

N.D.A.G. Letter to Myers (May 23, 1991)

May 23, 1991

Earle R. Myers Jr.
Richland County State's Attorney
Law Enforcement Center
413 - 3rd Ave. N.
Wahpeton, ND 58075

Dear Mr. Myers:

Thank you for your April 9, 1991, letter concerning the effect of a modification in the channel of the Red River on the boundary between Minnesota and North Dakota.

The Red River forms the border between Minnesota and North Dakota. During the 1940s and 1950s, the Corps of Engineers modified the river's channel. The modification resulted in a number of oxbows which left land originally in Minnesota on the North Dakota side of the river, and land originally in North Dakota on the Minnesota side of the river. You ask whether this modification changed the border between North Dakota and Minnesota. For the reasons set forth below, it is my opinion that the boundary between North Dakota and Minnesota remains as it was prior to the Corps' action.

Where a river forms the boundary between states, the true line is the middle of the main channel of the river. This is known as the rule of thalweg. Iowa v. Illinois, 147 U.S. 1 (1893). Once established, the boundary remains the center of the main channel, subject to its gradual migration through erosion and accretion. Uhlhorn v. U.S. Gypsum Co., 366 F.2d 211, 217 (1966).

It is well-settled that when a river changes its course by slow, imperceptible changes known as accretion, the river continues to be the boundary. Nebraska v. Iowa, 143 U.S. 359 (1892). It is equally well-settled that where a river suddenly abandons its old channel for any cause, natural or artificial, such change has no effect on the boundary, but leaves it in the center of the old channel. This process is known as avulsion. Arkansas v. Tennessee, 246 U.S. 158, 173 (1918). The boundary remains in the center of the old channel, even if no water remains in the old channel. Whiteside v. Norton, 205 Fed. 5 (8th Cir. 1913). These principles apply whether the river is a boundary between private property or between states. Missouri v. Nebraska, 196 U.S. 23 (1904).

The U.S. Supreme Court, in deciding a boundary dispute between Nebraska and Iowa, noted that "the test as to what is gradual and imperceptible . . . is, that though the witnesses may see from time to time that progress has been made, they could not perceive that while the process was going on." Nebraska v. Iowa, 143 U.S. at 368 (quoting from St. Clair v. Lovington, 23 Wall. 46).

Therefore, if the Corps' action was a sudden change of channel, then no change of boundary occurred. However, if it was a slow, imperceptible change, then the boundary follows the river.

Finally, I draw your attention to N.D.C.C. §§ 1-08-10 and 1-08-11 which concern an exchange of property between North Dakota and Minnesota as a result of an avulsion caused by artificial changes on the Red River. You may want to consider similar legislation for land in your county.

I hope this information has been helpful. Please contact me if you have any further questions.

Sincerely,

Nicholas J. Spaeth

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