



Arkansas Water Primer Series: Water Rights in Arkansas

Introduction

Water is essential for the survival of all living things. Societies depend on water to drink, grow crops, run industries and transport goods across the country. Water resources provide opportunities for recreation and habitat for aquatic and land-based wildlife. It is a finite resource that is recycled through the hydrologic cycle. As such, there have been conflicts since the beginning of civilization about who can use water, in what amount and at what time. These issues have been the impetus for the development of water rights – a complex and ever-changing combination of doctrines, laws and regulations that govern the distribution of water.

Historical Doctrines for Determining Water Rights

There are two common legal concepts, or doctrines, states have used to base water rights. The doctrine of prior appropriation dominates in the Western states. Under this system, water rights are “first in time, first in right.” This means that the first person to use a quantity of water from a water source for a beneficial use has the right to continue to use that quantity of water for that purpose. Subsequent users can use the remaining water for their own beneficial purposes provided that they do not impinge on the rights of previous users. All of the states in which the prior appropriation doctrine applies have statutory administrative procedures to provide an orderly method for appropriating water and regulating established water rights. Water appropriation laws

and administration vary significantly from state to state. Typically, states require a permit as the exclusive means of making a valid appropriation. However, the U.S. federal government and Native American tribal governments also have rights to water under doctrines of federal law that may supersede states’ rights.

Riparian doctrine is common in the Eastern states. This doctrine considers water to be a common use resource rather than private property. Riparianism attaches a water right to land adjacent to a water course. All landowners have the right to make reasonable use of water on or bordering their property. However, the water use cannot unreasonably diminish the quality or quantity of water to neighboring landowners. The concept of reasonable use depends on balancing the interests of all the “common owners.” The rights created by the balancing process may change with circumstances over time. Riparian doctrine applies to all natural bodies of water including streams, lakes, ponds and marshes. Under the riparian system, rights remain with the property when it changes hands.

Arkansas Water Rights

Legal doctrines change over the course of time. All states have modified the two water doctrines with legislatures and courts playing an increasingly active role. Arkansas’ water rights are based on a “regulated riparian” system. Traditional riparian principles are recognized but within a dynamic supervisory, administrative and legal structure. Beginning in the late 1950s, the

Arkansas General Assembly began passing a series of laws to address the need for more specificity and clarity concerning water rights.

The Arkansas Natural Resources Commission (ANRC)¹ was established to serve as the state's water resources planning and management agency. As such, ANRC has legislative authority to:

- Allocate surface water from streams during times of shortage based on the reasonable use concept
- Develop a comprehensive groundwater protection program
- Designate critical groundwater areas
- Cost-share on installation of water conservation practices
- Establish groundwater rights within critical areas
- Develop an education/information program and
- Delegate management powers to regional water districts and conservation districts, among other duties.²

As the state's water management agency, ANRC has the authority to investigate and assist in the resolution of water rights complaints that deal with surface water

availability and use.³ To initiate an investigation, a person must submit a written request to ANRC. The Executive Director of ANRC reviews the request to determine whether or not the Commission can assist in resolving the issue. If ANRC conducts an investigation, the person filing the request may be charged a fee ranging from \$50 to \$500, based on the complexity of inquiry. The fee is placed in ANRC's Water Development Fund to support the Commission's general operations. A report is provided to the person filing the request. If the person is dissatisfied with the Commission's findings, he or she has the option to file a lawsuit to resolve a water rights dispute.

The Arkansas Natural Resources Commission is located at 101 E. Capitol Avenue, Suite 350, Little Rock, AR 72201. To contact ANRC, call 501-682-1611 or fax 501-682-3991. More information about the agency can be found at www.anrc.arkansas.gov.

Additional Resources

Fact Sheet 103 (FSPPC103) – *Partners in Protecting Arkansas' Waterbodies* – provides an overview of state agencies with water-related responsibilities.

Fact Sheet 109 (FSPPC109) – *Glossary of Water-Related Terms* – contains a comprehensive list of terms used in the Arkansas Water Primer Fact Sheet Series.

¹Originally named the Arkansas Soil and Water Conservation Commission.

²Arkansas statutes and regulations that address water rights, use and allocation within the state are generally found in Ark. Code Ann. Title 15, Chapter 22.

³Rules Governing Water Rights Investigations (As Amended, October, 1993).

The University of Arkansas Division of Agriculture's Public Policy Center provides timely, credible, unbiased research, analyses and education on current and emerging public issues.

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