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WATER

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YOUR

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TO

USE

IT

By FRED L. MANN and N. G. P. KRAUSZ

UNIVERSITY OF ILLINOIS • COLLEGE OF AGRICULTURE

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WATER IN ILLINOIS YOUR RIGHT TO USE IT

By Fred L. Mann and N. G. P. Krausz¹

YOUR RIGHT TO USE WATER MAY VARY according to whether the source of supply is a natural watercourse, surface-drainage water, or ground water. It could also be affected by the purpose for which the water is used and the location of your land.

This circular contains general rules that apply to the use of water from natural sources in Illinois. In certain instances the rules are not well defined. They may be outdated and subject to change or new interpretation. Legal counsel should, therefore, be obtained in most situations that involve a specific question of water-use rights. But a general knowledge of water-use law may help you to recognize when an attorney's advice may be needed.

NATURAL WATERCOURSES

Flowing streams, most lakes, and some ponds are natural watercourses. Streams may range in size from large rivers to small channels of water that flow during an appreciable part of the year. If the water flows only during rainy seasons, it is treated as surface-drainage water.

A lake or pond is a relatively stationary body of

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water, even though it may have an inlet and outlet of flowing water. But a lake or pond that is entirely surrounded by your land and does not connect with a stream is also treated as surface-drainage water, and the rules in this section do not apply.

RIPARIAN RIGHTS

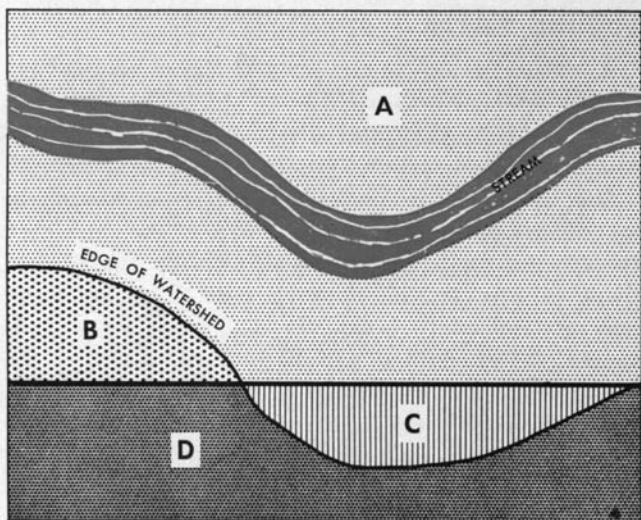
Owners (or their tenants) of land adjoining a natural watercourse have certain rights — riparian rights — to use the water. These include use of the water for natural wants, artificial purposes, recreation, and other uses, but with certain limitations.

Riparian rights apply only to use on riparian land. How much of the adjoining land is riparian is not clear. It does include at least any portion of land that borders on the water, is within the watershed, and has always been held as a single tract of land throughout its chain of title.

Riparian rights include the following:

THE RIGHT TO SUPPLY ALL NATURAL WANTS. Natural wants include water for drinking, cooking, and other household uses, and to a certain extent for livestock. If the stream divides two properties, the water for natural wants may have to be shared equally by the two landowners.

THE RIGHT TO USE A FAIR SHARE FOR ARTIFICIAL USES (after natural wants have been satisfied). Artificial uses may include farm irrigation, manufacturing, and other purposes the courts do not consider natural wants. If there is not enough water to satisfy all artificial uses, each riparian owner is entitled to his fair share, depending on the circumstances. This rule does not allow one riparian user to divert a material amount of the flow of a stream around a lower landowner.



This area of land adjoining a stream is held by one owner. At one time, the two tracts (A-B and C-D) were under separate ownership. How much of this man's holding is riparian land, thereby entitling him to use the water on it?

A is definitely riparian. It borders on the stream, is within the watershed, and has always been held in a single tract (A-B) throughout its chain of title.

B is part of the adjoining tract (A-B), but it is probably not riparian because it is outside the watershed.

C is within the watershed, but, as part of a tract that did not originally border on the stream (C-D), it may not be riparian.

D is probably nonriparian land. It is not within the watershed, and like C, it is part of an added tract of land that did not originally border on the stream.

THE RIGHT TO HUNT, FISH, AND SWIM, and use for other forms of recreation. This right accompanies ownership of the land under the water. If the adjoining landowner holds title to the bed of the stream or lake, he may use the water for recreation and exclude others from doing so. If he owns land only on one side of the water, he

ordinarily owns the bed only to the center thread. Adjoining owners usually have title to the beds of streams or lakes, except for meandered lakes (see below).

THE RIGHT TO ACCRETIONS. This includes any land slowly added to the banks of a body of water by the water's action.

NONRIPARIAN USE

It may be possible for the water to be used on non-riparian land, but the extent to which this can lawfully be done is not clear. The courts have mentioned the possibility of selling or leasing riparian rights. Non-riparian landowners who purchase or otherwise obtain lawful access to a watercourse may possibly be permitted to use its waters, at least as long as this does not encroach upon the rights of riparian owners.

RIGHTS OF THE PUBLIC

MEANDERED LAKES. Citizens, as members of the public, have the right to hunt, fish, swim, etc. on meandered lakes. These are lakes that were outlined on their maps by the federal surveyors when they surveyed the Northwest Territory, placing title to the beds of these lakes in the State. Thus members of the public may use their waters for recreation.

NAVIGABLE STREAMS AND LAKES are subject to an *easement of navigation*, which gives the public the right of transportation over the water. To be considered navigable, the stream or lake must be naturally capable of transporting enough boats used for commercial purposes long enough during the year to be of some practical value. The government may also have the right to make improvements for navigation and to exercise certain other rights over navigable waters.

OTHER LEGAL RESTRICTIONS

All users of natural watercourses are subject to certain legal restrictions. For example, the water must be allowed to flow free of unlawful pollution.

A statute enacted in 1945 declares that the general welfare requires that water resources be used reasonably and beneficially; that the right to use water shall not extend to "the waste or unreasonable use or unreasonable method of use or . . . of diversion of water." This statement would appear to be, at least, a legislative statement of public policy. The courts have not yet determined its effect, but it might influence them to alter some of the water-use rules in the future.

SURFACE-DRAINAGE WATER

Surface-drainage water includes all surface water not in streams, lakes, or other natural bodies of water that are governed by the rules of riparian rights.

You may impound and use all such water that drains or falls onto your property. The impounded water may be allowed to drain from your property at the place where it would naturally flow, even though the quantity flowing to a lower landowner is in this way increased. But it must not be increased enough to be against the interests of good husbandry or to cause destruction of lower lands. You may not throw surface water back on higher land or cause it to drain onto different land than it naturally would. It must not be polluted so as to cause a nuisance to others, nor may it be used maliciously so as to injure others.

The "reasonable and beneficial use" policy statement may be applied to the use of surface-drainage water as well as to natural watercourses.

GROUND WATER

All water found in the ground, except well-defined underground streams (which are probably subject to the same rules that govern surface watercourses), is called *percolating ground water*.

You may use any amount of such ground water as long as it is taken from a well on your own land, even though this use deprives others of their supply. But there are certain limitations: a user of ground water may not unlawfully pollute or maliciously deplete the supply. Before drilling a well that will penetrate the subsurface below the glacial drift, you must obtain a permit from the State Department of Mines and Minerals, and a log of all drilled wells must be filed with the State Geological Survey Division. The legislative-policy statement regarding reasonable and beneficial use also applies to ground water.

CONTROL OF USE BY STATE AGENCIES

Two state agencies are important in the regulation of water use. The Department of Public Works and Buildings has certain jurisdiction and control over interference with the use of navigable waters and other *public waters* of the state. According to the statute, lakes and streams that discharge into navigable waters may also be considered public waters. The Sanitary Water Board has jurisdiction and control over pollution of all waters in the state. These agencies may order discontinuance of unlawful acts over which they have jurisdiction and they can obtain assistance from the courts to enforce such orders.

More complete information on water-use rights may be found in Research Report AERR19, Illinois Water-Use Law, available from the Department of Agricultural Economics at Urbana.

YOUR RIGHT TO USE WATER MAY DEPEND ON:

- THE SOURCE OF SUPPLY
- YOUR PARTICULAR USE
- WHERE YOUR LAND IS LOCATED
- THE AMOUNT OF WATER AVAILABLE
- NEEDS AND USES OF OTHER PERSONS