

Chapter 11

State/Private Ownership of Non-Tidal Streambeds, Banks and Their Substrata in Pennsylvania, Ohio, Virginia, Kentucky, and West Virginia

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§ 11.01. Introduction.

This chapter explores whether non-tidal streambeds, banks and their substrata (submerged lands) in Pennsylvania, Ohio, Virginia, Kentucky, and West Virginia are required to be state owned, or may be privately owned.

Whether the substrata is state or privately owned in mineral-rich states may be more important than who owns the beds and banks. Do the minerals underlying state-owned beds and banks belong to the state or to the riparian owners *ad filum aquae* or the owner of the land on both sides of the stream where the sovereign grant has embraced the stream?

Ownership of submerged lands of tidal waters, waters in which the tide ebbs and flows, is for the most part excluded from consideration because only Pennsylvania and Virginia have within their borders tidal streams and they are not a significant part of their waterways.

Also excluded are the nature and extent of public rights to use waters and their beds and banks for navigation, fishing, hunting, etc., except insofar as those rights are addressed in, and are an integral part of, court decisions and statutes relating to the ownership issue.

§ 11.02. Statehoods.

Pennsylvania and Virginia were two of the original thirteen states, each having achieved statehood at the commencement of the Revolutionary War in 1776. At the time, the lands of present-day Kentucky and West Virginia were a part of Virginia. Kentucky became an independent state in 1792, West Virginia in 1863. Ohio was carved out of the Northwest Territory and became a state in 1803.

The lands presently comprising these five states were in the colonial period (prior to 1776 for four of them and prior to the Treaty of Paris in 1783 for Ohio) subject to the common law of England, a law that was the progenitor of the development of the law in these states on land ownership post their statehoods, particularly in Virginia for pre-statehood Kentucky and West Virginia.