

### United States of America v. Ray L. Davis United States Court of Appeals for the Tenth Circuit 339 F.3d 1223 (Decided August 13, 2003)

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**FAILURE TO POST REGULATIONS FOR THE USE, ADMINISTRATION AND  
NAVIGATION OF NAVIGABLE WATERS UNDER 33 U.S.C. § 1**

**The failure of a party to raise the issue of navigability of a waterway at the trial level even if the regulations were not posted will preclude that party from later raising the issue on appeal**

United States of America v. Ray L. Davis  
United States Court of Appeals for the Tenth Circuit  
339 F.3d 1223  
(Decided August 13, 2003)

On July 3, 2001, defendant-appellant Ray L. Davis, owner and operator of a boat and jet-ski rental company, received two citations from a United States Army Corps of Engineers park ranger. The citations were issued for the unauthorized mooring of a pontoon boat and for engaging in unauthorized business activities on Broken Bow Lake, Oklahoma. The lake was a part of Hochatwon State Park, both of which were United States land administered by the Army Corps of Engineers. Proceeding *pro se* before a magistrate judge, Mr. Davis was found guilty of both violations and fined \$150.00.

Following the district court's affirmation of the convictions, Mr. Davis appealed to the Tenth Circuit. The appellant alleged, as a ground for relief, that the failure of the Army Corps of Engineers to post the regulations at issue mandated a reversal of his conviction. The Tenth Circuit Court concluded, however, that the lack of any assertion by the defendant or factual determination by the district court regarding the navigability of the body of water at issue prevented the reviewing court from addressing whether the regulations at issue were required to be posted pursuant to 33 U.S.C.S. § 1.

Further, the convictions survived challenge because the appellant had actual notice that his activities were in violation of the regulations. Specifically, appellant had received verbal warnings and correspondence that his business practices and mooring of boats were in violation of existing regulations and that he was subject to legal action, and this, the court concluded, was enough to uphold the convictions.

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