



Arkansas Water Rights

Common Law Riparian Doctrine

- Purest form of rule:
 - Each property owner who has water flowing by his land is entitled to have the full flow of the stream going by without significant pollution from upstream

Limitations

- Pure riparianism did not accommodate consumptive use other than for domestic purposes
- Uses such as agricultural irrigation would diminish the “natural flow” to downstream neighbors

Reasonable Use

- Industrial and agricultural progress required changes to riparianism
- Consumptive and non-consumptive use limited by their reasonableness and whether they cause unreasonable harm to other riparians
- Still not practical, because litigation is required
- Adopted in Arkansas in 1955 in Harris v. Brooks

Riparian Land

- Land contiguous to a body of water
- Within the same watershed
- Source of title and unity of title
- Part of the Spanish land grant or U.S. patent at the typically smallest unit
- Constantly diminishing

Is it a Watercourse?

- Ditches?
- Intermittent streams?
- Low spots?
- Springs?
- Runoff?



Transfer of Riparian Rights

- Riparian rights are “correlative,” they depend on the land
- One might reserve rights if a parcel is subdivided
- Selling riparian rights to another may affect only the rights of the parties
- Leases and easements prior to March 1, 1990
- Non-riparian transfer

Arkansas Cases on Riparianism

- Harris v. Brooks 1955
- Farmers vs. boat dock
- Analyzed natural flow and reasonable use theory and adopted the latter
- Court set a lake level at which the irrigators had to stop pumping
- Impractical to have Arkansas Supreme Court set lake levels!

Harris v. Brooks Rules

- Domestic use superior to all other uses
- Other uses equal
- 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 be adjusted

Harrell v. City of Conway

- Conway could continue to move water from Caldron Creek to its municipal customers who were not riparian and were not even in the same watershed so long as a shortage did not exist for the riparians



Jones v. Oz-Ark-Val **Poultry Co.**

- 1957 case applying reasonable use riparian theory to groundwater
- Arkansas does not subscribe to “absolute ownership” rule
- Lingo et al. v. City of Jacksonville
- Can move groundwater to non-riparians if no unreasonable harm to other groundwater users

Arkansas and Regulated Riparianism

- The dry period in the early 1950s brought not only court cases but legislation
- State rejected Western-style allocation, but did start moving toward a framework for ensuring predictability
- Minimum streamflow
- Regulations on dams
- Non-riparian transfer
- Allocation during shortage

Water Use Registration

- Annual registration with local conservation district or with ANRC
- Surface and groundwater
- Exceptions



Minimum Streamflow



Non-Riparian Permitting



Allocation of Surface Water

- Shortage: “not sufficient water in a stream to meet all beneficial uses”



Usable Without Allocation

- < 1 acre-foot (325,900 gallons) per year
- Diffused surface water
- Captured water
- Exclusively owned water
- Tailwater
- Non-consumptive use
- Intermittent streams
- Permitted capture

Reserved Uses

- Domestic
- Municipal domestic
- Minimum streamflow
- Interstate compacts
- Navigation
- Fish and wildlife
- Water quality
- Aquifer recharge
- Federal water rights

Allocation Hierarchy

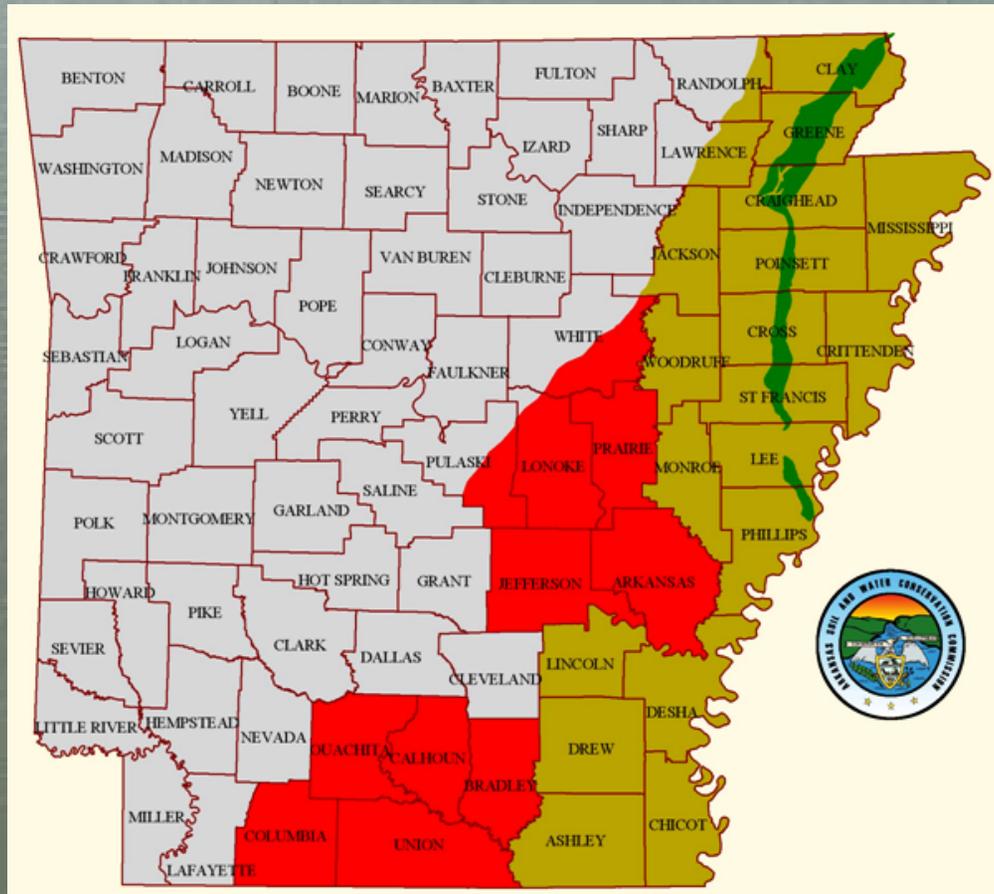
1. Registered riparian use
2. Non-registered riparian, but used
3. Non-riparian permitted INTRAbasin
4. Non-riparian permitted INTERbasin
5. Out-of-state transfer
6. Never used, never registered riparian

Groundwater Use

- Groundwater Protection and Management Act, Arkansas Code 15-22-901, et seq.



Critical Groundwater Areas



Regulation of Groundwater Use

- “Tragedy of the Commons”
- AGPMA somewhat weak
- Grandfathering
- Alternative surface water supplies must be available or can be made available
- Cost
- Issuance of “water rights”

Positive Note

- Sparta Aquifer Critical Counties' Remediation Act, Arkansas Code 15-22-1201—1218
- Board formed
- Sparta water use taxed @ 36 cents per 1,000 gallons
- Construction of a surface water diversion from the Ouachita providing cooling water for a merchant power plant and process water for industry

Arkansas Water Plan

- Arkansas Code § 15-22-503
- “A comprehensive program for the orderly development and management of the state’s water and related land resources”
- Executive summary
- Basin reports
- Projects

Water Plan Compliance

- Any entity spending public money on a water project must obtain approval by the Commission under the Arkansas Water Plan
- Standard: “adequately coordinates the use of water resources within the region in which the project is located, and with in the state as a whole”