



ARKANSAS WATER PLAN UPDATE

Fact Sheet No. 2 - January 2013

Water Rights in Arkansas

Riparian Water Use

Arkansas is a riparian reasonable use state with some legislation to deal with emerging issues.

Riparian use of water is a property right. Riparian land touches a lake, stream, river, or other watercourse. Riparian landowners may use water on the property, but can be limited if their use unreasonably harms another riparian's use. No permission or permit is required from the government before a riparian owner uses water.

The Natural Flow Rule that we inherited from English Common Law allowed only household and livestock use. As land and water use changed, court cases allowed increased consumptive use, such as irrigation, and disruptions of natural flow, such as mill ponds.

Harris vs. Brooks (1955)

The landmark court case on surface water in Arkansas is *Harris vs. Brooks*, 225 Ark. 436, 283 S.W.2d 129 (1955). A fishing boat rental business on an oxbow lake near Augusta sued neighboring farmers during the dry summer of 1954, claiming that irrigation from the lake drastically lowered water levels, causing the fish to stop biting and harming boat rentals. The Arkansas Supreme Court ruled that the irrigators were unreasonably harming the rental business, and set a minimum lake level, effectively shutting the irrigators off.

The Arkansas Supreme Court ruled that:

- Domestic use is superior to all other uses
- Other uses are equal

- A lawful use destroying another lawful use must yield or may be enjoined
- Lawful use interfering or detracting from another lawful use requires determination of whether interfering use is reasonable or must be adjusted

Groundwater

In 1957, the Arkansas Supreme Court in *Jones v. Oz-Ark-Val Poultry Co.*, 228 Ark. 76, 306 S.W.2d 111 (1957), applied the reasonable use theory to groundwater. A landowner may use water on land with a well as long as that use does not unreasonably harm another groundwater user.

Legislation

The drought in the early 1950s brought not only court cases but legislation. The General Assembly passed several water management laws in that decade to provide some predictability in water use. These include laws for:

- Minimum streamflow
- Regulations of dams to require minimum releases and safe operation
- Non-riparian transfer
- Allocation during shortage

For more information

This is a very simplified introduction to a complex subject. For a more in-depth discussion, download "Water Law in Arkansas" from www.anrc.arkansas.gov

For more information please visit the following website:

ARWaterPlan.Arkansas.gov

If you would like to send comments please email them to ArkansasWater@CDMSmith.com or by mail to:

Arkansas Natural Resources Commission, Attn: Arkansas Water Plan

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