

Agenda

Development of Water Laws: Quantity, Quality and Usage

R. Walker

Development of the common law of water rights
Statutory and regulatory limits on the exercise of water rights
Federal, state and local regulators
Development of the law on water quality preservation
Comprehensive water planning

Riparian Rights

P. Davis

Originated in *Tyler v. Wilkinson* (1827)
Incident of title to land abutting surface watercourses
Comparative reasonable use rule: each riparian is entitled both to natural flow and to make reasonable uses of water – *Bollinger v. Henry* (1964)
Missouri, as an eastern state, does not follow western prior appropriation doctrine
Large diversions and impoundments must be registered with MoDNR – RSMo § 256.420
Where can water be used? Definition of riparian land
Can be transferred to third party landowners
Includes right of access to the watercourse and to float on its surface

Groundwater Rights

P. Davis

Three rules exist in various U.S. states
Incident to ownership of land overlying groundwater aquifer
Comparative reasonable use rule : each landowner can use groundwater, provided neighbors are not unreasonably affected – *Higday v. Nickolaus* (1971)
• Overrules prior “modified absolute ownership rule”
Large withdrawals must be registered with MoDNR – RSMo § 256.420
Groundwater can be exported – *Higday v. Nickolaus* (1971)
Groundwater rights cannot be transferred to third parties –
Blue Springs v. Central Development (1992)
Citizens v. Porter (2008) creates confusion about choice of rule and right to export

Drainage Water

P. Davis

Three rules exist in various U.S. states
Comparative reasonable use rule: landowner can deflect drainage, provided neighbors are not unreasonably affected – *Heins Implement v. Missouri Hwy. & Transp. Comm’n* (1992)
• Overrules prior “common enemy rule”
Flood waters are considered drainage water – *Campbell v. Anderson* (1993)

Recreational Use Rights

P. Davis

Members of public have a right to float on any watercourse capable of floating a recreational boat – *Elder v. Delcour* (1954)
Public trust rights probably also apply to such waters –
State ex rel. Citizens Elec. v. Longfellow (1902)
Missouri does not regulate obstructions to floatable waters
Riparian landowners have a right of access to and to float on all natural watercourses
Federal law guarantees navigation rights on all commercially navigable waters –
Corps permit is required for all obstructions of navigable waters
Federal navigable waters are those which are, historically were, or could be commercially navigated – *Appalachian Elec. Power v. FPC* (1942)

State and Regional Water Planning

J. Hoggatt

Planning for the next drought

Missouri Water Laws and Regulations
St. Louis, MO - Tuesday, November 27, 2018

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Learning Objectives

You'll be able to:

Discuss the development of laws regulating water quality, quantity and usage.

Learn about riparian rights, including what constitutes reasonable use of surface waters.

Review groundwater rights, including rules for when groundwater can be exported.

Explore the law of drainage water, including when a landowner can deflect drainage water flowing from adjacent land.

Discuss the public's rights to use surface waters for recreation.

Explore current issues in regional water planning, including planning for the next drought.



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Learn about the development of the law of water rights and water quality preservation

Explore riparian rights and groundwater rights

Examine rules on drainage water

Review recreational use rights

Discuss state and regional water planning

Continuing Education Credits

Missouri Attorneys

7.2 CLE Hours

Professional Engineers

6.0 PDHs

Floodplain Managers

6.0 ASFPM CECs

Geologists

Non-Credit CE



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Roger Walker, JD, LL.M *Principal at RA Walker & Associates LLC in Jefferson City, MO*
Mr. Walker has a private legal practice focusing on permitting, compliance, and enforcement. He also serves at the executive director of REGFORM, a nonprofit association in Missouri focused on environmental regulatory issues. Mr. Walker is also the organizer of the Midwest Environmental Compliance Conference. Previously, he served as an adjunct instructor teaching, “Introduction to Environmental Law,” at St. Louis University. Prior to starting his firm he practiced as an environmental attorney at Armstrong Teasdale LLP in St. Louis for 13 years. He received his J.D. degree from University of Missouri at Kansas City Law School and his LL.M degree in Environmental Law from Lewis & Clark School of Law in Portland, Oregon.

Peter N. Davis *Isidor Loeb Professor Emeritus of Law, University of Missouri-Columbia*
Professor Davis joined the law faculty in 1970. While in law school he served as managing editor of the *Wisconsin Law Review* and was elected to the Order of the Coif. In 1963 he received a Fulbright Scholarship to study at Australian National University, studying Australian irrigation law, the topic of his S.J.D. thesis. In 1964, he was Graduate Fellow at the University of Wisconsin School of Law. He practiced law in Washington, D.C. from 1965-66, with the firm of Ely and Duncan, and with the U.S. Department of Agriculture as a research attorney in Madison, Wisconsin, from 1966-70. From 1973-81, he was a member of the City of Columbia Planning and Zoning Commission, and since 1986 has been a member of its Railroad Advisory Board. During the winter term of 1982, he served as a visiting professor at the University of Auckland School

of Law in New Zealand. During May 1990, he lectured in China on American environmental law, at Wuhan University, Wuhan, and at the North-West Institute of Political Science and Law, Xian. In summer 1992, he lectured at several locations in Australia and New Zealand on American coal log pipeline law and several water rights and environmental law topics. In 1996, he taught in the law school’s London program. He is the author of numerous articles and books in the fields of water use rights and management, and water pollution law. He has received several major water law research grants; and in the 1990’s he worked on the legal aspects of coal log pipelines with the MU Capsule Pipeline Research Center. He retired in 2003 and since has been teaching part-time. The courses he teaches include Mining, Oil & Gas Law, Environmental Law, Transportation Law, Copyright Law, Land Use Controls, Water Rights Law, Railroad Law, Seminar on Problems of Environmental Control, Estates & Trusts, and Intellectual Property. He received his B.A. degree from Haverford College, and his LL.B and S.J.D. degrees from the University of Wisconsin.

Jennifer Hoggatt *Director, Water Resources Center, Missouri Department of Natural Resources*
Ms. Hoggatt serves as the director of the Department’s Water Resources Center. She has been with the Department since 2008, previously working in the Director’s Office and for the Division of Environmental Quality’s Water Protection Program. A native of Southwest Missouri, she grew up enjoying plentiful fishing, hiking and water recreation activities around places such as Roaring River State Park and Table Rock Lake. She holds a Bachelor of Science degree in Biology from Missouri Southern State University and a Master of Environmental Science and Management degree from University of California-Santa Barbara.

Seminar Information

Holiday Inn Forest Park 5915 Wilson Avenue St. Louis, MO 63110 (314) 645-0700	Registration 8:00 - 8:30 am Morning Session 8:30 - 11:45 am Lunch (On your own) 11:45 am - 12:45 pm Afternoon Session 12:45 - 4:00 pm
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Continuing Education Credit Information

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This course offers 6.0 PDHs to engineers in Missouri. Educators and courses are not subject to preapproval in Missouri. Engineers seeking continuing education credit in other states will be able to claim the hours earned at this seminar, in most cases. Refer to specific state rules to determine eligibility.

The Association of State Floodplain Managers has approved this course for 6.0 CECs.

This seminar offers a non-credit continuing education opportunity to geologists.

Attendance will be monitored and attendance certificates will be available after the seminar for most individuals who complete the entire event. Attendance certificates not available at the seminar will be mailed to participants within fifteen business days.

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 - **Working with the HEC-RAS User Interface**
Thurs., Oct. 18, 2018, 1:30 - 3:00 PM CDT
 - **Water Surface Profiling**
Fri., Oct. 19, 2018, 11:00 AM - 1:00 PM CDT
 - **Steady Flow Surface Profile Demonstrations**
Fri., Oct. 19, 2018, 1:30 - 3:30 PM CDT

- Construction Cost Estimating**
- **Introduction to Cost Estimating**
Thurs., Oct. 25, 2018, 11:00 AM - 12:30 PM CDT
 - **Cost Components – A Closer Look at the Estimates**
Thurs., Oct. 25, 2018, 1:00 - 3:00 PM CDT
 - **Cost Estimate Organization and Examples**
Fri., Oct. 26, 2018, 11:00 AM - 1:00 PM CDT
 - **Cost Estimating Topics**
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