CONSERVATION COMMISSION: The State of Missouri owns beds of navigable waters, and the riparian only owns to low water mark of navigable waters.

WATERS :

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September 3, 1946.

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Conservation Commission
State of Missouri,
Jefferson City, Missouri.

Attention Mr. I. T. Bode, Director.

Gentlemen:

This will acknowledge receipt of your recent request for an opinion, which reads in part:

> "We have under consideration a proposal to establish a state migratory waterfowl refuge on some low water sandbars and mud flats along a short stretch of the Missouri River between Boone and Moniteau Counties. On the Boone County side this area extends from the center of Section 11, Township 47-N, Range 14-W, to the southern border of Section 3, Township 46-N, Range 13-W.
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> "Following our established procedure of setting up all areas with the consent of the landowner or legal representative thereof, we would like to determine who owns or has jurisdiction over the type of lands described above.
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> "The lands and water with which we are concerned would include the river channel between the lines of visible vegetation. The land area alone would cover only that portion which is exposed between the ordinary high-water and low-water levels. No lands above the high water levels are involved.
>
> "Specifically, who owns or has jurisdiction over the river channel between the lines of visible vegetation--the federal government, the state, the county, or the adjoining riparian landowners?"

The law is well established that title to beds of navigable waters passed to the states when admitted to the union.

In Hecker v. Bleish, 3 S.W. (2d) 1008, l.c. 1015-16, in so holding the court said:

> "* * * The same author, in section 166 of the said text, states the following as the generally accepted rule; * * *
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> "In 29 Cyc. 355, it is said:
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> "'No title to the soil under navigable waters was conferred by the Constitution upon the federal government, so far as the original states were concerned, but the title remained in the respective states. But before a state is admitted and while it is a territory, the federal government is vested with the title to the lands under water. This title, however, except as conveyed before the admission of the state, is relinquished to the state upon its admission into the Union.'
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> "The rule or doctrine just stated finds ample support in the decisions of the Federal Supreme Court in Pollard's Lessee v. Hagan, 3 How. 212, 11 L.Ed. 565, Barney v. Keokuk, 94 U.S. 324, 24 L.Ed. 224, and Mobile Transp. Co. v. Mobile, 187 U.S. 479, 23 S. Ct. 170, 47 L.Ed. 266.
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> "In Gould on the Law of Waters (3rd Ed.) Sec. 39, p. 94, it is said:
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> "'The United States is the source of title to lands within its limits which are not within the boundaries of the states, and the new states, being admitted into the Union upon an equal footing with the original states, become entitled to all the rights and privileges possessed by the latter. They have the same rights, sovereignty, and jurisdiction, as to the soil of navigable waters, as the older states; and neither the right of the United States to the public lands, nor the power conferred upon Congress to make laws and regulations for the sale and disposition thereof, enables the general government to grant the shores and bed of such waters within the limits of a new state after its admission into the Union.'

> "The later decisions of this court appear no longer to follow the doctrine which seems to have been announced in the earlier cases of Adams v. St. Louis, and Benson v. Morrow, supra, but appear to hold to the rule or doctrine announced by the Federal Supreme Court in the cases cited supra, namely, that title to the bed or soil under the navigable waters within the boundaries of the state passed from the United States to the state of Missouri upon its admission into the Union, and when islands spring up or form upon the soil or river bed beneath the waters of navigable rivers within the boundaries of the state, or lands are made by the recession of the waters of such navigable rivers, such lands are part of the public domain, and the state, by right of sovereignty, has the power and authority to transfer and grant its title thereto to the respective counties of the state in which such lands are located, to be held by such counties for school purposes, under the act of the General Assembly of 1895. McBaine v. Johnson, 155 Mo. 191, 202, 55 S.W. 1031; Moore v. Farmer, 156 Mo. 33, 49, 56 S.W. 493, 79 Am. St. Rep. 504; State ex rel. v. Longfellow, 169 Mo. 109, 129, 69 S.W. 374; Frank v. Goddin, 193 Mo. 390, 395, 91 S.W. 1057, 112 Am. St. Rep. 493."

In Martin et al. v. The Lessee of Waddell, 10 L. Ed. 997, l.c. 1013, the court said:

> "For when the Revolution took place the people of each State became themselves sovereign; and in that character hold the absolute right to all their navigable waters and the soils under them for their own common use, subject only to the rights since surrendered by the Constitution to the general government.* * *"

Also in United States v. Utah, 75 L. Ed. 844, l.c. 849, 283 U.S. 64, the court said:

> "* * * In accordance with the constitutional principle of the equality of states, the title to the beds of rivers within Utah passed to that state when it was admitted to the Union, if the rivers were then navigable; and, if they were not then navigable, the title to the river beds remained in the United States. * * *."

A riparian owner of land in the State of Missouri owns land only to the low-water mark and not to the middle of the thread of the navigable stream.

In Frank v. Goddin, 193 Mo. 390, l.c. 394, the court, in so holding, said:

> "* * * In the first place, whatever be the common law or the civil law, each State of this Union may settle for itself the title to lands formed by accretions within its boundaries. (Barney v. Keokuk, 94 U.S. 324; St. Louis v. Rutz, 138 U.S. 226).
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> "In the second place, in Missouri, the riparian owner does not own to the middle of the thread of a navigable river, ad filum medium aquae (Benson v. Morrow, 61 Mo. 345), but only owns to low water mark. (Cooley v. Golden, 117 Mo. 33; State ex rel. v. Longfellow, 169 Mo. 109.)**."

See also Peterson v. City of St. Joseph, 156 S.W. (2d) 691, l.c. 694, wherein the court held that a riparian owners along the Missouri River owned to the water's edge, and may claim accretions to their lands. In so holding, the court said:

> "'Accretions must, as a rule, in their formation preserve uninterrupted contiguity.' Therefore, 'Alluvion cannot become an accretion to land by extending itself until it meets the land, except in cases where the title to the land extends to the center of the stream. For example, if the process is such that an island first arises from the water, and afterwards becomes connected to the land by the addition of accretions to it, the title to the island will not vest in the riparian owner of the mainland.' 1 R.C.L. pp. 232, 233.
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> "In Moore v. Farmer, 156 Mo. 33, l.c. 43, 56 S.W. 493, 496, 79 Am. St. Rep. 504, the following instruction was, in effect, approved. 'The court instructs that the Missouri river is a navigable stream, and that riparian owners along said river own to the water's edge only; their line expanding as the waters recede and accretions form to the land, and contracting as the waters encroach upon and wash away their land; the line always remaining at the water's edge. But the formation or reliction must be gradual and imperceptible, and must be made to the contiguous land so as to change the position of the water's edge or margin. And if

> is is shown by the preponderance of the testimony in the case that the land in controversy first appeared as an island or formation of soil, sediment, or other substances out in the midst of the Missouri river, to which accretions were formed from the deposit of soil and other substances by the waters of said river, until the banks of said island or formation extending northward united with the main bank of the river, or was separated therefrom by a slough or depression only, then such lands are not an accretion to the main bank of the river * * *."

In a recent decision, Hartvedt v. Harpst, 173 S.W. (2d) 65, l.c. 69, the court, in holding that a riparian proprietor on a navigable stream owns to the low-water mark, said:

> "'It is well settled in this state * * * that a riparian proprietor on a navigable stream only owns to the water's edge.' Cox v. Arnold, 129 Mo. 337, 341, 31 S.W. 592, 593, 50 Am. St. Rep. 450. 'Upon navigable streams (as is the Missouri river) the riparian owner has title to the river bank and no further. The river bank may be figured at and to low-water mark.' Doebbeling v. Hall, 310 Mo. 204, 215, 274 S.W. 1049, 41 A.L.R. 382. We take judicial notice of the fact that the Missouri River is a navigable stream. Wright Lumber Company v. Ripley County, 270 Mo. 121, 131, 192 S.W. 996; Heiberger v. Missouri & Kansas Telephone Company, 133 Mo. App. 452, 458, 113 S.W. 730.* * *"

CONCLUSION

Therefore, it is the opinion of this department that, in view of the foregoing decisions, the State of Missouri owns the beds to navigable waters and the riparian land owner owns to the low-water mark of navigable waters.

Respectfully submitted,

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APPROVED:

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