Using Water from a Stream

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D. L. Uchtmann (1)

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Abstract:
In Illinois, rules for the use of stream water and ground water differ somewhat. For stream water, Illinois follows the Riparian Doctrine – Reasonable Use Rule: Each person owning land next to a stream is entitled to use all the stream water necessary to satisfy natural needs (e.g., to meet household needs), but is limited to reasonable use of the water to meet artificial needs (e.g., irrigation). Disputes about what is reasonable share of the available stream water are resolved in the courts if they cannot be resolved informally.

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What are the rights of a private Illinois landowner to use water in an adjacent stream? Can an upstream landowner interfere with the quantity of water flowing down stream, e.g., by damming the stream or by withdrawing large quantities of water? If two owners whose lands are separated by the stream both want to water livestock from the stream, how is the water divided if there is not enough to water both herds? If one landowner hopes to invest in an irrigation system that will use stream water, should the owner be concerned if there is not enough water to supply all landowners who potentially might irrigate? These are just some of the questions that can arise.

In 1842, the Illinois Supreme Court decided the case of Evans v. Merriweather (Ill. Reports, Vol. 4, page 492) and laid the foundation for the water use law still recognized today. Under the rule of “reasonable use,” each person owning land next to a stream (a riparian landowner) is entitled to use all the stream water necessary to satisfy natural needs, e.g., drinking water for one’s household. However, a riparian landowner can only use a reasonable amount of water for artificial uses, such as irrigation. Put another way, natural uses of water have priority over artificial uses and when there are competing artificial uses, each riparian landowner is entitled to a reasonable portion of stream water for artificial uses. If riparian owners can’t agree on what is reasonable, a lawsuit can be filed and a jury can make that determination.

Although the Illinois rules regarding stream water use seem fair, they don’t provide much certainty about a riparian owner’s rights to use water. For example, whether a particular use falls into the category of “natural” or “artificial” is important, but is not always clear. In 1842, when every farm had a few cattle to supply meat and milk to the household, watering livestock was considered a natural use. But today, in the context of a large animal feeding operation, watering livestock is more like other commercial uses of water that are considered artificial uses. Also, even if the water use is clearly artificial, e.g., irrigating cornfields, there may be enough water to satisfy the first riparian landowner to irrigate, but what if other riparian owners start irrigating in the future? Under current Illinois law, all riparian owners are entitled to a reasonable portion of the water, whether they are the first to start irrigating or the last.

Fortunately, Illinois has historically been a water surplus state, there has generally been enough water to go around, and private disputes over stream water use have been relatively rare.
However, in addition to private uses of stream water to meet both natural and artificial uses, the public also has an increasing need for water in Illinois streams. Examples include supplying public water systems and maintaining the instream flows needed to support navigation and sustain water quality and aquatic ecosystems.

In all probability, Illinois water law will someday need to evolve further by providing clearer guidance regarding the competing rights of different riparian landowners, and the potential competition between private and public uses of water. Until that happens, riparian landowners are entitled to use all the water in the stream necessary to meet their natural needs, and a reasonable amount of the remaining stream water to meet their artificial needs.

1. Uchtmann is a Professor of Agricultural Law in the Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign. B.S. 1968, University of Illinois; M.A. The University of Leeds, England, 1972; J.D. 1974, Cleveland State University.