

American Whitewater

Louisiana Navigability Report

Summary

Navigable streams in Louisiana are those that have been or are capable of being used in their ordinary condition for interstate commerce. In navigable rivers, the state owns the riverbed, and the public can use the banks up the ordinary high water mark for activities related to navigation. Acceptable activities include boating, fishing and canoeing.

State Test of Navigability

Louisiana, through its case law, has adopted a state test of navigability that considers streams navigable that are “navigable in fact,” very similar to the federal commerce test.¹⁾ A body of water is navigable-in-fact if “it is capable of being used for a commercial purpose over which trade and travel are or may be conducted in the customary modes of trade and travel.”²⁾ The court goes on to say that “simply stated, a water course is navigable when by its depth, width and location it is rendered available for commerce.”³⁾ However, the courts in Louisiana distinguish the fact that a stream “navigable in fact by canoes, row boats and other small craft”, but “not navigable by larger boats and vessels, does not make it a navigable stream.”⁴⁾

Navigability is not presumed and the burden of proof rests with the party seeking to establish it.⁵⁾ In Louisiana, a body of water can also be held

navigable despite its natural or man-made obstructions.⁶⁾ The public trust doctrine applies in Louisiana to navigable waters. The public trust doctrine maintains that the state holds certain lands and waters for the public's reasonable use.

Extent of Public Rights in Navigable and Non-Navigable Rivers

Louisiana follows the federal navigational servitude test which grants the public the right to use and access navigable waters as continuous highways for the purpose of navigation in interstate commerce.⁷⁾ However, the courts in Louisiana distinguish from this test by fact that not all navigable waters enjoy a navigational servitude as there may be instances non-navigable waters are made navigable by private owners.⁸⁾ For example, if there is a shallow lake that is non-navigable, and the owner of the lake dredged the bottom to make it navigable for boat travel, the public does not have a navigational servitude to access the lake.

The beds of navigable waters are “insusceptible of private ownership.”⁹⁾ Banks¹⁰⁾ of a navigable river are “private things subject to public use.”¹¹⁾ The public may not utilize the bank of a river or a stream for any activity other than incidental use as it relates to navigation.¹²⁾ Riparian landowners have the right to reasonable use of the waters but cannot restrict the actual use of a navigable river or stream.¹³⁾ Courts have not formally addressed the issue of portage outside of the use of navigable rivers banks.

Criminal trespass in Louisiana states that “no person shall remain in or upon property, movable or immovable, owned by another without express, legal or implied authorization.”¹⁴⁾ There is an exception to trespass in the statute for an “occupant of a watercraft or vessel traveling on salt water engaged in an emergency purpose for the purpose of retrieval of his property or for obtaining assistance in an emergency.”¹⁵⁾

Miscellaneous

For more information on water rights in Louisiana, please refer to the Louisiana Department of Natural Resources, found at [<http://dnr.louisiana.gov/>]. Regulation of all fishing and boating activities falls under the exclusive control of the Louisiana Wildlife and Fisheries Commission, found at [<http://www.wlf.louisiana.gov/>].

1) Ramsey River Road Property Owners Association, Inc. v. Reeves, 396, So. 2d 873, 876 (La. 1981).

2) Walker Lands, Inc. v. East Carroll Parish Police Jury, 871 So. 2d 1258, 1265 (2004), citing, Ramsey River Road Property Owners Association, Inc. v. Reeves, 396, So. 2d 873, 876 (La. 1981).

3) See id.

4) 8) 11) 13) 15) See id.

5) Shell Oil Company v. Pitman, 476 So. 2d 1031, 1036 (1985).

- 6) State ex rel. Guste v. Two O'Clock Bayou Land Co., Inc. 365 So. 2d 387 (1978).
- 7) Dadar v. LaFourche Realty Co. Inc., 985 F. 2d 824, 832 (1993) citing the Kaiser Aetna v. United States, 444 U.S. 164, 178, 100 S.Ct. 383, 392 (1979).
- 9) State v. Barras, 615 So. 2d 285, 287 (1993).
- 10) The bank of a navigable river or stream is the land lying between the ordinary low and the ordinary high state of water. Id.
- 12) Op. Atty. Gen. No. 90-663 (January 24, 1991).
- 14) Louisiana State Revised Statues 14:63.