

Ripple Effect #92

Right Answers to Water Rights

Ever wondered about who 'owns' water? Because water is a resource that constantly moves, whether through flow or its constant process of evaporation and precipitation, owning it is not easy.

That this is a good thing was recognized even in ancient Roman times, when the famous jurist Justinian declared that navigation and the bounty of seas was open to all. Justinian's statement is echoed in the US Supreme Court ruling of 1913 that the private ownership of running water in a great navigable stream is "inconceivable."

But what about our everyday rights to water? What are they?

The answer to this question in North America depends on where you live.

If you live in Eastern states or provinces, your right to water is based on Riparian law, a concept transferred to North America from English common law. Sometimes called "natural flow," Riparian law gives people who own land along a water flow the right to that water as long as they use it for "beneficial" purposes and do not impair the quantity or quality of the water for downstream riparian owners.

This practice of water rights, implying a common ownership of the water by riparian owners, has worked for the eastern regions, where rainfall is plentiful. In the West, however, the method ran into problems early on. Settlers found that rainfall was often scarce, and many were unable to make property claims along streams. Miners in particular often owned land some distance from a river, yet needed water to process their ore.

In response to this problem, the Colorado Supreme Court declared in 1882 that riparian rights were invalid for the state and substituted a law that allowed access to water on a first-come, most-rights basis. This new way of granting rights to water, called "Prior Appropriation," became the standard for all Western water law.

So which law applies to you? Well, if you live in Minnesota, your right to water is determined under Riparian law. If you live in Manitoba, North Dakota or South Dakota, your right to water is determined under Prior Appropriation.

Problem is, of course, the Red River Basin is split between the two laws. This complicates making plans for the full-Basin, which already has the challenge of working among three states and one province and over an international border.

Despite these challenges, The Red River Basin Commission continues to bring together water managers and citizens from all these jurisdictions to encourage pro-active planning for the Basin. This includes plans for potential drought, one of the RRBC's current projects, when questions of rights to water will demand right answers.

Until the next Ripple Effect,

The Red River Basin Commission (RRBC)

The RRBC is a grassroots organization that is a chartered not-for-profit corporation under the provisions of Manitoba, North Dakota, Minnesota, and South Dakota law. Our offices in Moorhead, MN and Winnipeg, MB can be reached at 218-291-0422 and 204-982-7254, or you can check out our website at www.redriverbasincommission.org.

