

Dear Misty,

I have researched an answer to your questions. Again, I apologize for taking so long and appreciate your patience.

First, let me emphasize that my response should not be taken as formal legal advice. The MS-AL Sea Grant Legal Program cannot enter into an attorney-client relationship. Before you take any legal action you should consult with an attorney who is licensed to practice in Alabama. He or she is welcome to use the information I give you.

Let me quickly recap the relevant facts, as I understand them. You own property bordering a private, non-navigable lake. You also own 90% of the land underlying the lake. This lake is man-made, having been created by damming in an old mining pit.

If I have those facts right, then your situation is almost exactly like that in *Wehby v. Turpin* and you have the exclusive right to use the lake surface above the portion of the lake bed that you own. *Wehby* is the most up-to-date law on this subject in Alabama. As the judge in that case said, "the owners of land extending beneath artificial or man-made lakes, not navigable as a matter of law, have surface-water rights only in the surface waters above their land." The developers of the neighboring property are incorrect in claiming otherwise.

Be aware that the outcome of cases like this depend very heavily on their specific facts. If your lake was determined to be natural and/or navigable, the *Wehby* rule probably would not apply. Likewise, any easements, covenants, etc. that exist may have an effect on your rights as well.

I hope this information is helpful to you. If you have any further questions, please let me know. Thank you very much for bringing your question to the MS-AL Sea Grant Legal Program.

Sincerely,
Josh Clemons
Mississippi-Alabama Sea Grant Legal Program

MASGC 07-007-07