

## THE JOURNAL RECORD

### Gavel to Gavel: Shifting water courses may affect property rights

By: Lewis LeNaire Guest Columnist November 16, 2016 0



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As anyone who has spent significant time near a western Oklahoma river is likely aware, our water courses tend to be shallow, with beds composed of loose, sandy soil. These characteristics make western Oklahoma rivers especially susceptible to significant shifts in course over time, which can have important consequences for riparian landowners or owners of underlying minerals.

Under Oklahoma law, when a property's boundaries are defined by a water course, the property line itself may shift under certain circumstances along with changes to the stream, depending on the nature of the movement. If the shift occurs suddenly and perceptibly – such as when flood waters quickly erode a bank or cut a new course in a matter of hours – the movement is known as avulsion. Avulsive shifts in a river's course have no impact on property lines; the boundary will remain where it was prior to the change.

However, if the shift occurs gradually over time by imperceptible degrees and natural causes, resulting in new lands forming on one side of the river, the movement is known as accretion. Accretive changes to a water course correspondingly alter property lines, resulting in ownership of more or less land, depending on which side of the river a landowner is on. Oklahoma law presumes that river movement occurs by accretion, but this presumption can be rebutted by a preponderance of evidence indicating that movement occurred by avulsion.

Owners of mineral interests underlying riparian lands do not escape these effects simply because this phenomenon occurs on the surface. Most mineral interests in Oklahoma have been severed from the surface estate. For owners of severed mineral rights, if the ownership tract is bordered on any side by a water course, that mineral estate also is subject to reduction or enlargement as a result of accretive movement of the river, just as with the surface estate.

Property disputes arise frequently as a result of river movement, and are expensive to litigate due, in part, to the need for experts such as surveyors and hydrologists. For riparian property owners, a more economical solution can often be achieved by negotiating with neighboring surface or mineral owners to reach an agreed boundary line defined by survey rather than by a natural water course.

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