



**WISCONSIN  
LAKES**

# What's All the Fuss About Pier Rights & Privately Owned Lakebed?

Riparian Rights & Property Rights in the Age of *Movrich v Lobermeier*

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# PROTECT YOUR PIER

## AND PUT A STOP TO DISAPPEARING DOCKS

For 140 years, Wisconsin property owners had the right to place a pier or dock on their property to enjoy the Badger State's wonderful waterways.

A recent court decision could put ALL waterfront property owners in jeopardy of losing their piers, because someone else may own the ground UNDER the water!

The legislature is working to fix this issue and restore our property rights.

DON'T LET YOUR DOCK DISAPPEAR. CALL YOUR LEGISLATOR 800-362-9472  
AND LET THEM KNOW YOU YOU WANT TO PROTECT YOUR PIER.

Call your legislators:

1-800-362-9472



Visit [ProtectOurPiers.org](http://ProtectOurPiers.org)  
for more information

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A dark blue arrow points to the right from the left edge of the slide. Below it, several thin, light blue lines curve upwards and to the right, creating a decorative graphic element.

## In this session...

- Look past the hype
- Learn about the legislation and the court case that it attempts to overturn
- Learn what properties are really impacted by the decision/law



## What is this all about?

- Legislation (AB551/SB501)
- *Movrich v Lobermeier* (2018 WI 9), a decision of the WI Supreme Court
- Question of property law:
  - Riparian rights vs Fee simple rights


# Basic Property Law

**The Fee Simple Bundle of Rights**



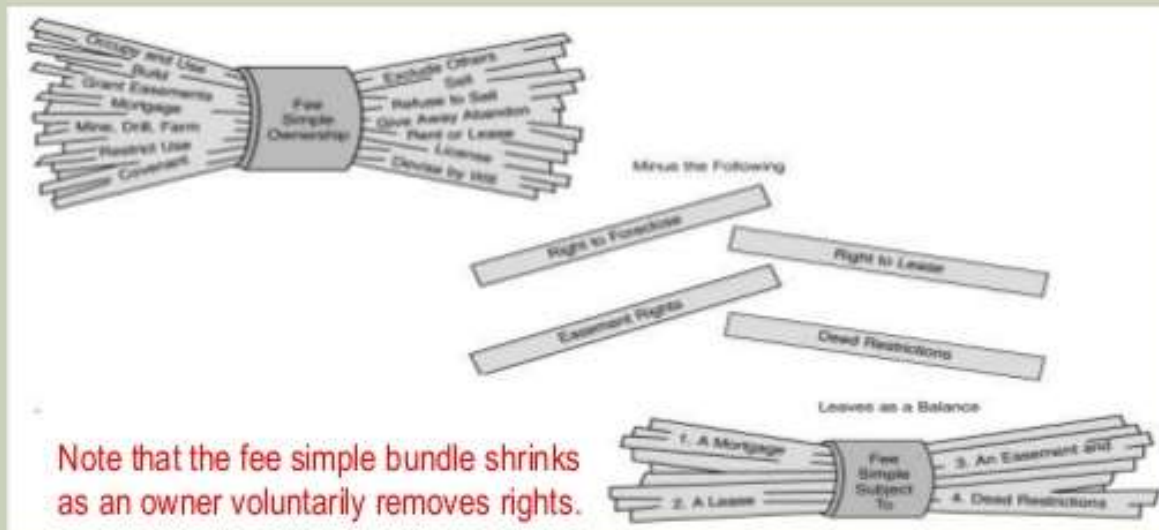
Real estate ownership is, in actuality, the ownership of rights to land. The largest bundle available for private ownership is called "fee simple."

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# Removing Sticks from the Fee Simple Bundle



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## Riparian Rights

- Generally conferred to lands that border navigable water
- Include, among other things:
  - Reasonable use for domestic, ag, and recreational purposes
  - Use of shoreline and access to waters
  - Right to place piers and other structure
- Subject to, not created by, the Public Trust Doctrine



## Movrich v Lobermeier: The Facts

- Dispute among property owners on Sailor Creek Flowage, Fifield (Price County)
- One owned a portion of the lakebed (Lobermeier)
- One owned shoreline adjacent to lakebed of the other (Movrich)
- Lobermeier prevented Movrich from placing a pier
- Movrich sued



Photo by Tom Nichols, Price County Review





## Movrich v Lobermeier: The Decision

- I. Movrich “not entitled to those riparian rights that are incidental to property ownership along a naturally occurring body of water where the lakebed is held in trust by the state”
  - Either no riparian rights or riparian rights curtailed by the Lobermeier’s interest in the lakebed
  - Placement of a pier violates Lobermeier’s fee simple interest in the Lakebed



## Movrich v Lobermeier: The Decision

- II. The Public Trust Doctrine conveys no private property rights
  - Use of public trust waters is held equally by all
  - Lobermeier's property rights are modified such that public can use waters for recreation, **BUT...**
  - Placement of a pier violates Lobermeier's fee simple interest in the Lakebed



## Movrich v Lobermeier: The Decision

III. The Public Trust Doctrine does allow Movrich to access the flowage directly from their property

- Must be using the flowage for “public trust purposes”



## Movrich v Lobermeier

- Wisconsin Lakes' involvement
  - “Friend of the Court” brief
  - Clean up lower court handling of public trust doctrine
  - Thanks to Atty. William O'Connor



## The Story So Far...

- Lobermeier won't let Movrich place pier
- Movrich sues
- 2018: Supreme Court issues decision in favor of Lobermeier
  - Public trust doesn't confer property rights
  - Shoreland owners on flowages with privately owned lakebed may not have some or any riparian rights
  - Fee simple right to refuse entry trumps even when land is flooded



## Who Keeps Their Stick?

- Buyers of land assume they hold the “riparian rights” bundle of sticks
- Lakebed fee simple owners assume they hold the “right to refuse entry” stick

This dispute necessarily causes one of the parties to lose property rights

Someone has to give up their stick!



## AB551/SB501

“An owner of land that abuts a ***navigable waterway*** is presumed to be a ***riparian owner*** and is entitled to exercise all rights afforded to a riparian owner, subject to the requirements of this chapter, including the right to place a pier, other structures, or deposits, ***even if the bed of the waterway is owned in whole or in part by another***, unless those rights are ***specifically prohibited by the deed*** to the land.”





## Arguments for AB551/SB501

- Court took away “sacred” property rights of riparians
- “Thousands” of property owners affected [Hard data?]
- Shoreland buyers bought not knowing lakebed ownership was an issue
- Taking away the right to place a pier without permission reduces the property value of the shoreland property [Hard data?]
- Reduced property value means reduced, property tax collections [Hard data?]



## Arguments Against AB551 /SB501

- The bill unfairly takes away the fee simple rights of lakebed property owners that *Movrich v Lobermeier* preserved
- Lakebed buyers bought not knowing they might not have full control of their property
- Taking away the right to refuse entry of another reduces the property value of the lakebed property [hard data?]
- Might negate other methods of voluntarily giving up riparian rights if not recorded in the deed
- Might cause utilities problems in renewing flowage agreements

# Is your shoreline property impacted by *Movrich v Lobermeier*?

## **NO, if...**

- You live on a natural lake where the lakebed is owned by the state
- You live on a river or stream where the bed is owned to the middle
- You live on a flowage, but own the lakebed yourself
- You live on a flowage and your deed (or possibly some other document like an easement) expressly provides for riparian rights

## **MAYBE, if...**

- You own to the waters edge but someone else owns the lakebed (possibly even if you have a cancelable agreement with the lakebed owner)



## Where do we go from here

- Assembly passed AB551 with amendment to appease the utilities
- Senate has yet to debate – unclear what will be taken up this session because of coronavirus limitations
- Further lawsuits?
- Thoughts:
  - Complicated issue that will cost someone – better solution to be found?
  - More equitable solution to provide non-utility lakebed owners some relief?



# Questions or Comments?

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