

# Water Rights

## Surface waters

Water rights, which are defined by law, have developed because of shortage of available water to meet the needs of potential users. There are bases for these laws.

### *Riparian Doctrine*

Origin: Roman Civil Law through French and English law to American water laws.

*Riparian owner (owner of land bordering a body of water) has a right to make reasonable use (drinking, household use, watering livestock, etc.) of stream or lake water, providing that the water is used on riparian land (land bordering a body of water)*

### *Doctrine of Appropriation*

Origin: Roman Civil Law through Spanish law to American water laws.

*The first to develop and put a specific quantity of water to beneficial and reasonable use has the prior right to continue his or her uses. Water is lost by non-use. Water can be transported away and used on non-riparian land.*

Riparian Doctrine: Eastern States - generally water is abundant

Appropriation Doctrine: Western States - generally water is scarce

Some states recognize both doctrines.

## **Groundwater**

### ***English Rule (common law or absolute rule)***

Sometimes referred to as the law of the biggest pump

*Percolating groundwater is part and parcel of the land above it and thus belongs to the landowner. Owners can withdraw as much water as they wish regardless of the effect on water beneath neighboring lands.*

### ***American Rule (reasonable-use rule)***

*Percolating groundwater is part and parcel of the land above it and thus belongs to the landowner. Owners can withdraw as much water as they wish regardless of the effect on water beneath neighboring lands, as long as they make reasonable use of the water they withdraw. "Reasonable use" is defined by the courts.*

### ***Correlative-rights doctrine***

Applicable in California. Provides for equitable distribution of withdrawal rights when groundwater is in limited supply.

*When water is in limited supply, withdrawal must be weighted by land area owned. Water must be withdrawn for beneficial use. Surplus groundwater may be appropriated for export to other lands.*

### ***Prior Appropriation Doctrine***

*The first to develop and put a specific quantity of groundwater to beneficial and reasonable use has the prior right to continue his uses. Water is lost by non-use. Groundwater can be transported away and used on non-riparian land.*

# Illinois Drainage Laws

## Law of natural drainage

### *Nature of the law*

**Right:** Landowners, including highway authorities, have a right to drain water away as it would in a state of nature.

**Responsibility:** Landowners, including highway authorities, have a responsibility to accept water flowing naturally onto or through their lands and have no right to interfere with such natural drainage.

### *Exceptions to the law*

In the interest of good husbandry, a landowner can apply drainage practices that might increase the discharge to lower lands. However,

- the point of entry on lower lands cannot be changed,
- watershed boundaries cannot be changed, and
- water cannot be discharged with malicious intent.

All lands lying within a natural basin may be drained into a watercourse that drains that basin. The water can be transported in open channels or tile lines but the conduit should only carry water from the basin and the water must enter the lower land where it would have in a state of nature.

When landowners are harmed by other owners and fail to enforce their rights, the harmful practices may themselves become rights, known as easements, if they are in existence for twenty or more years. Drainage easements cannot be acquired against the public.

### ***Dual interpretation***

- For agricultural settings, natural drainage with good husbandry exception is generally applied.
- For urban development, reasonable use philosophy is used. Basically, the advantages and benefits are weighed against the disadvantages and costs to determine the existence of liability

### ***Alterations***

The rights and responsibilities of natural drainage can be altered

- by agreement between parties,
- through prescriptive easements; and
- by the power of eminent domain.

### ***Statutory Enlargement of Drainage Law***

The Constitution of the State of Illinois provides the General Assembly with the power to provide drainage statutes when necessary. Statutes are to enlarge the natural drainage law. The statutory enlargement of the rules of natural drainage may permit landowners to

- extend a tile drain across the property of others when the extension is necessary to secure a proper outlet if they follow the procedure and meet the conditions outlined in the statute;
- connect to a drain along the highway with the consent of the highway commissioners; and to
- prevent owners of lower ground from interfering with the flow of water through a mutual drain, or from destroying or impairing such drains.