHER STRUCTURE TO ACCESS THE WATER.

NO WHERE IN OUR DEED, ORIGINATING IN THE YEAR 1853, DOES IT ALLOW FOR RIPARIAN OWNERS, OR ANY OTHER ENTITY, TO ERECT STRUCTURES ON OUR PRIVATE PROPERTY WITHOUT OUR PERMISSION, AN EASEMENT OR OTHER FORM OF LEGAL AGREEMENT. A deed is in fact, a legal document regarding the ownership of legal property rights. The person holding the deed is the only person who has legal authority to grant a PRIVILEGE to the property. It is OUR RIGHT to make the decision of what takes place on our property.

Furthermore, our property is bound to a perpetual, exclusive, private and contractual conservation agreement with North Central Conservancy Trust. Our privately owned lakebed is included in that agreement. Legal agreements such as conservation easements need to be given the same consideration as FERC agreements in as much as they both are existing legal agreements between parties that regulate what can and can't take place on privately owned lakebed property. Perhaps the most important aspect of these agreements is the fact that third parties, such as riparian owners, cannot be assigned "rights" over existing contracts.

We recognize, respect and understand the value of the Public Trust Doctrine, both as public users and private property owners. By placing a conservation easement, we have tried to find a balance of protecting our wetlands and waterways while providing recreation opportunities to the public, all while we continue to assert our rights as public users and private property owners. It is important to acknowledge the fact that our privately owned lakebed, and the responsibilities and liability that go along with it, are what make waterway recreational opportunities available to all. We value our lakebed property ownership as a tremendous responsibility, not as a burden, in protecting Wisconsin's natural resources.

In conclusion, I believe that Assembly Bill 551 is a threat to public users and the rights of private property owners that own a legal deed to lakebed property. There are numerous ways to address these concerns without the intervention of government and potential laws and statutes that will most certainly cause unnecessary conflict between all user groups.

Assembly Bill 551 Public Hearing Testimony

Thursday, January 16, 2020

Given by:

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I start with a quote....author unknown. "No man's life, liberty or property are safe while the legislature is in session."

It leads us to ask why we are here. We are here because special interest groups didn't like the outcome of a recent Supreme Court case and Supreme Court Justice Bradley's dissenting opinion has been used by those groups as a basis to push this bill. I would be curious to know if everyone that has input regarding this legislation has read the Movrich vs. Lobermeier case review. If they had, they would know, the ruling was based on clarification of the law, not opinion. It is made very clear that waterbed property ownership rights prevail over riparian property ownership.

It is ironic that the language in AB 551 is essentially summarized and taken from a 1923 Supreme Court case review where the facts and basis of the case ARE NOT equal to the Movrich vs. Lobermeier case. What is the significance of having the State's highest court if legislators can simply undermine those rulings? Everyone must be aware that there are a significant number of Wisconsin Supreme Court rulings in favor of private waterbed rights. The precedence has been set over the past several decades, not just recently.

The issue of privately owned waterbed rights does not end at the state level. Private property rights are constitutionally protected in the United States through the Takings Clause of the 5th Amendment. This clause prohibits the government from confiscating property if it is not doing so for a public use. Riparian rights are not considered for public use as is required for a legal taking via the Takings Clause. Riparian rights provide a right of access for private upland owners of property that runs into a body of water. In this case, the government has no grounds with which to take private property/lakebed property from one person and give to another in the name of riparian rights. Therefore; this proposed legislation would be a violation of the Takings Clause of the 5th amendment of the United States Constitution.

When Justice Bradley stated, "riparian rights in Wisconsin are sacred", it was meant to invoke an emotional response. That in no way should invoke a response to attempt to create a statute that tramples the rights of one property owner for another. It is a violation of the Wisconsin State Constitution and the United States Constitution that is meant to be upheld by our lawmakers and judicial system.

In conclusion, let it be known that I am in opposition of AB 551. And I end with a quote by Neal Boortz...

NO FREEDOM IS SECURE IF YOUR PROPERTY RIGHTS ARE NOT SECURE!