

**Chapter 1 : Legal Control of Water Resources: Cases and Materials by Joseph L. Sax**

*This comprehensive casebook, now in a fully updated sixth edition, spans eastern and western water law and policy issues, focusing on the allocation, use and conservation of groundwater and surface water.*

Statutory and constitutional law forms the framework within which these disputes are resolved, to some extent, but decisional law developed through the resolution of specific disputes is the great engine of water law. At common law any rights to water must be claimed based on a claim against the land over which water flows or rests. Water Disputes arise in a number of contexts. When the state, local, or federal government takes private property that has water rights associated with private ownership, the value of that property is significantly affected by its water rights. And, properties located along public waters are quite common, because of the importance of public waters to commerce, the environment, and recreation. These taking cases represent a major source of the law defining the limits of private rights in water and public rights. A second context for the development of water law arises from disputes among private parties over the extent of their respective water rights; e. The downstream owner claims that the upstream landowner has appropriated water that belongs to its property. A downstream owner seeks to stop the flow of excess water that will otherwise flood its land thereby increasing flood damage on the upstream owner. The third context for water law arises from disputes regarding flooding or other invasions of private property by water. In these cases, the private party claims that private or public actions have damaged its private property, and the court must decide the nature of the respective rights of public and private parties arising from the alteration of the hydrology of a watershed. Who has domain over water is typically based on who owns the underlying soils, but Local, State and Federal regulations often limit the amount and type of uses to which water can be used in order to protect downstream users rights. At some point, before the water reaches the ocean it amasses sufficient size that the underlying lands become owned by the Nation or State in which they are situated. At this point defined as the upper limits of navigation individual rights give way to the superior rights of the public. Riparian rights[ edit ] The Eastern states all those east of Texas, except Mississippi, follow the riparian doctrine, which permits anyone whose land has frontage on a body of water to use water from it. These states were the first settled by Europeans and therefore most influenced by English law and have the most available water. The Supreme Court has explained the evolution of riparian principles in *United States v. Gerlach Livestock* In the middle of the Eighteenth Century, English common law included a body of water doctrine known as riparian rights. As long ago as the Institutes of Justinian, running waters, like the air and the sea, were *res communes* -- things common to all and property of none. Such was the doctrine spread by civil-law commentators and embodied in the Napoleonic code and in Spanish law. This conception passed into the common law. From these sources, but largely from civil-law sources, the inquisitive and powerful minds of Chancellor Kent and Mr. Justice Story drew in generating the basic doctrines of American water law. The riparian concept developed fully in those portions of the United States where lands were amply watered by rainfall. The primary natural asset was land, and the run-off in streams or rivers was incidental. Since access to flowing waters was possible only over private lands, access became a right annexed to the shore. The riparian system does not permit water to be reduced to possession so as to become property which may be carried away from the stream for commercial or nonriparian purposes. In working out details of this egalitarian concept, the several states made many variations, each seeking to provide incentives for development of its natural advantages. A number of rights may be listed as riparian rights. One court, in *McLafferty v. Riparian rights* are generally described as the rights to use and enjoy the profits and advantages of the water. The riparian owner has a right to make such use of the lake over its entire surface, in common with all other abutting owners, provided such use is reasonable and does not unduly interfere with the exercise of similar rights on the part of other abutting owners. Riparian rights include the right to build and maintain, for private or public use, wharves, piers, and landings on the riparian land and extending into the water. They also include such rights as hunting, fishing, boating, sailing, irrigating, and growing and harvesting wild rice. In addition to these rights, riparian rights may include the right to access the water, the right to use or consume, the right to use the ground of non-public

waters, and the right to use land that is added to the extent of the adjoining property by accretion. Prior appropriation[ edit ] Most western states, naturally drier, generally follow the prior appropriation doctrine , which gives a water right to whoever first puts water to beneficial use. Colorado, where the prior appropriation doctrine first developed, was generally looked to as the model by other Western states that adopted the prior appropriation doctrine. Water law in the western United States is defined by state constitutions e. Each state exhibits variations upon the basic principles of the prior appropriation doctrine. Texas and the states directly north of it; the West Coast states, and Mississippi have a mixture of systems. Hawaii uses a form of riparian rights, and Alaska uses appropriation-based rights. In some states Surface water , lakes, rivers, and springs, are treated differently from ground water underground water that is extracted by drilling wells ; however, In other states surface and ground water are managed conjunctively. For example, in New Mexico, surface and ground water have been managed together since the s. This trend comes from a growing scientific understanding of the formerly mysterious behavior of underground water systems. For instance, gradual contamination of some water supplies with salt has been explained with the knowledge that drawing water from a well creates a gradual seepage into the well area, potentially contaminating it and surrounding areas with seawater from a nearby coast. Such knowledge is useful for understanding the effects of human activity on water supplies but can also create new sources of conflict. A variety of federal, state, and local laws govern water rights. One issue unique to America is the law of water with respect to American Indians. Tribal water rights are a special case because they fall under neither the riparian system nor the appropriation system but are outlined in the Winters v. Indian water rights do not apply to non-federally recognized tribes. According to legal scholar Bruce Duthu, tribes must prove that the requested amount of water is needed for their land and construct facilities to save it. United States[ edit ] Winters v. United States involved the Fort Belknap Indian Reservation , created by the agreement with the federal government. This agreement made one boundary of the reservation a part of the Milk River , but it did not mention water rights to that river. The settlers claimed appropriative rights after the reservation had been established, but before the tribe began to use the water. The Supreme Court held that the water rights were automatically reserved by the agreement that created the reservation. The Court assumed the Indians would not reserve lands for farming without also reserving the water that would make such farming possible. California[ edit ] In Arizona v. California , the Court had to determine water rights of tribes along the Colorado River whose reservations were established by both statute and executive order. The Court held that the statute or executive order could not have meant to establish reservations without also reserving the use of water for the productivity of the tribes. California also concerned the quantity of water reserved. The Supreme Court ruled that the tribes were entitled to enough water to irrigate all the "practicable irrigable acreage" on the reservation. The priority date of those rights remains the date when the reservation was created. Non-Native American allottees can lose their water rights to non-use. Winters rights as property Winters rights coming from a treaty or statute creating a reservation are property to which title is recognized. When a reservation is created by an executive order, "the tribal title is unrecognized for Fifth Amendment purposes. It involved water rights in the case of the Cherokee nation. Winters Rights do not apply to the Cherokee Nation because there is no actual Cherokee reservation. During this July proceeding, the state of Oklahoma sought monetary damages and injunctive relief against the Tyson Foods Corporation, due to the injury to the Illinois River watershed from poultry waste. The defendant, Tyson Foods, Inc. The ruling on this motion helped determine the standing of the Cherokee Nation concerning water rights in their region. The Court, in order to determine if case could proceed without the involvement of the Cherokee Nation, applied Rule In this court ruling, it was determined that the Cherokee Nation has substantial interests, such as seen in their Environmental Quality Code which shows interest in protecting the Illinois River and vindicating any pollution. The Cherokee Nation also has an interest in recovering remedies for any injuries, in regulating and taxing things concerning the environment of the Cherokee Nation. Furthermore, the Cherokee Nation claims their water rights derived from federal law and treaties were unaffected by statehood. In entering into cooperative agreements with tribes, which would be necessary to resolve the issue of water rights especially in the case of the Cherokee Nation and Tyson Foods the state of Oklahoma must meet explicit requirements. The Governor is authorized, as well as any other named designee, and is allowed to

enter into cooperative agreements on behalf of the state with federally recognized tribes within that state if an issue of mutual interest is being addressed. Approval of the Secretary of the Interior is required if the cooperative agreement dealing with issues of mutual interest involves trust responsibilities. The United States historically promised the Five Civilized Tribes that their lands would not be included without their consent in the territorial limits or jurisdiction of a state. Southeast Oklahoma is unique from other tribal reservation areas because of the Five Tribes doctrine. The federal government removed the Five Civilized Tribes to specific unsettled lands within the Indian Territory. At that time it also granted federal land patents to the Five Tribes and the Tribes were authorized to issue tribal patents in the case of a transfer of their tribal land. In addition, the Supreme Court has held in past decisions that the federal government conveyed specific lands directly to Indian tribes, and that a state that later enveloped tribal land did not inherit rights to the water on that land. The Oklahoma State Constitution, as adopted in 1907, further provides that non-Indian inhabitants of the State do not have rights to Indian lands. The Five Tribes doctrine emphasizes that under federal legislation treating the Five Tribes differently from other tribes on reservations, the Choctaw and Chickasaw Tribes in southeastern Oklahoma would own all the water on their lands, and would not be subject to state authority as to its use or non-use.

**Water project law** [ edit ] Water project law is the branch of state and federal law that deals with the construction, management, financing, and repair of major water projects, including public drainage, irrigation, flood control, navigation and other projects. Some of these projects are constructed and managed by state and local government. But many are constructed and managed by special local improvement districts, which are special political subdivisions of state government. Water project law has had, and continues to have, a significant role in the management of important water resources. For example, agricultural drainage, much of which is now responsible for maintaining a significant infrastructure, results largely from these local districts or other entities. Drainage in the United States occurred in two primary developmental periods, during the Reconstruction and during the New Deal. Economic Research Service, Often, state projects are constructed under the mantle of local water project authorities, using special federal funds appropriated for these purposes. Often the local entity must agree in return for the original federal funds to maintain the project indefinitely with local funds, derived either from taxes or special assessments. Although there are unique state law features to water project instrumentalities, there are many features in common. Many of these districts are special improvement districts endowed by state law with the ability to collect revenues from lands that are benefited by the improvement. Often these assessments are in the form of special assessments which are proportional to the increase in value afforded the benefited land by the project. Or, the local improvement district may be afforded the power to levy special taxes, or to levy charges in return for the privilege of receiving the use and benefit of the project. Some districts are governed by a board of elected officials.

## Chapter 2 : Water resources law - Wikipedia

*This edition retains its in-depth consideration of water institutions and federal-state and interstate water relations; and it contains sharpened coverage of property rights claims. It includes major new Supreme Court decisions, along with new key cases from several jurisdictions.*

In the Water Act was repealed and replaced by new law which is presently known as the Water Act and does not have a Chapter number. This came into effect in March by which Water Act Cap was repealed. At the same time the common law considers running water air and light to be things the property of which belongs to no person but the use to all persons. This principle is articulated in the case of *Liggins V Inge E*. Although the common law considers that the landowner owns everything on land a landowner has no property in running water air and light. What is land ownership gives him is a natural light to the use of running water air and light. The Natural light is considered to be incidental to the land ownership. The land owner whose land abuts on a water course is known as a riparian owner. A riparian owner is considered to have a natural right to water. *Potter ER* A right to water is the ability to exercise as of right the right which is available to all members of the public to use running water. None riparian owners can only exercise the right to use running water under an agreement with a riparian owner. An agreement providing for access over riparian land is known as an easement. In the absence of an easement non-riparian owner will be committing a trespass if he attempted to exercise the right to use running water. Because the right to use riparian water is shared by all riparian owners, its use must be reasonable. No one owner may use the water in a way which prejudices the right of other riparian owners. The principle of reasonable use is articulated in the case of *Embrey v Owen ER* The extent of the riparian owners right to water and the scope of reasonable use can be reduced to 3 rights: Right of Access and Navigation; 2. Right to the Natural quantity of the water in the water course; 3. Right to the Natural quality of the water in the water course; These 3 are known as the riparian rights. The reason for the rights belonging to all members of the public is because the ownership of the land beneath a tidal river is vested in the State whereas the ownership of the land beneath a non-tidal river is vested in the riparian owner. The tidal part of the river is therefore accessible to any member of the public whereas the other part of the river is only accessible to the riparian owner. Only a riparian owner has a right of access to his land which enables him to embark and disembark on the non-tidal part of the river. This principle was established in the case of *Lyon v Fishmongers Co*. The riparian owners right to quantity enables him to abstract, divert, obstruct or impound the water. The water abstracted may be used for ordinary domestic purposes such as drinking, cooking and washing or it may be used for purposes such as irrigation which the common law considers to be extraordinary purposes. Where the riparian owner uses the water for extraordinary purposes, the use is restricted to the extent that it is subject to the right of other riparian owners. Any use which prejudices the use by a lower riparian owner is considered to be unreasonable. Basically is a riparian owner A is using the water for irrigation, if it prejudices the right of G to use water for ordinary purpose he is said to prejudice the use of water by G. This principle is articulated in the case of *Swindon Waterworks Co*. Under the common law the riparian owner is not allowed to use riparian water for foreign purposes. Foreign purposes means use of water outside of the riparian land. Any such use is considered as unreasonable even if it does not prejudice the use of any other riparian owner. The riparian owners right to quality entitles the riparian owner to the flow of water past his land in its natural state of purity and deteriorated by noxious matter discharged into it by others. The principle of riparian ownership is the principle of water resources management which operated under the common law. As per the common law the riparian owner owns the land upto the midian line of the river but our statute specifically the Agriculture Act prohibits the riparian owner from cultivating up to 2 meters of the river. The common law principles have however been incorporated into statute law even if with modifications and the current statute governing water resources management is the water Act Cap which was enacted in July and came into effect in March The Water Act provides for the management, conservation, use and control of water resources. Secondly it provides for the acquisition and regulation of rights to use water and for the regulation of water supply and sewerage services. The Water Act has divided the management of the resource

and the provision of the supply.

### Chapter 3 : Download Legal Control of Water Resources (American Casebook Series) Ebook Free - Video

*What is a landowner's responsibility to habitat preservation? In the past, owning land meant arranging it for one's own use, but this in turn generally resulted in destroyed or degraded habitat. In today's world, loss of biodiversity has become a public concern. Does the landowner now have an.*

Water resources laws may apply to any portion of the hydrosphere over which claims may be made to appropriate or maintain the water to serve some purpose. Such waters include, but are not limited to: The Code was developed about 3, years ago by King Hammurabi of Babylonia. Water is mobile, its supply varies by year and season as well as location, and it can be used simultaneously by many users. As with property land law, water rights can be described as a "bundle of sticks" containing multiple, separable activities that can have varying levels of regulation. For instance, some uses of water divert it from its natural course but return most or all of it e. Each type of activity has its own needs and can in theory be regulated separately. There are several types of conflict likely to arise: One theory of history, put forward in the influential book *Oriental Despotism*, holds that many empires were organized around a central authority that controlled a population through monopolizing the water supply. Such a hydraulic empire creates the potential for despotism , and serves as a cautionary tale for designing water regulations. Water law involves controversy in some parts of the world where a growing population faces increasing competition over a limited natural supply. Disputes over rivers , lakes and underground aquifers cross national borders. Long-term issues in water law include the possible effects of global warming on rainfall patterns and evaporation; the availability and cost of desalination technology; the control of pollution , and the growth of aquaculture. Legal models[ edit ] The legal right to use a designated water supply is known as a water right. There are two major models used for water rights. The first is riparian rights , where the owner of the adjacent land has the right to the water in the stream. The other major model is the prior appropriations model , the first party to make use of a water supply has the first rights to it, regardless of whether the property is near the water source. Riparian systems are generally more common in areas where water is plentiful, while appropriations systems are more common in dry climates. As water resource law is complex, many areas have some combination of the two approaches. Water law by country[ edit ] Main article: Right to water The right to water to satisfy basic human needs for personal and domestic uses has been protected under international human rights law. When incorporated in national legal frameworks, this right is articulated to other water rights within the broader body of water law. The human right to water has been recognized in international law through a wide range of international documents, including international human rights treaties, declarations and other standards. The human right to water places the main responsibilities upon governments to ensure that people can enjoy "sufficient, safe, accessible and affordable water, without discrimination". Most especially, governments are expected to take reasonable steps to avoid a contaminated water supply and to ensure there are no water access distinctions amongst citizens. Today all States have at least ratified one human rights convention which explicitly or implicitly recognizes the right, and they all have signed at least one political declaration recognizing this right. Canada[ edit ] Under the Constitution Act, , jurisdiction over waterways is divided between the federal and provincial governments. Federal jurisdiction is derived from the powers to regulate navigation and shipping, fisheries, and the governing of the northern territories, which has resulted in the passage of:

### Chapter 4 : California Court Finds Public Trust Doctrine Applies to State Groundwater Resources | Legal P

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### Chapter 5 : Kenya Legal Resources: WATER MANAGEMENT

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## Chapter 6 : Department of Water Resources

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## Chapter 9 : State Water Control Law

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