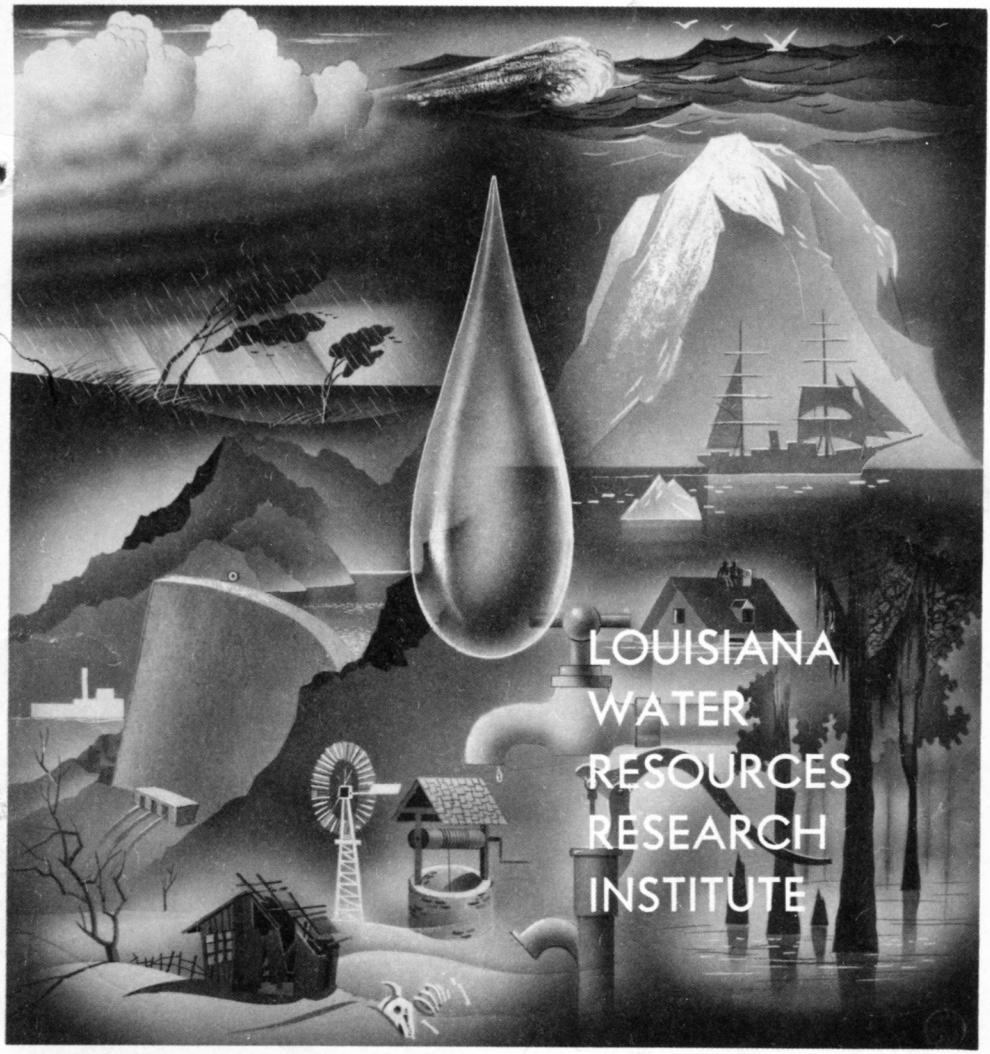
JUNE 1966 BULLETIN 1



Handbook of Basic Water Law

(with special Reference to Louisiana)

Prepared under the Direction of
George W. Hardy, III

LOUISIANA STATE UNIVERSITY

The LOUISIANA WATER RESOURCES RESEARCH INSTITUTE has been chartered by Louisiana State University

1. To encourage original, purposeful water research and, simultaneously, to promote graduate work and advanced training in the broad area of water resources.

2. To obtain and administer funds.

3. To make the results of research available for publication and, upon occasion, to publish or to reprint, papers containing results of work performed under the auspices of the Institute.

Research has been funded through public or private contributions and through funds obtained from the U. S. Office of Water Resources Research. A research project funded by the Institute may be accomplished at any institution of higher learning in the State of Louisiana.

If you have an idea for work in the field of water resources, or if you have a problem of wide interest in the field of water resources, please communicate with:

The Director
Louisiana Water Resources Research Institute
Louisiana State University
Baton Rouge, Louisiana 70803

The Institute will willingly evaluate your proposal and, if it seems promising, will assist in obtaining support for the work, or will find a researcher who can undertake the solution of the problems involved.

HANDBOOK

OF

BASIC WATER LAW

(With Special Reference to Louisiana)

Prepared Under the Direction of

GEORGE W. HARDY III

JUNE, 1966

This report was prepared as part of a ground water study of salt water encroachment in the Baton Rouge area and methods to combat it. The work was financed by a Federal Grant under PL 88-379, the Water Resources Research Act of 1964, which was made to the Louisiana Water Resources Research Institute by the Office of Water Resources Research of the U. S. Department of the Interior.

TABLE OF CONTENTS

Foreword iv

BASIC MEMORANDUM ON WATER LAW by F. J. Trelease

Introduction A-1

Sec. 1 Surface Streams A-1
Sec. 1.1 Riparian Rights A-1
Sec. 1.2 Nonriparian Priviliges A-3
Sec. 1.3 Protection of Nonriparians A-4
Sec. 1.4 Navigable Waters A-5

Sec. 2 Ground Water A-6
Sec. 2.1 Right to Withdraw A-6
Sec. 2.2 Protection of Withdrawals A-6

Sec. 3 Protection of Recharge A-8

Sec. 4 Choice of Agency A-9

Sec. 5 General Observations A-9

Citations A-12

SUMMARIES OF WATER LAW OF SELECTED STATES

Introduction B-1

Sec. 1 Ground Water Law of Indiana B-2

Sec. 2 Ground Water Law of New Jersey B-5

Sec. 3 Ground Water Law of Illinois B-7
Sec. 3.1 In General B-7
Sec. 3.2 Water Service Districts B-7

Sec. 4 Ground Water Law of Colorado B-10

Sec. 5 Ground Water Law of Florida B-12

Sec. 6 Ground Water Law of California B-15
Sec. 6.1 In General B-15
Sec. 6.2 The Orange County Water District B-15
Sec. 6.3 The Alameda County Flood Control and Water Conservation District Act B-17

Sec. 7 Ground Water Law of Nebraska B-21
Sec. 7.1 Irrigation Wells B-21
Sec. 7.2 Ground Water Conservation Districts B-21

Sec. 8 New York-Water Resources Planning and Development B-23

Sec. 9 Ground Water Law of Texas B-25

COMPILATION OF RELEVANT STATUTES AND JURISPRUDENCE OF LOUISIANA WATER LAW

Introduction C-1

Chapter 1: Rights of Property Owners, Irrigation, and Drainage C-2

Sec. 1 Ownership of Surface Water C-2
Sec. 1.1 Non-Navigable Waters C-2
Sec. 1.2 Navigable Waters C-3

Sec. 2 Right to Use and Divert Surface Waters C-5
Sec. 2.1 Irrigation C-5
Sec. 2.2 Drainage C-7
Sec. 2.3 Pollution C-12
Sec. 2.4 Canals C-14

Sec. 3 Use of Banks of Watercourses C-15

Sec. 4 Alluvion and Dereliction C-16

Sec. 5 Ground Water C-16

Chapter 2: Rights and Powers of State and Local Agencies or Organizations C-18

Sec. 6 State Department of Public Works C-18

Sec. 7 Department of Conservation C-18

Sec. 8 Municipal Corporations C-19

Sec. 9 Police Juries C-20

Sec. 10 Water Works District C-21

Sec. 11 Fresh Water Districts C-23

Sec. 12 State Soil and Water Conservation Districts C-24

Sec. 13 Iatt Lake Water Conservation District C-26

Sec. 14 Bayou D'Arbonne Lake Watershed District C-27

Sec. 15 Recreation and Water Conservation Districts C-28

Sec. 16 Sabine River Authority C-28

Sec. 17 Irrigation Districts C-29

Sec. 18 Drainage Districts C-30

Sec. 19 Levee Districts C-34

Sec. 20 State Contracting Power with Federal Government C-35

Sec. 21 Expropriation C-35

Chapter 3: Miscellaneous

Sec. 22 Protection of Navigable Waters by the Federal Government C-37

Sec. 23 Prescription of Drainage Claims Against State C-37

Sec. 24 Water Resources Study Commission C-37

FOREWORD

The materials compiled in this bulletin are intended to form a basic handbook for the further study of possible solutions to the legal problems encountered in the study of salt water intrusion into aquifers utilized as a source of fresh water in East Baton Rouge Parish and the surrounding area. Toward this end the bulletin consists of three parts: (1) a memorandum by Dean Frank Trelease of the University of Wyoming College of Law exploring problems of water conservation on a broad scale; (2) collected memoranda summarizing the law of several states other than Louisiana which have faced problems of water use and conservation; and (3) a compilation of relevant statutes and court decisions regarding water law, water use and control, and water conservation in Louisiana.

As noted, these materials are not to serve the function of presenting a solution to the legal problems which may have to be faced in conjunction with the salt water intrusion study in Baton Rouge; rather, it is hoped that they will furnish an adequate basis for more specific study and planning when sufficient geological, economic, and engineering data have been procured to permit the conception and presentation of plans for legal action to assure the Baton Rouge area of a steady supply of fresh water for industrial and domestic use.

G.W.H. III

BASIC MEMORANDUM ON WATER LAW

INTRODUCTION

There seems no need to detail in this memorandum the present state of knowledge regarding the ground-water occurrence underlying the Baton Rouge area, the problems caused by salt water intrusion into the sands at present rates of pumping, or even the preliminary ideas currently considered as solutions to the problem. Suffice it to say that preliminary thoughts on possible alternate conclusions open up almost the whole gamut of water resources law.

All solutions currently considered take the positive approach of improving the supply available in the Baton Rouge area by importing water, rather than the negative one of restricting the uses of the immediately available resources. If the imported water is to come from surface streams, the legal problems involve a determination of the rights of various types of water users, riparian and nonriparian, and the kinds of protection a nonriparian agency could obtain. If the imported water is to be sought from underground sources, the rights to take such water must be examined, and the protection the taker could obtain against interference by others must be explored. On the receiving end, there are problems of correlating the use of imported and local water and of securing reimbursement of the project's costs. Having an effect on all of these, the final but central question is the nature of the organization or agency which will accomplish the purposes of the project. In seeking answers to all of these questions and problems, the search is for a legal and institutional framework that will enable the agency to reach the ultimate goal of providing a permanent and adequate supply to meet all present and foreseeable demands for pure water in the Baton Rouge district.

Sec. 1. SURFACE STREAMS

If imported water is to be sought from surface streams, the legal questions relate to the right of the agency to withdraw water from streams, and the protection it can receive from interference by others with rights to the streams.

Sec. 1.1. Riparian Rights

The primary and fundamental rights to the waters of natural streams and water courses in Louisiana is in the riparian landowners. Article 661 of the Civil Code provides:

> He whose estate borders on running water, may use it as it runs, for the purpose of watering his estate, or for other purposes.
>
> He through whose estate water runs, whether it originates there or passes from lands above, may make use of it, while it runs over his land; but he cannot stop or give it another direction, and is bound to return it to its original channel, where it leaves his estate.

It is not necessary here to go into the reciprocal rights of the riparians between themselves, except to point out that even the basic nature of the right is not made clear by the code. The fundamental right of a riparian may have a very considerable effect upon the rights of a nonriparian agency. It is quite possible that, as in tort law, common law precedents might be considered in giving flesh and body to this article which sets out the bare bones of the right.

The common law courts first seemed to use a "natural flow" theory; then they evolved a "reasonable use" theory.[1] Under the natural flow theory, the primary or fundamental right of each riparian proprietor on a water course is to have the body of water maintained in its natural state, not sensibly diminished in quantity or impaired in quality. Each proprietor, however, is recognized as having a privilege to use the water to supply his "natural wants," and each also has a privilege to make "artificial" uses so long as such uses do not sensibly or materially affect the natural quantity or quality of the water, and are made on or in connection with the use of the riparian land. Under the reasonable use theory, the primary or fundamental right of each riparian proprietor is merely to be free from an unreasonable interference with his reasonable use of the water. Each proprietor has a privilege to make a beneficial use of water for any purpose, provided only that such use does not reasonably interfere with the beneficial uses of others. If the natural flow theory is adopted, the nonriparian has no rights or privileges to the water, and he may be enjoined from such use by a riparian, even though the riparian suffers no present actual damage.[2] But if the reasonable use theory is applied to its full extent, nonriparian uses are permissible so long as sufficient water is left for the reasonable needs of the riparian.[3]

Analysis of the exact language of Article 661 (and of Article 660, which, though usually applied to drainage, may have some relevance here) does not give a definite answer to the question of how the courts will ultimately view the riparian's right. However, there are two Louisiana precedents which might be persuasive authority that the reasonable use rule is to be followed in this state. The first is Long v. Louisiana Creosoting Co.,[4] in which the Supreme Court decided a pollution case by using common law principles of reasonable use.

It cited no Civil Code article. The other precedent is Jackson v. Walton,[5] involving a byou which the Second Circuit Court of Appeal treated as though it were not a running stream.[6] The court reversed an injunction against a nonriparian defendant who was taking the water under a contract entered into with the owner of the land between his property and the bayou. The plaintiff owned land on the opposite side of the bayou. The decision was not based upon an analysis of Article 661; instead, the Court of Appeal rested its decision on the law of remedies and denied the injunction on the ground that the plaintiff showed no actual or impending damages. Neither of these cases is decisive, but there seems to be no contrary precedent indicating an absolute right to the full flow or natural state of the water.

Sec. 1.2. Nonriparian Privileges

Nonriparian withdrawals seem to be common in Louisiana. Certainly the tenor of practical operations and the legislative assumption has been that surplus water may be taken from the streams for nonriparian uses. Cities, waterworks districts, waterworks corporations, irrigation companies and irrigation districts are extensive users of water for nonriparian purposes. Most but not all of these have powers of expropriation that seem broad enough to permit the condemnation of riparian rights interfered with by their stream withdrawals,[7] but no cases involving such expropriation have come before the courts, and no examples of payment for riparian rights were known to persons interviewed by the writer. Undoubtedly the natural flow of many water courses has been substantially altered, but quite probably no actual riparian uses have been damaged.

In 1910 the legislature declared the waters of "bayous, lagoons, lakes, and bays, and the beds thereof, ... to be the property of the state...."[8] In 1954 this was amended to include the waters of "rivers and streams."[9] In 1964 the Water Resources Study Commission act declared that "the public welfare requires that such [ground and surface] water be put to the highest beneficial use.... The ownership and control of development and use of ground and surface waters for all beneficial purposes are within the jurisdiction of the State...."[10] The practical operation of these declarations is unclear. Western states have used similar language to justify appropriation of water by nonriparian members of the public and general police power regulation of water rights and water uses.[11] In one instance the Louisiana legislature has exercised a similar authority. R.S. 45:62 gives corporations formed for gravity irrigation "the right to utilize the waters of navigable streams and other waters of the state for irrigation purposes."

Sec. 1.3. Protection of Nonriparians

In all common law jurisdictions, except in those which have changed the rule by statute, a riparian has a superior right to the water, as against a nonriparian user. In nearly all cases establishing this principle, the riparian user initiated his use subsequent to the nonriparian use. This creates an instability in nonriparian uses, and various methods of giving the nonriparian some legal certainty of right have been invented. One, which exists without a statute, is freedom of contract: the nonriparian can buy out the riparian objector. At common law, a nonriparian cannot buy a riparian right in the sense that after the transaction he would stand in the shoes of the riparian vis-a-vis other riparians.[12] What he buys is his peace, the forbearance of the objecting riparian to sue.[13] The price depends in part on what the riparian could sue for--preservation of the natural flow, preservation of an existing use, or his possibilities of future use. This method of obtaining nonriparian certainty has many drawbacks. Many such riparians may need to be placated; some may irrationally refuse to sell at any price; some may extort hold-up prices based not on the value of the water to them but on its value to the nonriparian.

In the eastern states, including Louisiana, the most common statutory adjustment is to give certain types of nonriparians powers of eminent domain. This at least protects the non-riparian water taker from irrational or extortionate prices.

Several states have removed serious threats to nonriparians by limiting a riparian's reasonable uses to minimal quantities. Thus in North Dakota a riparian apparently can claim only water for domestic and stock water purposes.[14] Texas regulations, untested in the courts, reach the same result.[15]

In some jurisdictions, prescription is a protection available to many nonriparian users. This is especially true where the natural flow theory is applied between riparians and nonriparians, for the riparian is seldom impelled to act in the absence of actual damage, and the lapse of time gives the nonriparian a stable right even against actual uses by the riparian. However, this is apparently not available in Louisiana,[16] and in any case it is a risky procedure.

Where shortages are likely to be only seasonal, and riparian demands on high-water flows are light, giving nonriparians rights to store water and exclusive rights in the stored water may provide sufficient protection. This has been done in a neighboring state, Arkansas,[17] and in a midwestern state, Indiana.[18] The success of this type of solution would depend upon the existence of suitable reservoir sites.

In several western states and one southern state, the legislatures or the courts have decided that certainty of nonriparian uses is to be preferred over unused riparian claims. In Oregon, South Dakota, and Mississippi, only a

"vested" riparian right is protected, and a vested right is one in actual use when the statute was adopted.[19] After the statutory system is put into effect, the only rights recognized are appropriations, whether made by riparians or nonriparians.[20] In Washington, the court decided that a riparian had only a reasonable time within which to exercise his right, and that thereafter the water was free for nonriparian appropriation.[21] In Nebraska, the court first decided that an unused riparian right was worth only money, not an injunction, and then that the value was only nominal.[22] While there were some indications that such statutory abolition of unused riparian rights without compensation were unconstitutional, the modern trend seems to be to uphold them.[23]

Finally, there arises the problem of the relations of one nonriparian user to another. Not one word in the Louisiana statutes or jurisprudence sheds any light on this subject. If several municipal suppliers or irrigation organizations have needs which in combination impose demands upon a stream in excess of the supply, there is nothing to indicate which of them has the better right. The problem might be solved by giving a statutory preference to a "higher" use or by giving effect to priority, possibly by requiring all to prorate, but there are no guidelines or indications as to how this vacuum might ultimately be filled.

Sec. 1.4. Navigable Waters

Probably all of the above considerations apply to navigable streams as well as to nonnavigable. That is, riparian rights to withdraw and use water probably exist in navigable waters, and nonriparian users are probably subordinate to them.[24] But the navigability of the waters does change the picture in several respects. First, it adds a new class of persons with rights that must be recognized by persons withdrawing water. The right of any riparian or nonriparian who seeks water for a private use is subordinate to the rights of the public. Public rights usually involve the use of the water in place for transportation, pleasure boating, and fishing. A withdrawal that seriously injures these rights might be enjoinable as a public nuisance, and might be a crime.[25] Second, the navigable character of a stream gives to the state a greater regulatory power over it. The exercise of such power may give nonriparians rights that are actually superior to those of riparians, without constitutional objection.[26] Third, if the water is navigable in the federal sense[27] then the national government may have to be dealt with. A federal statute provides, "...and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition or capacity... of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the

same."[28] While this has never been applied to diversions from western rivers, those rivers have not been extensively improved for navigation. A withdrawal from the Mississippi or other navigable water, of sufficient magnitude to affect the usability of the channel during low water flows, could come within the purview of this section.[29] If it did, and the Corps required a permit or license, the U.S. Fish and Wildlife Service could be drawn into the picture under the Co-ordination Act of 1958.[30]

Sec. 2. GROUND WATER

If the source of imported water for the Baton Rouge project is ground water at some distance from the city, the legal questions parallel those relating to surface streams: what would be the right of the agency to withdraw water, and what protection could it receive from others whose acts might interfere with the agency's operations?

Sec. 2.1. Right to Withdraw

Adams v. Grigsby[31] must be accepted as the controlling case. That decision permitted an oil operator to withdraw large quantities of ground water for secondary oil recovery, although this depleted the water-bearing sands under the land of a number of surrounding owners and caused them expense in improving their wells. The court held that Articles 660 and 661 gave no rights of ownership and use of subterranean waters, and that those waters should be treated as fugitive substances similar to oil and gas, subject to ownership only when withdrawn and reduced to possession.

Under this rule, as far as the right to withdraw water is concerned, the agency need only own the acre of ground upon which each well is located. Adams v. Grigsby did reserve judgment on whether an overlying landowner could recover if he were damaged by intent or negligence. These words must have been used in a special sense, since the oil operator intended his acts, and presumably the damage to surrounding landowners was foreseeable. Apparently the courts meant intent to harm, and negligence as unreasonable conduct in the light of the withdrawer's needs, for it negated these charges by finding the purpose of the defendant was reasonable and beneficial to him.

Sec. 2.2. Protection of Withdrawals

The rule of capture announced in Adams v. Grigsby is a two-edged sword, for if the adjacent landowner cannot object to large withdrawals by the agency, neither can the agency object to actions by others who might threaten the supply.

One adjustment that might be made without statute is similar to that of buying out the rights of riparians. The agency might assure itself of a sufficient recharge to supply its withdrawals by purchasing sufficient lands surrounding the well field, or enough of the water rights of the landowners, or servitude on those lands. If the agency were created by statute, it could be invested with powers of expropriation in order to protect itself from hold-out landowners or hold-up prices.

Other legislative solutions involve some sort of police power regulation that would protect the agency's supply by preventing interfering with withdrawals. The most obvious way of doing this is practiced in the west where eleven states apply the rule of prior appropriation to ground waters, and couple it with a permit system.[32] Under these laws, further permits to drill wells can be denied when the "safe yield" of the aquifer is reached or threatened. Even where the rule of ownership of ground water (in either its absolute or reasonable use form) is in force, statutes may authorize the administrative declaration of critical areas within which the owners of ground water may not drill for it.[33] Several eastern states have untested but long-standing statutes requiring permits to drill wells.[34] All of these devices involve a concept of protecting established water uses by restricting subsequent operations that would impair them, although not all of them frankly adopt a system of prior appropriation. I do not believe that any of these devices raise serious constitutional questions. In Adams v. Grigsby the court declined to accept "long, unauthorized and complicated...judicial regulation" and said that the problem of regulation and control of water supply and use addressed itself to the legislative branch of the government. The opinion indicated that proper spheres of legislative action might include the regulation, apportionment or allocation of the amount of water which may be withdrawn from a common reservoir. The problem in Louisiana, where the landowner does not own the water, seems less acute than in those states where he has previously been declared by judicial or legislative action to be the owner. Still, the Louisiana landowner does have the valuable privilege of drilling for water and the valuable opportunity to capture and exploit it, which such statutes might impair. Some states have sought to avoid complete deprivation of these rights by permitting the overlying landowner to drill wells of quite small capacity.[35] Kansas, while protecting the appropriator's prior right to water, removes constitutional objections by preserving the landowner's right to money damages for loss of his common law rights.[36] Most of the western appropriation statutes have simply been accepted or have been sustained on grounds peculiar to those states, but the Arizona court upheld that state's limitations on ownership under emergency powers,[37] and South Dakota upheld its appropriation law as a police power

regulation, in the face of a statutory provision declaring the water to be owned by the landowner.[38]

An argument for constitutionality could also be made on an analogy to zoning: The landowner is prevented from making some uses of his property that would cause harm to existing uses of others. Although the landowner has the valuable privilege of drilling for water and the opportunity to capture and exploit it as part of his ownership of the land, the exercise of this right may be regulated by the state. For example this is already done by the Department of Conservation in the field of oil and gas.[39] Some comfort might also be obtained from Act 188 of 1964 which declares that the "ownership and control of the development and use of ground and surface waters for all beneficial purposes are within the jurisdiction of the state."[40]

Sec. 3. PROTECTION OF RECHARGE

If the agency imports water to the Baton Rouge area and there injects it into the underlying sands for withdrawal by existing wells, the problems are those of the protection of the injected water as the property of the agency and the recovery of the costs of the operation from the water users. There are some precedents for the proposition that water severed from its place of natural occurrence becomes personal property,[41] and that the owner does not lose control over it by replacing it in a stream or aquifer.[42] These do not offer a satisfactory solution, because of the difficulty of identification, and because of the complexity of the underlying structures. It is quite possible that the injection would be made on a selective basis to those sands most immediately threatened, and that water users updip from the salt water barrier might withdraw little if any of the injected water, and those in untreated aquifers would withdraw none. However, all would be benefited in that the presently occurring intrusion of salt water into the sands would be halted and postponed indefinitely.

One obvious solution is a public improvement district formed by a majority of landowners (or owners of a majority of lands) to construct an improvement that will benefit not only themselves, but also their neighbors. Lands actually improved can be included within such a district regardless of the wishes of the landowners, and assessments can be levied in proportion to the benefits received. This device has been used for everything from street and sewer improvements in cities, to irrigation, drainage, and flood control improvements in rural areas. It has been applied to quite similar projects for recharging overtaxed ground water supplies.[43] One of these has a feature that would seem particularly suitable for the Baton Rouge project. The Orange County Water

District in California has the power to levy an excise tax on the volume of water pumped from each well.[44]

Possibly analogies to cooperatives and to unitization of oil and gas pools underlying the lands of several owners could be applied to the area under study. These possibilities are left for exploration by those more familiar with those fields of law.

Sec. 4. CHOICE OF AGENCY

Most of the foregoing seems to point toward a public entity or a public utility as the legal organization for accomplishing the desired results. Powers of expropriation are obviously needed for the acquisition of pipeline right-of-ways, dam sites, reservoir sites, well sites, and access to streams, and such powers are possibly desirable for the purpose of extinguishing riparian rights and rights of overlying landowners by payment of compensation.

In the Baton Rouge area, more seems to be needed than a public utility if the imported water is to be injected into the aquifers rather than distributed through pipes. Here, a government unit such as an improvement district, with powers to levy assessments on improved lands, or to tax for direct benefits received, could be created by those landowners favoring the project and could then impose assessments, taxes or tolls on a dissentient minority. If regulation or cutback of withdrawals from certain aquifers is contemplated, if restrictions on the use of water from certain aquifers for certain purposes is a possibility, if regulation of use practices (e.g., recycling, reinjection) is needed, a governmental body with regulatory powers seems desirable.[45] Of course, this body would need powers to act outside its physical boundaries in order to accomplish its functions of water importation.

Suggestions were made that possible models of a more private nature might be found in cooperatives or in unitization of oil and gas fields. In investigating these ideas further, thought should be given as to whether an agency based on these models could be given expropriation and regulatory powers, whether they might be subject to outside controls (Public Utilities Commission, Conservation Commission), whether their rules, rates, functions and enforcement powers would be sufficiently flexible to carry operations into the unknown future.

Sec. 5. GENERAL OBSERVATIONS

The problems that need to be solved by legislation in order to provide a legal and organizational framework for a solution for Baton Rouge are problems which face the State of Louisiana as a whole. Yet certainly the Baton Rouge Water project does not want to carry the ball for the whole state. A difficult

choice is presented, and alternate or successive plans of action should be drawn. There are difficulties in obtaining special privileges for a local organization, yet legislation designed to solve a particular problem might be easier to put across than statewide legislation for which there is no pressing need and which might upset and draw opposition from every riparian or potential well driller. Certainly the Louisiana Water Resources Research Institute should cooperate with the newly formed Water Resources Study Commission, work with it, make known to it Baton Rouge's problems and suggest to it possible solutions.

No one state's law of water rights is suggested as a model, and no particular form of organization seems completely suitable for Louisiana. Ideas can be gleaned from other states' experiences, phrases can be borrowed from other statutes, but a truly good Louisiana law must be tailor made for Louisiana. It must be keyed to its problems; it must use and build on accepted and familiar Louisiana institutions.

Perhaps some empirical studies should be made of the actual operations of successful systems that may serve as precedents. The administration of the Kansas water laws in the Wichita area, the California districts that engage in recharge and regulatory powers set up in the Texas statutes could be examined. Their problems and failures might well be studied in order to obviate similar disabilities here.

My opinion is that Louisiana needs a general water use law. I would favor the Oregon-South Dakota-Mississippi Plan of confirming all existing uses and placing all future uses on an appropriative basis, with a modern flexible system of administration that would not be burdensome in what is after all an area of water surplus which can afford to give its people a great deal of freedom.[46] Such a code could and should accomplish the objectives of protection and stabilization of the Baton Rouge agency's rights to stream and ground water. But there is danger in asking for too much. Perhaps the next most desirable law for Louisiana, which would probably suit the Baton Rouge agency's purposes very well, might be something like the Indiana ground water law and the Indiana-Arkansas stream water storage laws. Next in line seems to be a law of general application which would permit the organization of agencies with powers of expropriation, including riparian and overlying rights, plus powers of regulation, assessment of benefits and charging tolls. The minimum might be the special legislative chartering of the agency.

These thoughts on the theoretically desirable might not be shared by those on the spot at the time when action must be taken. The political situation at that time, the strength or weakness of the Water Resources Study Commission, the success or failure of proposals it may have made by that time, the desirability of joining hands with it or proposing some less sweeping but more possible local solution, are matters for the future.

At this stage, both basic and applied legal research must be undertaken. Just as at this time no one physical solution is to be explored but rather alternatives are to be compared, studies of alternative legal possibilities for both water right and organizational aspects of the project must be studied. They must be much more in depth than this memorandum; they must be much more closely tied to local law; they must be related to specific proposals for action as these take shape and offer possibilities of physical and economic feasibility. This memorandum has indicated only preliminary considerations, broad areas of study, possible analogies and precedents.

Frank J. Trelease, Consultant
Dean, School of Law
University of Wyoming

1. Many references cited are contained in Trelease, Bloomenthal & Geraud, Cases on Natural Resources, which will be available to most readers of this memorandum. To facilitate access to these materials, Nat. Res. p.____ is added to the regular citations. Compare Beuscher, Appropriation Water Law Elements in Riparian Doctrine States, 10 Buffalo L. Rev. 448, Nat. Res. 117.

2. Anaheim Union Water Co. v. Fuller, 150 Cal. 327, 88 P. 978 (1907), Nat. Res. 10.

3. Motl v. Boyd, 116 Tex. 82, 286 S.W. 458 (1926); Brown v. Chase, 125 Wash. 542, 217 P. 23 (1923).

4. 137 La. 861, 69 So. 281 (1915).

5. 2 La. App. 53 (La. App. 2d Cir. 1925).

6. Borton & Ellis, Some Legal Aspects of Water Use in Louisiana, Bull. No. 537, L.S.U. Ag. Exp. Sta. (1960), at pp. 67-68, seem to think that this detracts from the authority of the opinion as riparian law. But riparian rights can apply to lakes and ponds having no perceptible inlet or outlet. Proctor v. Sim, 134 Wash. 606, 236 P. 114 (1925).

7. Water works districts, La. R.S. Sec. 33:3815 (1950); Water works companies, La. R.S. Sec. 19:2(6) (1950); Irrigation districts, La. R.S. Sec. 38:2112 (1950); As to cities, see La. R.S. Sec. 33:841 (1950; gravity irrigation corporations, La. R.S. Sec. 45:61, 45:64 (1950).

8. La. Acts 1910, No. 258. The effect of this act is highly unclear. However, the background against which it was enacted indicates that it was intended to apply to navigable waters.

9. La. Acts 1955, No. 443, La. R.S. Sec. 9:1101 (1950).

10. La. Acts 1964, No. 188.

11. Trelease, Government Ownership & Trusteeship of Water, 45 Cal. L. Rev. 638 (1957).

12. The La. Civil Code seems to dictate the same result. See Borton & Ellis, p. 46.

13. Duckworth v. Watsonville W & L Co., 158 Cal. 206, 110 P. 927 (1910), Nat. Res. 63.

14. N.D. Code Sec. 61-01-01.1, cf. Burns Ind. Stat. Sec. 27-1403(1), 27-1405.

15. Rules & Regulations, Texas Bd. of Water Engineers, Sec. 520.2 (1953), Nat. Res. 190.

16. Comment, Water Rights in Louisiana, 16 La. L. Rev. 500, 508 (1956).

17. Arks. Stat. Sec. 21-1307 (1963 Supp.), see also Sec. 21-1309.

18. Burns Ind. Stat Sec. 27-1403 (1960 Replacement), see also Sec. 27-1409.

19. Ore. Laws 1909, c. 216, p. 319; S.D. Code Sec. 61.0101; Miss. Code Sec. 5956-01 to 5956-30.

20. Washington renders the same result. See Nat. Res. 198.

21. Brown v. Chase, 125 Wash. 542, 217 P. 23 (1925).

22. See McCook Co. v. Crews, Cline v. Stock, Nat. Res. 198-199.

23. See Baumann v. Smrha, 145 F. Supp. 617, 352 U.S. 863 (1956), Nat. Res. 197; Nat. Res. 199, note 4; cf. Knight v. Grimes, 127 N.W. 2d 708 (S.D. 1964) Nat. Res. 113;

24. Borton & Ellis doubt this, arguing that the French law, which specifically exempts navigable water from the code article giving rights of riparian use, is probably Louisiana Law, though the La. Code omits the exemption. I should think the opposite conclusion more logical. Common law riparian rights exist in navigable waters. Motl v. Boyd, 116 Tex. 82, 286 S.W. 458 (1925); Heilbron v. Fowler Switch Canal Co., 75 Cal. 426, 17 P. 535 (1888).

25. Borton & Ellis, pp. 33-45 contains an excellent discussion.

26. See State v. Superior Court, 70 Wash. 442, 126 P. 945 (1912); Minneapolis Mill Co. v. St. Paul W. Comm'rs., 56 Minn. 485, 58 N.W. 33 (1894), Nat. Res. 16.

27. Used or capable of use as a highway for commerce in its natural condition or with reasonable improvements. U.S. v. Applachian Electric Power Co., 311 U.S. 377 (1940), Nat. Res. 310. Many states use less strict definitions for determining those waters over which they have regulatory jurisdiction or in which the public has rights. See Borton & Ellis, pp. 34-35 for the Louisiana law.

28. 33 U.S.C.A. Sec. 403.

29. Sanitary District of Chicago v. U.S., 266 U.S. 405 (1925) (Inversion of Great Lakes).

30. 16 U.S.C.A. Sec. 661-664. Again, Borton & Ellis, pp. 41-43 contains an excellent discussion that need not be repeated here.

31. 152 So. 2d 619 (1963) (Cert. denied.).

32. See Harnsberger, Nebraska Ground Water Problems, 42 Neb. L. Rev. 721 (1963), Nat. Res. 113, for citations.

33. Southwest Engineering Co. v. Ernst, 79 Ariz. 403, 291 P. 2d 764 (1955), Nat. Res. 202.

34. See Harnsberger, at Nat. Res. 206, for citations.

35. Ibid.; Tex. Civ. Stat. art. 7880-3cD (4) (b).

36. Williams v. Wichita, 190 Kans. 317, 374 P. 2d 578 (1962), Nat. Res. 197.

37. Southwest Engineering Co., supra n. 34.

38. Knight v. Grimes, 127 N.W. 2d 708 (1964), Nat. Res. 113.

39. La. R.S. 30:1-251 (1950).

40. See Trelease, supra n. 11.

41. Vaughn v. Kolb, 130 Ore. 506, 280 P. 518 (1929); Methow Cattle Co. v. Williams, 64 Wash. 457, 117 P. 329 (1911).

42. Los Angeles v. Glendale, 23 Cal. 2d 68, 142 P. 2d 289 (1943), Nat. Res. 98.

43. See Smith, Public Districts in the Management of California's Ground Water, Nat. Res. 217; see also Tex. Civ. Stat. art. 7880-3cB(1) (6) and G.

44. Smith, supra n. 44; Cal. Water Code.

45. Compare Tex. Civ. Stat. art. 7880-3c.

46. Compare Trelease, A Water Code for Alaska, Arts. II and IV (1962).

SUMMARIES OF WATER LAW OF SELECTED STATES

INTRODUCTION

Many areas in the United States have been, and are being, confronted with exhaustion of their supplies of subterranean water. This condition has usually resulted from an ever-increasing demand for water which has caused either substantial depletion of the ground water reserve or the degradation of water quality due to the encroachment of saline water into the freshwater supply. Many studies have been conducted as part of the effort to determine how best to preserve the water source.

The various states and other subdivisions of government have studied many different legal and engineering approaches in an attempt to preserve their fresh ground water. Cognizance of existing ground-water statutes should prove of benefit to the people and organizations of the Baton Rouge area as efforts are made to solve the local salt-water encroachment problem.

Briefs of ground-water legislation in California, Colorado, Florida, Illinois, Indiana, Nebraska, New Jersey, and Texas are presented here. The study does not include briefs of the complete water law of the states selected--only ground water legislation. The states included represent in their complete water law the four water rights doctrines: riparian rights; riparian rights-statutory regulation; appropriation and riparian rights; and appropriation. Louisiana's water law follows more closely the riparian doctrine.

Sec. 1. GROUND WATER LAW OF INDIANA

When the Indiana Department of Conservation has reason to believe that the withdrawal of ground waters in a certain area of the state exceeds or threatens to exceed the natural replenishment, it may designate the area as a restricted use area.[1] Before the department can make such designation it must make, or have made, surveys of the ground-water resources of the area from which it must determine the safe annual yield of the basin. The department is authorized to utilize surveys made by other agencies of the federal and state governments as a basis for its decisions.

Whenever the department designates an area of the state as a restricted use area, it must give notice to counties, municipalities and utilities in a manner prescribed by statute.[2]

In restricted areas it is unlawful for a person or any type of organization, excepting utilities engaged in supplying public utility service to consumers within the area, to withdraw, or use for any purpose, ground water in quantities in excess of 100,000 gallons per day, unless such withdrawals are pursuant to a permit from the department to withdraw a greater quantity.[3] This 100,000 gallons per day is in addition to any amount of water being withdrawn at the time the area is designated as a restricted use area. In granting or refusing the permits authorizing the withdrawal of more than the allowable 100,000 gallons per day, the department must consider the effect the withdrawal of additional ground water will have on the future supply in the area, what use is made of the water, how it will affect present users of ground water in the area, whether the future natural replenishment is likely to become more or less, whether future demands are likely to be greater or less, and how the withdrawal of additional ground waters will affect the health and best interests of the public. In granting the permit the department may impose conditions necessary to conserve the ground waters and prevent waste. In addition it may require that such water be returned to the ground in a stipulated manner.

All users of ground water in excess of 100,000 gallons per day prior to the designation as a restricted use area must file a statement with the department within ninety days after such designation.[4] Failure to file this statement declaring the daily amount of ground water used prior to such designation will result in the invalidation of the user's right to withdraw the excess amounts without a permit.

All well owners in a restricted use area must file a complete record with the department of all new wells drilled within the area.[5] The record must be filed within 30 days after the well has been completed and placed in operation

and must contain a log of the well, static water level, yield and drawdown and other pertinent information which may be required by the department.

No permit may be issued to an applicant from a restricted use area authorizing him to withdraw amounts in excess of 100,000 gallons per day unless he has title or holds a valid lease to the property from which the water is to be withdrawn.[6]

The department has authority in a restricted use area to require users of ground water in amounts in excess of 100,000 gallons per day to install meters if deemed necessary by the department to determine whether the user is withdrawing an amount in excess of that authorized by the department.[7]

In restricted use areas, the department can require the user to return wasted water to the ground, if feasible.[8] The use of ground water for cooling purposes may constitute waste if the water is not used more than once in a cooling, air conditioning, or heating system and not put to further beneficial use. Where a well is withdrawing more than 1,500 gallons per day and there is water being wasted, the department may require the owner to install such controls on the well as are necessary to diminish the daily flow to 1,500 gallons or less.

The department can adopt such rules and regulations as may be necessary to determine within reasonable limits quantities of water being removed from the ground, or for administering any of the other provisions of this act.[9]

Violators of the provisions of this act will be guilty of a misdemeanor and subject to fines of not less than $25.00 nor more than $500.00.[10] Each day such a violation occurs will constitute a separate offense.

The department may require owners of flowing wells to reduce the flow from their wells to prevent the loss or waste of potable water which is not being put to beneficial use.[11]

In order to introduce potable ground water into any underground formations containing non-potable water, a permit must be obtained from the department.[12] The permit may be issued immediately upon application unless it is determined that an investigation is necessary. The department, after investigation, may deny a permit when such practice would constitute a waste of potable ground water or threaten to impair or exhaust the supply of the area and when available non-potable waters could be used in lieu of potable waters. The use of potable water obtained from a prolific aquifer which is rapidly recharged by an adjacent permanently flowing stream is excluded from the rule of this section, provided that the operator notifies the department of any such use, including a fair estimate of the amount of water withdrawn. Any water flood project using potable water at the time of the enactment of this act, shall have the right to continue such activity, provided that should an emergency arise affecting the water supply

for household or farm use, the department may, after notice and hearing, order the water flood project to cease use of such potable ground water.

FOOTNOTES

1. Ind. Stat. Sec. 27-1303 (1960).
2. Ind. Stat. Sec. 27-1304 (1960).
3. Ind. Stat. Sec. 27-1305 (1960).
4. Ind. Stat. Sec. 27-1306 (1960).
5. Ind. Stat. Sec. 27-1307 (1960).
6. Ind. Stat. Sec. 27-1308 (1960).
7. Ind. Stat. Sec. 27-1309 (1960).
8. Ind. Stat. Sec. 27-1310 (1960).
9. Ind. Stat. Sec. 27-1312 (1960).
10. Ind. Stat. Sec. 27-1313 (1960).
11. Ind. Stat. Sec. 27-1314 (1960).
12. Ind. Stat. Sec. 27-1315 (1960).

Sec. 2. GROUND WATER LAW OF NEW JERSEY

The Division of Water Policy and Supply of the State Department of Conservation delineates areas of the state where diversion of subsurface and percolating waters exceeds or threatens to exceed the natural replenishment of such waters.[1] In areas so delineated, no person, firm, or agency of the public may divert water from subsurface or percolating sources in excess of one hundred thousand gallons per day for any purpose unless such party has obtained a permit for the withdrawal from the Division of Water Policy and Supply.[2] This permit may be refused, or if granted, may include such stipulations as may be necessary to conserve the underground waters. Any refusal to grant a permit is subject to review by the Superior Court.[3]

Any party diverting water in excess of one hundred thousand gallons per day at the time of the passage of this act may continue without obtaining a permit.[4]

When an owner abandons a well, he must notify the division and effectively seal and fill such well and test holes in accordance with the regulations of the division.[5] All abandoned wells not sealed may be ordered sealed by the division when the condition of the well endangers or threatens to endanger the underground waters by the intrusion of salt water or from any other cause. The owner of an abandoned well who fails or refuses to seal such well is liable for a monetary fine.[6]

The provisions of this act are enforceable by a proceeding in the Superior Court of New Jersey to obtain injunctive relief, or by action in the court in lieu of prerogative writ.[7]

No person may engage in well drilling in the state until he has received a license as a well driller.[8] In order to receive this license, the person must pass an examination given by the Board of Well Drillers,[9] and pay the required fee.[10]

No well may be drilled until a permit therefore has been secured from the division. The application for a permit must contain such information as the division desires, accompanied with three dollars. As a further condition to the issuance of the license, the applicant may be required to submit to the division accurate samples of the materials encountered in sinking the well. Within sixty days of the completion of the well, a report containing the log, dimensions of the well, and other pertinent data as may be required, must be given to the division.[11]

The division and the State Geologist have the power to inspect and take samples deemed necessary for the supervision of the construction and repair of wells in the state.[12] They also have the right to inspect and obtain information about wells, whether idle, in use or abandoned.

All expenses for the administration of this act are paid out of the general funds of the state within the limits of the appropriations to the department.[13]

FOOTNOTES

1. N.J.S.A. 58:4A-1 (1937).
2. N.J.S.A. 58:4A-2 (1937).
3. N.J.S.A. 58:4A-3 (1937).
4. N.J.S.A. 58:4A-4 (1937).
5. N.J.S.A. 58:4A-4.1 (1937).
6. N.J.S.A. 58:4A-4.2 (1937).
7. N.J.S.A. 58:4A-4.3 (1937).
8. N.J.S.A. 58:4A-5 (1937).
9. N.J.S.A. 58:4A-10 (1937).
10. N.J.S.A. 58:4A-11 (1937).
11. N.J.S.A. 58:4A-14 (1937).
12. N.J.S.A. 58:4A-20 (1937).
13. N.J.S.A. 58:4A-21 (1937).

Sec. 3. GROUND WATER LAW OF ILLINOIS

Sec. 3.1 In General

The Illinois law of ground water rests on Edwards v. Haeger,[1] in which the court stated:

> Water which is the result of natural and ordinary percolation through the soil is part of the land itself and belongs absolutely to the owner of the land, and, in absence of any grant, he may intercept or impede such underground percolations, though the result be to interfere with the source of supply of springs or wells on adjoining premises. Upon this proposition there is, so far as we are advised, no dissension in the decisions of courts or in the writings of the authors of textbooks.

Sec. 3.2 Water Service Districts

Any contiguous territory may be incorporated as a water authority in the following manner: Not less than 500 voters within the proposed authority must petition the local county court, stating the boundaries of the proposed authority and requesting that the question of the formation of the authority be submitted to the voters.[2] After a hearing has been held on the limits of the boundaries, the county judge must fix the boundaries and submit the question to the voters.

Every water authority is governed by a board of three trustees appointed by the county judge who declared the water authority formed. The terms of the trustees are staggered. After a term expires, the judge may appoint a successor. The trustees must be qualified voters from the district they represent.[3]

The board of trustees have the following powers:[4]

1. To make inspections of wells or other withdrawal facilities and require information from the owners or operators concerning the supply, withdrawal and use of water.

2. To require the registration of all wells or other withdrawal facilities in accordance with such forms as they deem advisable.

3. To require permits for all additional wells or withdrawal facilities or for deepening, extending or enlarging existing wells or withdrawal facilities.

4. To require the plugging of abandoned wells or the repair of any well or withdrawal facility to prevent loss of water or contamination of supply.

5. To regulate reasonably the use of water and, during periods of actual or threatened shortage, to establish limits upon or priorities as to the use of water. In determining such regulations, limitations, or priorities, the board must seek to promote the common welfare by considering the public interest, the average amount of withdrawals, relative benefits or importance

of use, and economy or efficiency of use. Appropriate consideration must also be given to users who have reduced the amount of ground water withdrawals or who have taken care to meet the increased requirements of the board by using equipment permitting the use of surface water.

6. To supplement the existing water supply or provide additional water supply by such means as may be practicable or feasible. They may acquire property or property rights either within or without the boundaries of the authority by purchase, lease, condemnation proceedings, or otherwise, and they may construct and operate wells, reservoirs, pumping stations, purification plants, infiltration pits, recharging wells, and other facilities as may be necessary to insure an adequate supply of water for the present and future needs of the authority. They have the right to sell water to municipalities or public utilities operating water distribution systems either within or without the authority.

7. To levy and collect a general tax on all of the taxable property within the limits of the authority. They may issue general obligation bonds for the purpose of acquiring necessary property or facilities. The bonds must meet certain specified requirements.

8. Before constructing any facility for providing additional water supply, the plans must be submitted to and approved by the Sanitary Water Board or its successor and all operations of such facilities must be conducted in accordance with such rules as may from time to time be prescribed by such Sanitary Water Board.

9. To have the power, by appropriate action in the circuit court of the county in which the authority is located, to restrain any violation or threatened violation of any of their orders or rules.

10. To provide by ordinance that the violation of any provision of any rule or ordinance adopted by the board shall constitute a misdemeanor subject to a fine in any competent court not to exceed $50.00 for each act of violation. Each day's violation shall constitute a separate offense.

Any person, firm or corporation using ground water at the time of the establishment of a water authority has the right of continuing to take, from the same source, the quantity of water equal to the rated capacity of the equipment used to obtain water at the time of the establishment of the water authority.[5]

All final administrative decisions of any board of trustees are subject to judicial review pursuant to the provisions of the "Administrative Review Act", approved May 8, 1945.[7]

The Water Authorities Act does not apply to water used for agricultural purposes, farm irrigation, or water used for domestic purposes where no more

than four families are supplied from the same well or other immediate source.[8]

Additional territory may be joined to a water authority by following the required procedures.[9]

All costs and expenses of the authority are paid for by the issuance of revenue bonds of the authority, payable solely from the income and revenue derived from the operation of the water supply or other waterworks properties of the authority.[10]

FOOTNOTES

1. 180 Ill. 99, 54 N.E. 176 (1899); for a discussion of the Illinois water law, See, J.E. Cribbet, Water...as a Species of Private Property, 47 Ill. Bar J. 449 (1959).
2. Ill. Stat. Ann., ch. 111 2/3, Sec. 223 (1954).
3. Ill. Stat. Ann., ch. 111 2/3, Sec. 225 (1954).
4. Ill. Stat. Ann., ch. 111 2/3, Sec. 228 (1954).
5. Ill. Stat. Ann., ch. 111 2/3, Sec. 229 (1954).
6. Ill. Stat. Ann., ch. 110, Sec. 264 et seq. (1954).
7. Ill. Stat. Ann., ch. 111 2/3, Sec. 230 (1954).
8. Ill. Stat. Ann., ch. 111 2/3, Sec. 231 (1954).
9. Ill. Stat. Ann., ch. 111 2/3, Sec. 232 (1954).
10. Ill. Stat. Ann., ch. 111 2/3, Sec. 233 (1954).

Sec. 4. GROUND WATER LAW OF COLORADO

All users of ground water must file a statement of their use with the state engineer, setting forth such information as the name and address of the user, the location of the well, the nature and extent of use, the quantity of ground water used, the date when work on such facilities began, the date when water was first applied to a beneficial use, and other facts reasonably necessary to define clearly the purpose and extent of the use.[1] The state engineer then issues a permit for each use.

A Ground Water Commission consisting of eight members, appointed by the governor and confirmed by the senate,[2] may designate, as "tentatively critical ground water districts," any areas where, from the information gathered, the withdrawal of ground water appears to have approached, reached, or exceeded the normal annual rate of replenishment.[3] The commission shall immediately close all areas designated as "tentatively critical ground water districts" to further development of ground water resources.[4]

At any time after the designation of a "tentatively critical ground water district," the commission shall, upon its own initiative, at the unanimous request of the local advisory board, or upon petition of two-thirds of the resident landowners actually using ground water, remove or modify any restriction or remove the designation of the area as a "tentatively critical ground water district."[5]

The commission may, on its own initiative, at the request of the state engineer, or upon petition of what the commission considers to be a substantial number of the ground water users within a district or within any area of the state, review available information and declare such area to be a "tentatively critical ground water district" and set the boundaries thereof.[6]

The commission shall conduct an election to select a District Advisory Board of five members to cooperate with the commission and the state engineer in promoting and maintaining legally equitable and efficient diversion and use of the ground water in such restricted district.[7]

Before new wells may be drilled, or the supply of water taken from existing wells increased, the user must apply to the state engineer for a permit to use ground water.[8] This permit, issued automatically in areas other than those designated as critical, contains the conditions imposed by the state to ensure the prevention of waste or pollution of water or injury to existing rights.[9]

Exempted from the restrictions of this article are wells used solely for stock watering purposes, wells used for domestic purposes having discharge pipes of two inches or less, and all artesian wells with discharge pipes not exceeding three inches in diameter.[10]

The state engineer in cooperation with the commission shall have power to regulate the drilling and construction of all wells in the state to the extent necessary to prevent the waste of water and the injury to or destruction of other water resources, and shall require well drillers and private drillers to file a log of each well drilled. He shall adopt such rules and regulations as are necessary to accomplish the purposes of this section.[11]

FOOTNOTES

1. Colo. R.S.A. Sec. 147-19-2 (1) (1953).
2. Colo. R.S.A. Sec. 147-19-3 (1) (1953).
3. Colo. R.S.A. Sec. 147-19-3 (7) (1953).
4. Colo. R.S.A. Sec. 147-19-3 (9) (1953).
5. Colo. R.S.A. Sec. 147-19-3 (11) (1953).
6. Colo. R.S.A. Sec. 147-19-3 (12) (1953).
7. Colo. R.S.A. Sec. 147-19-4 (1953).
8. Colo. R.S.A. Sec. 147-19-5 (1) (1953).
9. Colo. R.S.A. Sec. 147-19-5 (2) (1953).
10. Colo. R.S.A. Sec. 147-19-8 (1953).
11. Colo. R.S.A. Sec. 147-19-10 (1953).

Sec. 5. GROUND WATER LAW OF FLORIDA

The purpose of Florida's Water Resources Law is to effect the maximum beneficial utilization, development and conservation of the water resources of the state in the best interest of all its people. The water law is especially aimed at preventing the waste and unreasonable use of the state's waters.[1] It includes legislation covering surface and ground water.[2]

The Department of Water Resources of the State Board of Conservation has the following powers and duties:[3]

1. To conduct with the Division of Geology and other agencies a continuous study to determine the most advantageous and best methods for obtaining maximum beneficial utilization, development, and conservation of Florida's water resources to make periodic reports to the Board of Conservation of its findings and recommendations for transmission to the legislature;

2. To collect and analyze scientific and factual data obtained from the federal and state agencies for use in administering the water resources law;

3. To cooperate and exchange ideas with water management districts and governmental agencies;

4. To prepare for the public current and useful information on the activities and findings of the board and cooperating agencies;

5. To determine by continuous study the areas of the state in which salt water intrusion is a threat, or may become a threat, to the fresh water resources, and report its findings to boards of county commissioners and to the public where such studies are made.

The State Board of Conservation has the power to authorize the capture, storage and use of water of any watercourse only in excess of the average minimum flow at the point of capture, except in those instances where hydrologic studies indicate that lowering the ground-water level below the average minimum elevation at the point of capture will not be detrimental to other users, or the water resources of the state. The board has the power to authorize the capture, storage and use of ground water only in excess of the average minimum elevation at the point of capture. It may authorize the diversion of such waters beyond riparian or overlying land. The capture, storage, use, or diversion of water from a surface or ground water resource must not interfere with the reasonable uses existing at the time such action started.[4]

The State Board of Conservation may create or dissolve water regulatory districts anywhere within the state. A water management district may also create or dissolve regulatory districts within their jurisdiction.[5] No district may be created or dissolved except pursuant to notice and hearing. Upon the creation of a water regulatory district, a governing board will be appointed.[6]

Local governing boards of the water regulatory district may:[7]

1. Establish regulations affecting the use of water as conditions warrant and forbid the construction of new diversion facilities or wells, the initiation of new water uses, or modification of any existing uses or storage facilities within the affected area;

2. Regulate the use of water within the area by apportioning, limiting, or rotating uses of water, or by preventing those uses which the local board finds have ceased to be reasonable or beneficial;

3. Make regulations and orders necessary for the preservation of the public interest and of affected water users.

The local boards must fully protect the existing rights to water insofar as is consistent with the purpose of this law.[8] No regulation or order may require any modification of existing use of water unless it is shown that the use to be modified is detrimental to other users or to the water resources of the state.[9]

The present property rights of persons owning land and exercising existing water rights must be respected and not restricted without due process of law nor divested without payment of just compensation. There is no authority to divert water from springs now developed and operated for recreational purposes or as tourist attractions to a degree that will materially interfere with such use.[10]

The State Water Resources Appeal Board, consisting of five residents of Florida appointed by the governor, may review any final order of a local board for an aggrieved party.[11] None of the appeal board members may be an officer or employee of the state. One member must be a qualified geologist with hydrological training or experience, one must be a qualified engineer with hydrological training or experience, and one must be a member of the Florida bar.[12]

The appeal board reviews the record on appeal for the purpose of determining whether the order entered by the local board conforms with the provisions and purposes of this act and that the order is in accordance with the weight of the evidence.[13] The board may affirm, modify, or rescind the order, or remand it to the local board for further proceedings.[14] After the appeal board has heard and decided the case, any aggrieved person may appeal the decision to the proper district court.[15]

The Board of Conservation, exercising general supervisory authority over all water regulatory districts, may review and modify or rescind any regulation, order, or budget adopted by a local board to insure compliance with the provisions and purposes of the act.[16]

If a water regulatory district is created within a water management district, the cost and expenses incurred in organizing and administering the regulatory

district must be borne by the water management district. If a water regulatory district is created outside a water management district, such cost and expenses incurred must be paid out of the flood control account of the Board of Conservatio

When the Board of Conservation determines, after a public hearing,[18] that salt water intrusion has become a matter of emergency proportions, it may establish generally along the seacoast a salt water barrier line. There may be no canal built or enlarged and no natural stream deepened or enlarged inland of the barrier line which may discharge into tidal waters not having a dam or spillway which prevents the movement of salt water inland of the barrier line.[19]

Application by a board of county commissioners, the governing board of a water management district, a municipality, or a water district, for the establishment of a salt water barrier line shall be made by adoption of an appropriate resolution, agreeing to:

(a) Reimburse the Board of Conservation the cost of determining the location of the salt water barrier line, including, but not limited to, subsurface exploration by drilling;[20]

(b) Require compliance with the provisions of the act by anyone seeking authority to discharge surface or subsurface drainage into tidal waters.[21]

FOOTNOTES

1. F.S.A. Sec. 373.101 (1960).
2. F.S.A. Sec. 373.081 (1960).
3. F.S.A. Sec. 373.131 (1960).
4. F.S.A. Sec. 373.141 (1960).
5. F.S.A. Sec. 373.142(1) (1960).
6. F.S.A. Sec. 373.144(1) (1960).
7. F.S.A. Sec. 373.171 (1960).
8. F.S.A. Sec. 373.171(2) (1960).
9. F.S.A. Sec. 373.171(3) (1960).
10. F.S.A. Sec. 373.101 (1960).
11. F.S.A. Sec. 373.172 (3) (a) (1960).
12. F.S.A. Sec. 373.172 (1) (1960).
13. F.S.A. Sec. 373.172 (3) (c) (1960).
14. F.S.A. Sec. 373.172 (3) (d) (1960).
15. F.S.A. Sec. 373.173 (1960).
16. F.S.A. Sec. 373.174 (1960).
17. F.S.A. Sec. 373.182 (1960).
18. F.S.A. Sec. 373.194 (4) (1960).
19. F.S.A. Sec. 373.194 (1) (1960).
20. F.S.A. Sec. 373.194 (2) (a) (1960).
21. F.S.A. Sec. 373.194 (2) (b) (1960).

Sec. 6. GROUND WATER LAW OF CALIFORNIA

Sec. 6.1 In General

The California ground water law is primarily judicial. The legislature has followed a hands-off policy, leaving the development of the ground water law almost entirely to the courts.[1]

Ground water is classified either as an underground stream or as percolating water. The riparian and appropriation doctrines apply to both surface and underground watercourses, while the correlative and appropriation doctrines apply to percolating ground waters.[2]

Every landowner has the right to use the ground water underlying his land to the full extent of his reasonable beneficial needs, unless this right has been divested by some legal process such as a grant, prescription, or condemnation. If the water supply is insufficient to satisfy all reasonable needs, it may be equitably apportioned by court order.[3] No overlying owner has priority over any other person in the use of water merely because he used the water first.

Nonoverlying uses may attach by priority of appropriation to any surplus that may exist in the ground water supply.[4] This right to the surplus water is protected the same as the overlying use, discussed in the preceding paragraph. The taking of non-surplus water may ripen into a prescriptive right.[5] Thus, a water user may invade the rights of overlying owners and prior appropriators and acquire a protected water right by the use of non-surplus water for a certain period of time. The prescriptive period starts to run at the commencement of the overdraft, which may occur earlier than the actual deprivation of water, since at the commencement of overdraft there may still be an adequate supply of underground water for all present users.

FOOTNOTES

1. W. A. Hutchins, California Ground Water: Legal Problems, 45 Cal. L. Rev. 688 (1957).
2. Katz v. Walkinshaw 141 Cal. 116, 74 Pac. 766 (1903).
3. Burr v. Maclay Rancho Water Co. 154 Cal. 428, 98 Pac. 260 (1908).
4. See note 2, supra.
5. City of Pasadena v. City of Alhambra 33 Cal. 2d 908, 207 Pac. 2d 17 (1949).

Sec. 6.2 The Orange County Water District

The statutory powers of the Orange County Water District include the right to acquire property by all means normally available to individuals as well as the right of eminent domain. The district's right of eminent domain is limited, however, in that it cannot take water, water rights, reservoirs, pipelines, water distributing systems, or power plants, any of which are already devoted to

beneficial or public use and located within the watershed of the Santa Ana River. Any property condemned must not already be in use by other corporations, municipalities, districts or individuals for similar purposes. The power to acquire property may be exercised both within and without the district. The district can acquire and operate necessary water works and other works, machinery and facilities, canals, conduits, waters, water rights, spreading grounds, lands, rights and privileges useful or necessary to replenish the underground water basin within the district or to augment the common water supplies of the district. The district also has power to store water in underground water basins or reservoirs within or outside of the district, to purchase and import water into the district, and to conserve water within or without the district; to sell water imported from outside the district for beneficial use within the district at such rates as can be determined by the board of directors of the district, provided that such rates must not be less than the cost of the water, including delivery. The district is further empowered to bear all costs of protecting the water rights useful to lands within the district and of preventing pollution or contamination of the water supply. One of the most significant of the district's powers is that it may cause assessments or charges to be levied to accomplish the purposes of the act establishing the district.[1] The powers and duties of the board are exercised and performed by elected directors.[2]

To provide funds necessary to initiate, carry on and complete any of the projects and purposes for which the district is organized, its directors must provide the board of supervisors of Orange County with a budget estimate.[3] The Board of Supervisors, at the time of levying annual county taxes must levy a general assessment sufficient to raise the amount specified in the estimates of the district directors.[4]

If the board of directors finds and determines that an overdraft, either annual or accumulated, exists, then the board may levy and assess a charge or replenishment assessment against all persons operating water producing facilities and producing water during the ensuing water year, which assessment or charge shall be computed and fixed at a uniform rate per acre-foot of such water production.

The total of the replenishment assessment levied in any year must not exceed an amount of money found to be necessary to purchase sufficient water to replenish the average annual overdraft for the immediate past 10 years plus an additional amount of water sufficient to eliminate over a period of not less than 10 years nor more than 20 years, the accumulated overdraft. However, the assessment in any year cannot exceed $5.50 per acre-foot of water produced except upon the vote of eight directors of the district.[5]

If necessary for the protection of the water supply and upon the vote of eight members of the board, an additional assessment may be levied on all persons operating water-producing facilities for all purposes other than irrigation. This assessment is not subject to the limitations imposed on the initial assessment.[6]

FOOTNOTES

1. Cal. Stat. ch. 770, Sec. 2 (1953).
2. Cal. Stat. ch. 770, Sec. 3,4,5,12 (1953).
3. Cal. Stat. ch. 770, Sec. 17 (1953).
4. Cal. Stat. ch. 770, Sec. 18 (1953).
5. Cal. Stat. ch. 770, Sec. 27 (1953).
6. Cal. Stat. ch. 770, Sec. 27.1 (1953).

Sec. 6.3 The Alameda County Flood Control and Water Conservation District Act

The purposes of this act are to provide for the control of flood waters and to conserve such waters for beneficial uses by spreading, storing, retaining, and causing them to percolate into the soil. These powers may be exercised within or without the district. In addition, this act is directed at preventing the waste of water and establishing recreational facilities.[1]

The district, a body corporate and politic, has the following powers:[2]

1. To acquire and alienate by any means real and personal property and to construct, maintain, and repair all works, within or without the district, which are necessary or convenient to the full exercise of its powers;

2. To store water in surface or underground reservoirs within or without the district; to conserve and reclaim water for present and future use within the district; to appropriate and acquire water and water rights, import water into the district and conserve within or without the district, water for any purpose useful to the district; to maintain any action, assuming the costs thereof, affecting ownership or use of water rights, contamination, and pollution of the water supply; to prevent interference with or diminution of, or to declare rights in the natural flow of surface or subterranean supplies of water useful for any purpose of the district or of common benefit to the lands or its inhabitants within the district; provided that the district does not have the right to pay the costs incurred or to intervene in any action between the owners of lands or water rights which do not affect the interest of the district;

3. To control the flood and storm waters of the district and conserve them for useful purposes by spreading, storing, retaining and causing them to percolate into the soil within or without the district, or to conserve in any manner all or any of such waters and protect from damage by floods the water-

courses, watersheds, harbors, public highways, life and property in the district. None of the provisions of this act shall preclude the exercise by any other political subdivision that may exist within the district from exercising its powers, although such powers may be of the same nature as the powers of the district. Such other political subdivision may, by written agreement with the district, provide for the use, or joint use, of property or facilities in which such other political subdivision has an interest, or for the use, or joint use, of property or facilities in which the district has an interest;

4. To cooperate and act in conjunction with the State of California or any of its engineers, officers, boards, commissions, departments, or agencies, or with any public or private corporation, or with the County of Alameda, in controlling flood waters and protecting life or property therein, or for the purpose of conserving the waters for beneficial use within the district and carrying out plans in accomplishing the purposes of the act;

5. To carry on all types of investigations pertaining to water supply, water rights, control of floods and use of water, both within and without the district;

6. To enter upon any land to make surveys and locate the necessary works of improvement and the lines for channels, conduits, canals, pipelines, roadways, and other rights of way; to acquire by any legal means, including condemnation, all lands, water, water rights, and other property necessary or convenient for the construction, use, and maintenance of the works, including the capital stock of any water company, domestic or foreign, owning water or water rights and other works; to do any act necessary for the performance of any agreement with a political body, firm or individual, for the joint acquisition, construction, use, and maintenance of any rights, works, or other property of any kind which might be lawfully acquired by the Alameda County Flood Control and Water Conservation District; to acquire the right to store water in any reservoir, or to carry water through any canal or conduit not owned or controlled by the district;

7. To incur indebtedness, issue bonds and cause taxes or assessments to be levied to pay any obligation of the district;

8. To take, by eminent domain, if necessary, any property needed to carry out the purposes of this act whether or not such property is already devoted to any public use; provided that the district will also incur the cost of relocation of any structure of any public utility which is required to be moved to a new location; provided further, that before property already devoted to a public use is taken, a court of competent jurisdiction must find that the taking is for a more necessary public use than that to which it has already been appropriated; provided further that no property will be taken which is being

used by any city, county, or municipal utility district. No water or water right may be taken without adequate compensation being paid to the existing owner.

The Board of Supervisors of Alameda County, acting as the ex officio Board of Supervisors of the Alameda County Flood Water Conservation District, must adopt all the legislative acts for the district.[3]

The board must appoint a nine man commission to assist and advise it in the institution of projects.[4] It has the power to make and enforce all regulations necessary for the administration and government of the district.[5] In addition, the board may employ competent registered civil engineers to investigate and devise plans to accomplish the purposes of the district.[6] The board determines which projects or works of improvement will be carried out.[7] All employees of Alameda County hold positions in the district similar to their positions in the county.[8]

The board may institute projects for single zones and joint projects for two or more zones after a hearing to determine whether the projects are feasible. Interested persons may oppose the projects at the hearing.[9]

The board has the power:[10]

1. To levy ad valorem taxes or assessments upon all property to pay the general administrative costs and expenses of the district;

2. To levy taxes or assessments upon all property in each or any participating zone to pay the cost of constructing, maintaining, operating, or extending all works established or to be established, according to benefits to be derived by the zones. It is declared that for the purpose of any tax or assessment levied under this subdivision, all property within a given zone is equally benefited;

3. To levy taxes or assessments upon all property in each zone according to the special benefits stemming to specific properties, to pay the cost of a project designed to give special benefits;

The board may call a special election in participating zones to determine whether bonds should be issued for amounts and purposes determined by the board. The principal and interest must be paid from revenue derived from annual taxes levied upon the property situated within the participating zones, and all such property will remain liable to be taxed for such payments as provided in this act.[11] These bonds will act as a lien upon all property in the zone of issuance.[12] All property exempt from taxation for county purposes under the provisions of the Revenue and Taxation Code of the State of California is exempt from taxation and assessment for the purposes of this act.[13]

A right of way over and across public lands of the State of California, not otherwise in use, is granted Alameda County Flood Control and Water

Conservation District for the location, construction and maintenance of flood control channels, ditches, waterways, conduits, canals, storm dikes, embankments, and protective works. No right of way may exceed in length or width that which is necessary for the construction and protection of such works.[14]

FOOTNOTES

1. Cal. Stat. ch. 1275, Sec. 4 (1949).
2. Cal. Stat. ch. 1275, Sec. 5 (1949).
3. Cal. Stat. ch. 1275, Sec. 6 (1949).
4. Cal. Stat. ch. 1275, Sec. 6 (1949).
5. Cal. Stat. ch. 1275, Sec. 8 (1949).
6. Cal. Stat. ch. 1275, Sec. 9 (1949).
7. Cal. Stat. ch. 1275, Sec. 10 (1949).
8. Cal. Stat. ch. 1275, Sec. 7 (1949).
9. Cal. Stat. ch. 1275, Sec. 11 (1949).
10. Cal. Stat. ch. 1275, Sec. 12 (1949).
11. Cal. Stat. ch. 1275, Sec. 13 (1), (2) (1949).
12. Cal. Stat. ch. 1275, Sec. 16 (1949).
13. Cal. Stat. ch. 1275, Sec. 18 (1949).
14. Cal. Stat. ch. 1275, Sec. 27 (1949).

Sec. 7. GROUND WATER LAW OF NEBRASKA

Sec. 7.1 Irrigation Wells

The legislature declared that, since complete information of ground water use is required for the future well being of the state, the registration of all irrigation wells would be required.[1] Also, since the drilling of irrigation wells without regard to spacing is detrimental to the public welfare, the legislature declared that no irrigation well shall be drilled within six hundred feet of any other irrigation well except any well the water from which is used solely for domestic, culinary or stock use.[2]

The Director of Water Resources may grant a special permit to an applicant to drill irrigation wells without regard to the spacing requirements when, in his opinion, the size, shape, and irrigation needs of the property, the known ground water supply, and the effect on the ground water supply, considered together, warrant the issuing of the special permit.[3] The spacing requirements will not apply to the location of more than one irrigation well by a land-owner on his own farm, as long as each well is at least six hundred feet from any other irrigation well located on a neighboring farm.[4]

Domestic uses have preference over any other type of use, followed by agricultural uses, and then manufacturing or industrial uses.[5]

Sec. 7.2 Ground Water Conservation Districts

In order to form a Water Conservation District, after the advice of the Director of Water Resources and the Director of the Conservation and Survey Division of the University of Nebraska has been received on a proposal for the formation of a ground water conservation district,[6] a petition for such formation must be filed by a certain percentage of the property owners with the county clerk of the county in which the proposed district is to be located.[7] The petition shall include, among other things, the boundaries of the proposed district and the names, addresses, and terms of office of the proposed directors.[8]

The county board shall set a date for hearing the petition and cause notice of such hearing to be published once each week for three weeks in a newspaper of general circulation throughout the area of the proposed district.[9]

At the time set for such hearing the county board will hear all objections thereto and set the limits of the district. The action of the county board may be reviewed by the district court in error proceedings.[10]

Ten days after the announcement of the county board's action, the petition shall be put to a popular vote and if fifty-five per cent of the landowners vote in favor of the petition, then the water conservation district is formed.[11]

The district will constitute a body politic with power to tax[12] and may aid or conduct, alone or in conjunction with other districts, any program of

water conservation which it desires.[13] It may contract for the performance of the activities mentioned. Further, the district may institute corrective measures to ensure the proper conservation of ground water within the district.[14]

> Comment: "No ground water conservation district has been organized yet in Nebraska. It is foreseeable that if pumpage continues to increase in some areas, the Nebraska well spacing regulations alone may prove ineffective to prevent falling water tables and increased pumping costs during a series of dry years. Large investments in irrigation equipment and land preparation would then be jeopardized. The question arises whether local farmers would impose controls upon themselves in such a situation. The likelihood is somewhat doubtful since well irrigation in the state has resulted almost entirely from investment of private capital, and farm owners and operators therefore are reluctant to recognize that control is a matter of state wide concern rather than an entirely local matter."[15]

FOOTNOTES

1. Neb. R. S. Supp. Sec. 46-601 (1959).
2. Neb. R. S. Supp. Sec. 46-608, 609 (1959).
3. Neb. R. S. Supp. Sec. 46-610 (1959).
4. Neb. R. S. Supp. Sec. 46-611 (1959).
5. Neb. R. S. Supp. Sec. 46-613 (1959).
6. Neb. R. S. Supp. Sec. 46-615 (1959).
7. Neb. R. S. Supp. Sec. 46-616 (1959).
8. Neb. R. S. Supp. Sec. 46-617 (1959).
9. Neb. R. S. Supp. Sec. 46-618 (1959).
10. Neb. R. S. Supp. Sec. 46-619 (1959).
11. Neb. R. S. Supp. Sec. 46-620-623 (1959).
12. Neb. R. S. Supp. Sec. 46-631 (1959).
13. Neb. R. S. Supp. Sec. 46-629 (1959).
14. Id.
15. Harnsberger, Nebraska Ground Water Law Problems, 42 Neb. L. Rev. 721 (1963).

Sec. 8. NEW YORK-WATER RESOURCES PLANNING AND DEVELOPMENT

Any county or municipality may authorize a petition to be sent to the New York State Water Resources Commission requesting a survey and study of the water resources of a specified region lying within the petitioner's jurisdiction. The purpose of the work is to prepare a comprehensive plan for the conservation, development and beneficial use of the water resources. Each petition must be approved by the board of supervisors of each county wholly or partly within the specified region.[1]

After serving notice to the public,[2] to stipulate state governmental agencies, and private concerns requesting it,[3] the Resources Commission, in a public hearing, must take testimony and hear arguments on the petition.[4] Within thirty days of the public hearing, briefs may be submitted to the commission either in favor or in opposition to the petition.[5] If the proposal is found to be in the public interest, the commission must determine the region of the state to be included in the study and comprehensive plan, the minimum number of specific purposes for which the planning should be undertaken, the extent of the study, survey and planning involved, and an estimate of the cost of the survey.[6] The petitioner has six months from this determination of the commission to decide whether to proceed with the project. One or more extensions of six months may be given to the petitioner to make its decision.[7]

The commission must appoint a Regional Planning and Development Board,[8] consisting of seven members,[9] who, after extensive research, will prepare comprehensive plans for the conservation, development and utilization of regional water resources.[10] This plan must be submitted to the commission for approval.

The plans must show the available and feasible sites for the installation and operation of protective and regulatory works, and the benefits estimated to be derived from such operations.[11] The location and character of the works and of the property required to be taken or damaged by such installation, together with the cost of the project, must be included. The plans must also: estimate the minimum annual amount of water which would be made available by the plan;[12] provide for the storage of sufficient water for distribution and use as contemplated by this act;[13] and list possible sources of income from operation of the works.[14]

The commission must hold a public hearing on the merits of the plans after giving public notice and receiving written objections.[15] From the evidence submitted at the hearing, the commission must determine whether the plan will comply with this act,[16] conflict with plans of any other regional water resources planning and development board, and be just and equitable to other interests in the state.[17] The commission may reject or adopt the plan or remit it to the board for further consideration.[18] If the plan is adopted, the commission must

Sec. 8. NEW YORK-WATER RESOURCES PLANNING AND DEVELOPMENT

Any county or municipality may authorize a petition to be sent to the New York State Water Resources Commission requesting a survey and study of the water resources of a specified region lying within the petitioner's jurisdiction. The purpose of the work is to prepare a comprehensive plan for the conservation, development and beneficial use of the water resources. Each petition must be approved by the board of supervisors of each county wholly or partly within the specified region.[1]

After serving notice to the public,[2] to stipulate state governmental agencies, and private concerns requesting it,[3] the Resources Commission, in a public hearing, must take testimony and hear arguments on the petition.[4] Within thirty days of the public hearing, briefs may be submitted to the commission either in favor or in opposition to the petition.[5] If the proposal is found to be in the public interest, the commission must determine the region of the state to be included in the study and comprehensive plan, the minimum number of specific purposes for which the planning should be undertaken, the extent of the study, survey and planning involved, and an estimate of the cost of the survey.[6] The petitioner has six months from this determination of the commission to decide whether to proceed with the project. One or more extensions of six months may be given to the petitioner to make its decision.[7]

The commission must appoint a Regional Planning and Development Board,[8] consisting of seven members,[9] who, after extensive research, will prepare comprehensive plans for the conservation, development and utilization of regional water resources.[10] This plan must be submitted to the commission for approval.

The plans must show the available and feasible sites for the installation and operation of protective and regulatory works, and the benefits estimated to be derived from such operations.[11] The location and character of the works and of the property required to be taken or damaged by such installation, together with the cost of the project, must be included. The plans must also: estimate the minimum annual amount of water which would be made available by the plan;[12] provide for the storage of sufficient water for distribution and use as contemplated by this act;[13] and list possible sources of income from operation of the works.[14]

The commission must hold a public hearing on the merits of the plans after giving public notice and receiving written objections.[15] From the evidence submitted at the hearing, the commission must determine whether the plan will comply with this act,[16] conflict with plans of any other regional water resources planning and development board, and be just and equitable to other interests in the state.[17] The commission may reject or adopt the plan or remit it to the board for further consideration.[18] If the plan is adopted, the commission must

recommend which public or private corporations, or agencies of the state, existing or proposed, would be best qualified to carry out the project.[19]

The commission, after public hearing, must approve the specific plans of the board before any work is undertaken.[20] The specific plans must be favorable to the public interest and consistent with the general plan already approved by the commission.

Any municipality may petition the commission, requesting that the general plan be modified or rescinded.[21] After public hearing, it may accept or reject the petition. The commission, on its own motion, and after a public hearing, may also alter or rescind the project.[22]

Of the total expenses incurred by the commission, twenty-five percent must be paid by the county benefiting from the plan.[23] If more than one county is involved, this charge may be apportioned among them.

FOOTNOTES

1. N. Y. Stat. Sec. 436 (1) (Supp. 1963).
2. N. Y. Stat. Sec. 436 (2) (Supp. 1963).
3. N. Y. Stat. Sec. 436 (3) (Supp. 1963).
4. N. Y. Stat. Sec. 436 (4) (Supp. 1963).
5. N. Y. Stat. Sec. 436 (5) (Supp. 1963).
6. N. Y. Stat. Sec. 436 (6) (Supp. 1963).
7. N. Y. Stat. Sec. 436 (7) (Supp. 1963).
8. N. Y. Stat. Sec. 437 (1) (Supp. 1963).
9. N. Y. Stat. Sec. 437 (2) (Supp. 1963).
10. N. Y. Stat. Sec. 437 (16) (Supp. 1963).
11. N. Y. Stat. Sec. 438 (1) (b) (Supp. 1963).
12. N. Y. Stat. Sec. 438 (1) (c) (Supp. 1963).
13. N. Y. Stat. Sec. 438 (1) (e) (Supp. 1963).
14. N. Y. Stat. Sec. 438 (1) (g) (Supp. 1963).
15. N. Y. Stat. Sec. 438 (2) (Supp. 1963).
16. N. Y. Stat. Sec. 438 (3) (a) (Supp. 1963).
17. N. Y. Stat. Sec. 438 (3) (b) (Supp. 1963).
18. N. Y. Stat. Sec. 438 (3) (c) (Supp. 1963).
19. N. Y. Stat. Sec. 438 (3) (d) (Supp. 1963).
20. N. Y. Stat. Sec. 438 (4) (Supp. 1963).
21. N. Y. Stat. Sec. 438 (5) (Supp. 1963).
22. N. Y. Stat. Sec. 438 (6) (Supp. 1963).
23. N. Y. Stat. Sec. 439 (5), 440 (2) (Supp. 1963).

Sec. 9. GROUND WATER LAW OF TEXAS

Ground water districts may be created for the conservation, preservation, protection, recharging and prevention of waste of the underground water of the state.[1] All districts must be coterminus with an underground water reservoir or a subdivision thereof.[2]

A petition for the organization of a water control and improvement district must be filed with the Board of Water Engineers,[3] who are appointed by the governor, and must be signed by a majority in number of the landowners, plus the owners of a majority in value of the lands within the district; however, it is sufficient if the petition is signed by at least fifty landowners.[4] Upon receipt of the petition, it is the duty of the Board of Water Engineers, after notice and hearing, to designate the area described in the petition as an Underground Water Conservation District. When the land to be included within the district lies within one county, the county commissioners' court, after a hearing, may order the formation of the district; however, this is done by the State Board of Water Engineers, when the land to be included is in two or more counties.[5,6]

Such districts are given the power: (1) to formulate and enforce rules and regulations for the conserving, preserving and recharging of an underground reservoir; (2) to formulate rules to prevent waste of the underground water; (3) to require drilling permits and to issue such subject to terms as will reduce waste; (4) to provide for the spacing of wells and the rate of production therefrom in order to prevent waste; (5) to require records to be kept and reports to be made of the drilling of wells and withdrawals therefrom; to require drillers' logs to be kept and a copy thereof sent to the district; (6) to acquire lands for the erection of dams, draining of designated areas and installation of pumps and other equipment necessary to recharge an underground water reservoir; but no such district may engage in the sale or distribution of surface or underground water for any purpose; (7) to cause surveys to be made of the underground water to determine the quantity available and recharges needed; (8) to develop comprehensive plans for the most efficient use of the ground water to carry out research projects, develop information, and determine limitations, if any, which should be made on the withdrawal of underground water; to collect information regarding the use and practicability of recharge of underground water; and (9) to enforce by court action the rules and regulations adopted by the district.[7]

The underground water belongs to the owner of the land overlying such water and nothing in the statute is to be construed to deprive him of this property right.[8] A district has no authority to determine priorities between users or to prorate underground water in the event of shortage.[9]

Nothing in this statute authorizes the requiring of a permit for the

drilling or producing of a well which will not produce in excess of one hundred thousand gallons of underground water per day.[10] Likewise, there is no restriction on the production of less than one hundred thousand gallons of ground water per day.[11]

Any interested person, firm, or association of persons dissatisfied with the provisions of the act or any regulations or orders promulgated by a district have the right to file a suit in a competent court of the State of Texas, to test the validity of the act or any orders of the district.[12]

No district has the power to levy or collect a tax for any purpose to exceed fifty cents (.50) on the One Hundred Dollars ($100) assessed valuation on property in the district subject to taxation.[13]

Each district has five directors. Each director must be a resident citizen of the state and own land subject to taxation in the district. The board of directors is the managing body in charge of all the business and affairs of the district.[14] There is an annual general election in each district of two directors in one year and three directors in the next year.[15]

The directors may, in their discretion, award use of waters of the district in the following order of preference and superiority: (1) domestic and municipal use; (2) industrial use, other than the development of hydroelectric power; (3) irrigation; (4) development of hydroelectric power; (5) pleasure and recreation.

If the welfare of the district requires, the directors may withdraw water from an inferior use and appropriate it to a superior use through condemnation proceedings.[16]

FOOTNOTES

1. Tex. Rev. Stat. Ann. art. 7880-3c, B (1951).
2. Tex. Rev. Stat. Ann. art. 7880-3c, C (1951).
3. Tex. Rev. Stat. Ann. art. 7475 et. seq (1951).
4. Tex. Rev. Stat. Ann. art. 7880-10 (1951).
5. Tex. Rev. Stat. Ann. art. 7880-3c, C (1951).
6. Tex. Rev. Stat. Ann. art. 7880-13 (1951).
7. Tex. Rev. Stat. Ann. art. 7880-3c, B (1951).
8. Tex. Rev. Stat. Ann. art. 7880-3c, D (1951).
9. Tex. Rev. Stat. Ann. art. 7880-3c, D (1) (1951).
10. Tex. Rev. Stat. Ann. art. 7880-3c, D (4) (b) (1951).
11. Tex. Rev. Stat. Ann. art. 7880-3c, D (4) (c) (1951).
12. Tex. Rev. Stat. Ann. art. 7880-3c, F (1951).
13. Tex. Rev. Stat. Ann. art. 7880-3c, G (1951).
14. Tex. Rev. Stat. Ann. art. 7880-36 (1951).
15. Tex. Rev. Stat. Ann. art. 7880-37 (1951).
16. Tex. Rev. Stat. Ann. art. 7880-4a (1951).

CHAPTER 1: RIGHTS OF PROPERTY OWNERS, IRRIGATION, AND DRAINAGE

INTRODUCTION

The following compilation of statutory materials and jurisprudence is intended to serve principally as a research tool in the event that it becomes necessary to evaluate legislation or consider some other legal solution as a result of the study of salt water intrusion problems in the Baton Rouge area. This compilation includes all discoverable statutes relating to water use and conservation and relevant cases decided by Louisiana courts. In some instances statutes are not quoted in full in the interest of saving space. Nevertheless, these materials should provide a complete source of all the raw materials necessary to research in Louisiana water law.

CHAPTER 1: RIGHTS OF PROPERTY OWNERS, IRRIGATION, AND DRAINAGE

Sec. 1. Ownership of Surface Water

Sec. 1.1 Non-Navigable Waters

(Louisiana Civil Code)

Art. 450: Things, which are common, are those the ownership of which belongs to nobody in particular, and which all men may freely use, conformably with the use for which nature has intended them; such as air, running water, the sea and its shores.

Art. 482: Among those which are not susceptible of ownership, there are some which can never become the object of it; as things in common, of which all men have the enjoyment and use.

There are things, on the contrary, which, though naturally susceptible of ownership, may lose this quality in consequence of their being applied to some public purpose, incompatible with private ownership; but which resume this quality as soon as they cease to be applied to that purpose; such as the high roads, streets and public places.

Art. 505: The ownership of the soil carries with it the ownership of all that is directly above and under it.

The owner may make upon it all the plantations, and erect all the buildings which he thinks proper, under the exceptions established in the title: Of Servitudes.

He may construct below the soil all manner of works, digging as deep as he deems convenient, and draw from them all the benefits which may accrue, under such modifications as may result from the laws and regulations concerning mines and the laws and regulations of the police.

(Louisiana Revised Statutes)

R.S. 9:2971: It shall be conclusively presumed that any transfer, conveyance, surface lease, mineral lease, mortgage or any other contract or grant affecting land described as fronting on or bounded by a waterway, canal, highway, road, street, alley, railroad or other right of way, shall be held, deemed and construed to include all of grantor's interest in and under such waterway, canal, highway, road, street, alley, railroad, or other right of way, whatever that interest may be, in the absence of any express provision therein particularly excluding the same therefrom; provided, that where the grantor at the time of the transfer or other grant holds as owner the title to the fee of the land situated on both sides thereof and makes a transfer or other grant affecting the land situated on only one side thereof, it shall then be conclusively presumed, in the absence of any express provision therein particularly excluding the same therefrom, that the transfer or other such grant thereof shall include the grantor's interest to the center of such waterway, canal, highway, road, street, alley, railroad, or other right of way; provided, further, however, that no then existing valid right of way upon, across or over said property so transferred or conveyed or so presumed to be conveyed and no warranties with respect thereto shall be in any manner or to any extent impaired, prejudiced, or otherwise affected by any of the terms and provisions of this Part or because of the failure of such grantor or transferor to therein make special reference to such right of way or to include or exclude same therefrom. Acts 1956, No. 555, Sec. 1.

R.S. 9:2973: Any person who has made a transfer or other grant affecting land so described, their heirs or assigns whose rights may be affected hereby, shall have a period of one year from August 1, 1956, within which to preserve and protect such rights, by: (a) filing suit in each parish where such land is situated, asserting such rights, or (b) by recording a notarized declaration asserting such rights in the conveyance records of each parish where such land is situated within such one year period; and in case neither said method of preserving such rights is followed within one year from August 1, 1956, said rights shall be forever barred. Acts 1956, No. 555, Sec. 3.

R.S. 9:5661: Actions, including those by the State of Louisiana, to annul any patent issued by the state, duly signed by the governor and the register of the state land office, and of record in the state land office, are prescribed by six years, reckoning from the day of the issuance of the patent.

Jurisprudence

R.S. 9:5661 applies to all suits to annul any patent, irrespective of whether the patent covers high land or submerged land. California Co. v. Price, 225 La. 706, 74 So. 2d 1 (1954)

Sec. 1.2. Navigable Waters

(Louisiana Civil Code)

Art. 450: Things, which are common, are those the ownership of which belongs to nobody in particular, and which all men may freely use, conformably with the use for which nature has intended them; such as air, running water, the sea and its shores.

Art. 453: Public things are those, the property of which is vested in a whole nation, and the use of which is allowed to all the members of the nation: of this kind are navigable rivers, seaports, roadsteads and harbors, highways and the beds of rivers, as long as the same are covered with water.

Hence it follows that every man has a right freely to fish in the rivers, ports, roadsteads, and harbors.

Art. 482: Among those which are not susceptible of ownership, there are some which can never become the object of it; as things in common, of which all men have the enjoyment and use.

There are things, on the contrary, which, though naturally susceptible of ownership, may lose this quality in consequence of their being applied to some public purpose, incompatible with private ownership; but which resume this quality as soon as they cease to be applied to that purpose; such as the high roads, streets and public places.

(Louisiana Revised Statutes)

R.S. 9:1101: The waters of and in all bayous, rivers, streams, lagoons, lakes and bays, and the beds thereof, not under the direct ownership of any person on August 12, 1910, are declared to be the property of the state. There shall never be any charge assessed against any person for the use of the waters of the state for municipal, industrial, agricultural or domestic purposes.

While acknowledging the absolute supremacy of the U. S. of America over the navigation on the navigable waters within the borders of the state, it is hereby declared that the ownership of the water itself and the beds thereof in the said navigable waters is vested in the state and that the state has the right to enter into possession of these waters when not interfering with the control of navigation exercised thereon by the U. S. of America.

All transfers and conveyances or purported transfers and conveyances made by the state of Louisiana to any levee district of the state of any navigable waters and the beds and bottoms thereof are hereby rescinded, revoked and cancelled.

This Section is not intended to interfere with the acquisition in good faith of any waters or the beds thereof transferred by the State or its agencies prior to August 12, 1910.

R.S. 9:1107: It has been the public policy of the State at all times since its admission into the Union that all navigable waters and the beds of same within its boundaries are common or public things and insusceptible of private ownership; that no act of the legislature has been enacted in contravention of said policy, and that the intent of the legislature at the time of the enactment ... of R.S. 9:5661, and continuously thereafter was and is now to ratify and confirm only those patents which conveyed or purported to convey public lands susceptible of private ownership of the nature and character, the alienation or transfer of which was authorized by law but not patents or transfers which purported to transfer navigable waters and the beds of same.

R.S. 9:1108: Any patent or transfer heretofore or hereafter issued or made is null and void, so far as same purports to include such navigable waters and the beds thereof, as having been issued or made in contravention of the public policy of this state and without any prior authorization by law; provided that the provisions of this Section shall not ... apply to lands that were susceptible to private ownership on the date of the patent or transfer by the state or its agency.

R.S. 9:1109: No statute enacted by the legislature shall be construed as to validate by reason of prescription or peremption any patent or transfer issued by the state or any levee district, so far as the same purports to include navigable or tide waters or the beds of same.

R.S. 9:5661: Actions, including those by the State of Louisiana, to annul any patent issued by the state, duly signed by the governor and the register of the state land office, and of record in the state land office, are prescribed by six years, reckoning from the day of the issuance of the patent.

33 U.S.C.A. 10: All navigable rivers and waters in the former Territories of Orleans and Louisiana shall be and forever remain public highways.

Sec. 2. Right to Use and Divert Surface Waters

Sec. 2.1. Irrigation

(Louisiana Civil Code)

Art. 653: Servitudes being essentially due from one estate to another for the advantage of the latter, they remain the same as long as no change takes place in regard to the two estates, whatever change may take place in the owners.

Art. 654: Servitude is a right so inherent in the estate to which it is due, that the faculty of using it, considered alone and independent of the estate, can not be given, sold, let or mortgaged without the estate to which it appertains, because it is a servitude which does not pass to the person but by means of the estate.

Jurisprudence

Riparian owner's injunction of a non-riparian's use of water from an adjacent bayou will be dissolved where the facts show that the riparian owner's land probably would not be injured by the pumping of water from the stream by the non-riparian owner. Jackson v. Walton, 2 La. App. 53 (1925).

Art. 661: He whose estate borders on running water, may use it as it runs, for the purpose of watering his estate, or for other purposes.

He through whose estate water runs, whether it originates there or passes from lands above, may make use of it, while it runs over his lands; but he can not stop or give it another direction, and is bound to return it to its ordinary channel, where it leaves his estate.

Jurisprudence

Definition of Riparian Rights: The best general definition of riparian rights is: "The rights of owners of lands on the banks of water courses relating to the water, its use, ownership of soil under the stream, accretions, etc." Doiron v. O'Bryan, 218 La. 1069, 51 So. 2d 628 (1951).

Riparian Rights in General: Article 660 and this article are exclusively applicable to surface waters and do not apply to sub-surface waters. Adams v. Grigsby, (La. App. 2d Cir. 1963), 152 So. 2d 619.

The title of an owner of land bordering on a navigable stream extends to the low-water mark. Mathis v. Board of Assessors, 46 La. Ann. 1570, 16 So. 454 (1894).

When the construction of levees is involved, all riparian land-owners hold their property subject to certain conditions imposed for public welfare or common utility. Cubbins v. Mississippi River Commission, 241 U.S. 351, 36 S. Ct. 671 (1915); Pruyn v. Nelson Bros., 180 La. 760, 157 So. 585 (1934); Egan v. Hart, 45 La. Ann. 1358, 14 So. 244 (1893); In re Bass v. State, 34 La. 494 (1882); Dubose v. Levee Commissioners, 11 La. Ann. 165 (1856); Zenor v. Parish of Concordia, 7 La. Ann. 150 (1852).

The temporary uncovering of parts of the bed of the lake by the recurring annual ebb of the waters, to become covered again by their rise or flow at the appropriate season, does not constitute

dereliction and such land may not be acquired by the riparian owners. Sapp v. Frazier, 15 La. Ann. 1718, 26 So. 378 (1899).

A party who sells the entire estate owned by him up to the line of a public road bordering the river, and beyond which no property susceptible of private ownership exists at the date of sale, retains no estate to which the accessory right to future alluvion could attach, since this right was acquired by the purchaser. Succession of Delachaise v. Maginnis, 44 La. Ann. 1043, 11 So. 715 (1892).

Art. 674: The other particular servitudes imposed by law relate to the following objects:

1. To boundary walls, inclosures and ditches:

2-5 omitted.

Art. 689: Every ditch between two estates shall be supposed held in common, unless there be a voucher or proof to the contrary.

Art. 714: The right of drain consists in the servitude of passing water collected in pipes or canals through the estate of one's neighbor.

This servitude is different from the right of drip, because the charge it imposes is more onerous.

It is much less inconvenient to receive the rain which falls than a body of water which may carry away the land by its violence.

The contrary servitude is the right of preventing this passage of water.

Art. 720: The right of drawing water is a servitude by which one suffers his neighbor to draw water from the well or spring he has on his land; the use of this servitude is confined to those who live in the house of the person enjoying the servitude, unless the contrary be expressed in the title.

Art. 721: The principal rural servitudes are those of passage, of way, of taking water, of the conducting of water or aqueduct, of watering, of pasturage, of burning brick or lime, and of taking earth or sand from the estate of another.

Art. 723: The right of drawing water from the spring of another is also a servitude.

Art. 724: The conducting of water or aqueduct is the right by which one conducts water from his estate through the land of his neighbor by means of an aqueduct or ditch.

Art. 727: Servitudes are either continuous or discontinuous.

Continuous servitudes are those whose use is or may be continual without the act of man.

Such are aqueducts, drain, view and the like.

Discontinuous servitudes are such as need the act of man to be exercised.

Such are the rights of passage, of drawing water, pasture and the like.

Art. 743: Servitudes are established by all acts by which property can be transferred, and as they are not susceptible of real delivery, the use which the owner of the estate to whom the servitude is granted, makes of this right, supplies the place of delivery.

Art. 752: Legal servitudes and even those which result from the situation of places, may be altered by the agreement of parties, provided the public interest does not suffer thereby.

Art. 756: If the right granted be of a nature to assure a real advantage to an estate, it is to be presumed that such right is a real servitude, although it may not be so styled.

Thus, for example, if the owner of a house contiguous to lands bordering on the high road, should stipulate for the right of passing through lands, without it being expressed that the passage is for the use of his house, it would be not the less a real servitude, for it is evident that the passage is of real utility to the house.

Art. 757: If, on the other hand, the concession from its nature is a matter of mere personal convenience, it is considered personal, and can not be made real but by express declaration of the parties.

Thus, for example, if the owner of a house near a garden or park, should stipulate for the right of walking and gathering fruits and flowers therein, this right would be considered personal to the individual, and not a servitude in favor of the house or its owner.

But the right becomes real and is a predial servitude, if the person stipulating for the servitude, acquires it as owner of the house, and for himself, his heirs and assigns.

Art. 789: A right to servitude is extinguished by the non-usage of the same during ten years.

Art. 795: Prescription for non-usage does not take place against natural or necessary servitudes, which originate from the situation of places.

Note: The Revised Statutes on Irrigation Districts may be found in Chapter 2, Section 16 of this compilation.

Sec. 2.2. Drainage

(Louisiana Civil Code)

Art. 505: The ownership of the soil carries with it the ownership of all that is directly above and under it.

The owner may make upon it all the plantations, and erect all the buildings which he thinks proper, under the exceptions established in the title: Of Servitudes.

He may construct below the soil all manner of works, digging as deep as he deems convenient, and draw from them all the benefits which may accrue, under such modifications as may result from the laws and regulations concerning mines and the laws and regulations of the police.

Jurisprudence

In General: There can be no doubt that the absolute owners of property have the right to establish, on the portion which they retained, and in favor of that portion which they sold, such servitudes as they think proper, their power in that respect being limited only by considerations of public order; and that the use and extent of such servitudes are to be regulated by the titles by which they are established. Bernos v. Canepa, 114 La. 517, 8 So. 438 (1905).

Art. 660: It is a servitude due by the estate situated below to receive the waters which run naturally from the estate situated above, provided the industry of man has not been used to create that servitude.

The proprietor below is not at liberty to raise any dam, or to make any other work, to prevent this running of the water.

The proprietor above can do nothing whereby the natural servitude due by the estate below may be rendered more burdensome.

Jurisprudence

Construction: This article has been construed to have reference strictly to "natural" drainage, that is, the drainage which has originally been provided by nature by reason of the respective location or situation of the properties. Elam v. Cortinas, 219 La. 406, 53 So. 2d 146 (1951). It also is to be liberally construed in favor of the estate to which the servitude is due. Guesnard v. Bird, 33 La. Ann. 796 (1881); Wood v. Ponder, 41 So. 2d 479 (1949).

Nature of Servitude: Servitudes of ditches or drains are continuous apparent servitudes which can be acquired by prescription of ten years. Wood v. Pinder, 41 So. 2d 479 (1949).

Drainage: One has the right to protect his property with dikes or levees, to keep back flood waters. Cubbins v. Mississippi River Commission, 241 U. S. 351 (1916); Kincaid v. U. S., 35 F. 2d 235 (1929). However, if the natural course of surface water on the land of one owner is over the land of another it cannot be obstructed. Hammons v. Illinois Cent. R. R., 239 La. 742, 119 So. 2d 846 (1960); Brantley v. Tremont & Gulf Ry. Co., 226 La. 176, 75 So. 2d 236 (1954); Brown v. Blakenship, 28 So. 2d 496 (1947); Johnson v. Gifford-Hill & Co., Inc., 174 La. 806, 141 So. 842 (1932); Louisiana Irrigation & Mill Co. v. Sixth Ward Drainage District, 158 La. 701, 104 So. 623 (1925); Broussard v. Cormier, 154 La. 877, 98 So. 403 (1923); Clement v. Louisiana Irrigation & Mill Co., 129 La. 825, 56 So. 902 (1911); Petit Anse Coteau Drainage Dist. v. Iberia & V. R. Co., 124 La. 502, 50 So. 512 (1909); Hays v. Hays, 19 La. 351 (1841); Lattimore v. Davis, 14 La. 161, 33 Am. Dec. 581 (1839); Hebert v. Hudson, 13 La. 54 (1838); Kirk v. Kansas City S & S Ry. Co. 51 La. Ann. 667, 25 So. 457 (1899); Foley v. Godchaux, 48 La. Ann. 466, 19 So. 247 (1896); Payne v. Morgan's Louisiana & T. R. & S. S. Co., 38 La. Ann. 164, 58 Am. Rep. 174 (1886); Heath v. Texas & P. Ry Co., 37 La. Ann. 728 (1885); Bourdier v. Morgan's L. & T. R. Co., 35 La. Ann. 947 (1883); Ludeling v. Stubbs, 34 La. Ann. 935 (1882); Bowman v. City of New Orleans, 27 La. Ann. 501 (1875); Minor v. Wright, 16 La. Ann. 151 (1861); Barrow v. Landry, 15 La. Ann. 681 (1860); Delahoussaye v. Judice, 13 La. Ann. 587, 71 Am. Dec. 521 (1858); Leonard v. Kleinpeter, 7 La. Ann. 44 (1852); Bolinger v. Murray, 18 La. App. 158, 137 So. 761 (1931); Volentine v. Houseman, 14 La. App. 704, 130 So. 863 (1930); Chandler v. Scogin, 5 La. App. 484 (1926); Vidrine v. Guillory, 3 La. App. 462 (1925); provided the industry of man has not been used to create the servitude, Broussard v. Cormier, 154 La. 877, 98 So. 403 (1923); Martin v. Jett, 12 La. 501 (1838); and this applies to parcels of land in cities as well as in the country, Lattimore v. Davis, 14 La. 161, 33 Am. Dec. 581 (1839).

In Adams v. Town of Ruston, 194 La. 403, 193 So. 688 (1940), the court held that the plaintiff was not entitled to enjoin the town and its employees from permitting waste water emptied from a swimming pool to flow across plaintiff's land in a natural ditch, where damage to plaintiff's land was negligible and could be adequately compensated in damages.

Making ditches on an upper estate and concentrating water to pass out at a single point on a lower estate may be done only in the interest of proper cultivation, Broussard v. Cormier, 154 La. 877, 98 So. 403 (1923); Petit Anse Coteau Drainage Dist. v. Youngsville Drainage Dist. of Parish of Lafayette, 146 La. 161, 83 So. 445 (1919); Marable v. Barhan, 137 La. 254, 68 So. 440 (1915); Martin v. Jett, 12 La. 504, 32 Am. Dec. 120 (1838); Ludeling v. Stubbs, 34 La. Ann. 935 (1882); Sowers & Jamison v.

Shiff, 15 La. Ann. 300 (1860); Becknell v. Weindahl, 7 La. Ann. 292 (1852); Bolinger v. Murray, 18 La. App. 158, 137 So. 761 (1931); however, nothing can be done which would tend to throw upon the lower estate the burden of receiving waters which would not otherwise drain upon it, Chandler v. City of Shreveport, 169 La. 52, 124 So. 143 (1929); Petit Anse Coteau Drainage District v. Youngsville Drainage District, 146 La. 161, 83 So. 445 (1919); Fletcher v. Dept. of Highways, 9 So. 2d 838 (1942); Barrow v. Landry, 15 La. Ann. 681 (1860); Kilgore v. Grevemberg, 10 La. Ann. 689, 63 Am. Dec. 597 (1855); Orleans Nav. Co. v. City of New Orleans, 2 Mart. O.S. 214 (1812); nor can the waters be concentrated so as to flow on the lower lands of the adjacent estate at a point which would not be their natural destination, thus increasing the volume of water which would by natural flow run over or reach any certain portion of the lower adjacent estate. Martin v. Jett, 12 La. 501 (1838); Kennedy v. McCullom, 34 La. Ann. 568 (1882); Barrow v. Landry, 15 La. Ann. 681 (1860); Delhoussaye v. Judice, 13 La. Ann. 587 (1853); Becknell v. Wiendahl, 7 La. Ann. 291 (1852). Also the upper proprietor cannot drain other land than that belonging to his estate upon the lower estate. Barrow v. Landry, 15 La. Ann. 681, 77 Am. Dec. 199 (1860).

Though an adjoining tract of land be subject to the servitude of receiving the waters running naturally from the estate above, the proprietor of the latter is not entitled to enter at pleasure on the contiguous tract, without the consent of its owner, whenever it may be necessary to remove any obstructions to the enjoyment of the servitude. Brantley v. Tremont & Gulf R. R. Co., 226 La. 176, 75 So. 2d 236 (1954); Landry v. McCall, 3 La. Ann. 134 (1843).

Police juries have the exclusive right to determine how lands situated within the points on the Mississippi river shall be drained, without regard to their relative position as superior or inferior estates; and to apportion among the several proprietors the costs of the drainage. Walsh v. Arnous, 6 La. Ann. 97 (1851).

Where the owner of a plantation makes a disposition regulating the drainage, and the plantation is subsequently divided into parts and sold to different owners, they acquire such parts, unless it is otherwise stipulated, subject to the disposition so made, and the question of the direction of the original natural flow of the drainage becomes immaterial. Hebert v. Champagne, 144 La. 659, 81 So. 217 (1919).

Floods: The owner of a plantation is not liable for damages to an adjoining plantation caused by works erected on his own plantation, in order to prevent its inundation by a destructive overflow of the Mississippi River, especially when the owner of the adjoining place refused to co-operate in a common work for the protection of both places. Mailhot v. Pugh, 30 La. Ann. 1359 (1878).

Agreements of Parties: A servitude affecting realty cannot be altered in such a way as to hold subsequent owners of either property unless the agreement is in writing and is recorded or unless subsequent proprietors can be charged with knowledge of the agreement in some form or manner. Cornett v. Hebert, 31 So. 2d 446 (1947).

The stipulation of plaintiff in an act of sale of part of his land to defendant, that both parties would jointly establish a water drain on the line dividing their lands, did not have the effect of changing the natural servitude of drain of plaintiff's land over defendant's where defendant clearly evidenced his intent of abandoning the drain established under the agreement. Fontenot v. Smith, 37 So. 2d 872 (1948).

Where one agrees to the opening of a new canal which fails in its purpose, the owner of a servitude of natural drain has the right to demand the destruction of a dam built to aid the new canal, in order that the formerly existing drain may again be re-established. Robertson v. Lebermuth, 132 La. 318, 61 So. 388 (1913).

Abandonment or Relinquishment of Rights: A servitude of drainage may be abandoned, especially for a valid consideration. This abandonment may not be presumed, but must be established by positive and unmistakable proof. Barrilleaux v. Delaune, 176 La. 377, 145 So. 776 (1933); Foley v. Godchaux, 48 La. Ann. 466, 19 So. 247 (1896). Therefore, silence is not a sufficient ground upon which to predicate the relinquishment of a right of drain; however, a plaintiff's silence is sufficient to bar his right to recover for damage to crops from overflow. Robertson v. Lebermuth, 132 La. 318, 61 So. 388 (1913).

Conflicts of Law: Where defendant erected a dam on his land in Louisiana, causing the impounding of water on the plaintiff's land in Arkansas, the court, applying Louisiana law, held that plaintiff's drainage could not be impaired, thus requiring defendant to destroy his dam. Caldwell v. Gore, 175 La. 501, 143 So. 387, aff'd 144 So. 151 (1942)

Damages: The upper riparian owner is responsible for whatever damages result to lower riparian owners from an increased flow resulting from the upper owner's activities, and whether such increased burden is reasonable or unreasonable depends upon the circumstances of each case. Busby v. International Paper Co., 95 Fed. Supp. 596 (1951). Likewise, a higher landowner is entitled to whatever damages he suffers because of the lower landowner's improper interference with the flow of water. Cornett v. Hebert, 31 So. 2d 446 (1947); Volentine v. Houseman, 14 La. App. 704, 130 So. 836 (1930). Also, the proprietor of the upper estate will be liable for all damages sustained by the overflow of the waters where he cuts ditches and makes drains onto the lower estate, without following the natural drains and flow of the water. Lattimore v. Davis, 14 La. 161, 33 Am. Dec. 581 (1839).

In the absence of specific proof as to which of the damages suffered by the lower landowner were actually as a result of increased drainage caused by the upper landowner, the court will award only nominal damages. Fletcher v. Department of Highways, 9 So. 2d 838 (1942). Where it is found that the damages caused an upper landowner actually stem from the depressions in the land and not from the closing of the culverts by the defendant, the court will not grant damages. Felt v. Vicksburg S. & P. R. Co., 46 La. Ann. 549, 15 So. 177 (1894).

In an action for damages resulting from pollution of a creek passing through plaintiff's land, the court will grant only that amount of damages which is proved beyond certainty. Maddox v. International Paper Co., 47 F. Supp. 829 (1943); Young v. International Paper Co., 179 La. 803, 155 So. 231 (1934); Rhodes v. International Paper Co., 174 La. 49, 139 So. 755 (1932); Greer v. Pelican Natural Gas Co., 163 So. 431 (1935).

Where the plaintiff was guilty of acts making the natural servitude due by the estate below more burdensome, and the defendant was guilty of obstructing the drainage, neither party was entitled to recover. Barrow v. Landry, 15 La. Ann. 681 (1860).

R.S. 13:5421 relieves the State and its political subdivisions from the payment of court costs, except those of the stenographer, in any judicial proceeding. This statute has been held not to apply in an expropriation suit because the costs of court incurred by the successful plaintiff constitutes an element of the damage suffered when his property is taken for public purposes. Westwego Canal & Terminal Co., Inc. v. Louisiana Highway Commission, 200 La. 990, 9 So. 2d 389 (1942). Likewise, this statute does not apply to relieve the department of highways from payment of plaintiff's court costs in a successful action for damages to property resulting from constructing a highway so as to interfere with the natural drainage. Fletcher v. Department of Highways, 9 So. 2d 838 (1942).

Art. 667: Although a proprietor may do with his estate whatever he pleases, still he can not make any work on it, which may deprive his neighbor of the liberty of enjoying his own, or which may be the cause of any damage to him.

Art. 668: Although one be not at liberty to make any work by which his neighbor's buildings may be damaged, yet every one has the liberty of doing on his own ground whatsoever he pleases, although it should occasion some inconveniences to his neighbor.

Thus he who is not subject to any servitude originating from a particular agreement in that respect, may raise his house as high as he pleases, although by such elevation he should darken the lights of his neighbor's [neighbors'] house, because this act occasions only an inconvenience, but not a real damage.

Art. 674: The other particular servitudes imposed by law relate to the following objects:

1. To boundary walls, inclosures and ditches:

2-5 omitted.

Art. 689: Every ditch between two estates shall be supposed held in common, unless there be a voucher or proof to the contrary.

Art. 714: The right of drain consists in the servitude of passing water collected in pipes or canals through the estate of one's neighbor.

This servitude is different from the right of drip, because the charge it imposes is more onerous.

It is much less inconvenient to receive the rain which falls than a body of water which may carry away the land by its violence.

The contrary servitude is the right of preventing this passage of water.

Art. 721: The principal rural servitudes are those of passage, of way, of taking water, of the conducting of water or aqueduct, of watering, of pasturage, of burning brick or lime, and of taking earth or sand from the estate of another.

Art. 724: The conducting of water or aqueduct is the right by which one conducts water from his estate through the land of his neighbor by means of an aqueduct or ditch.

Art. 727: Servitudes are either continuous or discontinuous.

Continuous servitudes are those whose use is or may be continual without the act of man.

Such are aqueducts, drain, view and the like.

Discontinuous servitudes are such as need the act of man to be exercised.

Such are the rights of passage, of drawing water, pasture and the like.

Art. 743: Servitudes are established by all acts by which property can be transferred, and as they are not susceptible of real delivery, the use which the owner of the estate to whom the servitude is granted, makes of this right, supplies the place of delivery.

Art. 752: Legal servitudes and even those which result from the situation of places, may be altered by the agreement of parties, provided the public interest does not suffer thereby.

Art. 756: If the right granted be of a nature to assure a real advantage to an estate, it is to be presumed that such right is a real servitude, although it may not be so styled.

Thus, for example, if the owner of a house contiguous to lands bordering on the high road, should stipulate for the right of passing through lands,

without it being expressed that the passage is for the use of his house, it would be not less a real servitude, for it is evident that the passage is of real utility to the house.

Jurisprudence

Drains: When a servitude of drain is established in favor of an estate, which happens to be owned by a partnership, over a contiguous estate belonging to one member of the partnership, where there is no stipulation that such servitude is in favor of the estate, such right will be presumed to be a real servitude. Levet v. Lapeyrollerie, 39 La. Ann. 210, 1 So. 672 (1887).

A sewer line constructed across adjoining property by agreement between the then owners was by nature and intent created for benefit of property and therefore constituted a real servitude. Fuller v. Washington, 19 So. 2d 730 (1944).

Art. 757: If, on the other hand, the concession from its nature is a matter of mere personal convenience, it is considered personal, and can not be made real but by express declaration of the parties.

Thus for example, if the owner of a house near a garden or park, should stipulate for the right of walking and gathering fruits and flowers therein, this right would be considered personal to the individual, and not a servitude in favor of the house or its owner.

But the right becomes real and is a predial servitude, if the person stipulating for the servitude, acquires it as owner of the house, and for himself, his heirs and assigns.

Art. 777: The owner of the estate which owes the servitude can do nothing tending to diminish its use, or to make it more inconvenient.

Thus he can not change the condition of the premises, nor transfer the exercise of the servitude to a place different from that on which it was assigned in the first instance.

Yet if this primitive assignment has become more burdensome to the owner of the estate which owes the servitude, or if he is thereby prevented from making advantageous repairs on his estate, he may offer to the owner of the other estate a place equally convenient for the exercise of his rights, and the owner of the estate to which the servitude is due can not refuse it.

Art. 778: On the other hand, he who has a right of servitude can use it only according to his title, without being at liberty to make either in the estate which owes the servitude, or in that to which the servitude is due, any alteration by which the condition of the first may be made worse.

Art. 789: A right to servitude is extinguished by the non-usage of the same during ten years.

Art. 795: Prescription for non-usage does not take place against natural or necessary servitudes, which originate from the situation of places.

Note: The Revised Statutes on drainage districts may be found in Chapter 2, Section 17 of this compilation.

Sec. 2.3 Pollution

(Louisiana Civil Code)

Art. 661: He whose estate borders on running water, may use it as it runs, for the purpose of watering his estate, or for other purposes.

He through whose estate water runs, whether it originates there or passes from lands above, may make use of it, while it runs over his lands; but he can not stop or give it another direction, and is bound to return it to its ordinary channel, where it leaves his estate.

Jurisprudence

The question whether a use that pollutes a water course is a reasonable or unreasonable use is for the judge or jury to determine from all of the circumstances of a case, including the nature of the water course, its adaptability for particular purposes, the extent of injury caused to the lower riparian owner, etc. Long v. Louisiana Creosoting Co., 137 La. 861, 69 So. 281 (1915).

(Louisiana Revised Statutes)

R.S. 56:1434: The Stream Control Commission of Louisiana has control of waste disposal, public or private, by any person, into any of the waters of the state or tributaries flowing into such waters for the prevention of pollution tending to destroy fish life, other aquatic life, wild or domestic animals or fowls or to be injurious to the public health.

R.S. 56:1435: [The commission may make and promulgate such rules and conduct such investigations as it deems necessary to carry out the provision of this Part.]

R.S. 56:1439: The commission:
(1) Shall establish pollution standards for waters of state ...
(2) May determine the volume of water flowing in any stream, and the high and low water marks affected by the waste disposal of any person;
(3) May regulate or restrain the discharge of any waste material into any water of the state ....

R.S. 56:1442: [Any person who feels himself aggrieved by the restrictions of the commission may, after filing a petition with the commission, be entitled to a hearing of the matter involved. The final decision of the commission is conclusive, but may be reviewed de novo in the district court in East Baton Rouge Parish.]

R.S. 56:1451: No person shall knowingly and willfully empty or drain ... from any pump, reservoir, well, or oil field into any natural stream of the state any oil, salt water, noxious or poisonous gases, in quantities sufficient to destroy the fish therein.

R.S. 40:11: The Board of Public Health and Safety has exclusive jurisdiction, control, and authority over maritime quarantine, water supplies and waste disposal within the state ....
[The Board is authorized to prepare a sanitary code for the state containing rules, regulations and ordinances for the improvement and amelioration of the hygenic and sanitary conditions of the state. The code shall provide specially for the supervision of water supplies and disposal of waste.]

R.S. 40:12: [Provides penalties for violations of the sanitary code.]

R.S. 56:322: In order to prevent the pollution of any waters of the state ... or the modification of natural conditions in any way detrimental to the interests of the state, no person shall discharge or permit to be discharged ... directly or indirectly into the waters of the states, any substance which ... in any way adversely affects the interests of the state.

Sec. 2.4. Canals

(Louisiana Civil Code)

Art. 505: The ownership of the soil carries with it the ownership of all that is directly above and under it.

The owner may make upon it all the plantations, and erect all the buildings which he thinks proper, under the exceptions established in the title: Of Servitudes.

He may construct below the soil all manner of works, digging as deep as he deems convenient, and draw from them all the benefits which may accrue under such modifications as may result from the laws and regulations concerning mines and the laws and regulations of the police.

Jurisprudence

> The proprietor of a tract of land has a right to excavate within his own boundaries a canal for the purposes of navigation, and to require payment for its use from those who choose to avail themselves of its facilities. Harvey v. Potter, 19 La. Ann. 264, 92 Am. Dec. 532 (1867).

(Louisiana Revised Statutes)

The following revised statutes provide for the right of corporations to expropriate property, construct and use canals for irrigation purposes, transportion of freight and passengers and development of hydroelectric power for lawful uses and purposes.

R.S. 45:61: [Corporations formed for the purpose of constructing and operating canals for irrigation by gravity have the power to acquire all land needed and if necessary to expropriate such property for rights of way and for reservoirs. This power of expropriation shall not be exercised within any township or section occupied by any canal in actual use, without the consent of the owners of such canal. Such power is to be exercised in the manner now provided for by the general expropriation laws of the state.]

R.S. 45:62: Corporations, operating under R.S. 45:61, have the right to utilize waters of navigable streams and other waters of the state for irrigation purposes, under regulations which the Department of Public Works shall prescribe, for the purpose of preventing unnecessary injury to private or public property.

Cf. R.S. 9:1101, which states that no charge shall ever be levied on the agricultural use of state waters.

R.S. 45:63: [Corporations asserting the privileges of the two statutes above are deemed public service corporations.]

R.S. 45:64: Domestic corporations, except those provided for in R.S. 45:61, organized with power of building, constructing and operating canals for irrigation, for the transportation of freight and passengers, and for the development of hydro-electric power for lawful uses and purposes, have the right to expropriate rights of way for these canals, and for telegraph, telephone, and hydro-electric lines, incident to the conduction, operation and maintenance of these canals, and lands for reservoirs, dam sites, and dykes, forming a part of the irrigation canal and hydro-electric system.

R.S. 45:65: The right of expropriation by the corporations discussed in R.S. 45:64 shall be exercised in the same manner, by the same proceedings, and under the same limitations now imposed by law on railroads and other quasi-public corporations; except through those townships, sections, or properties that are now occupied by irrigation canals.

R.S. 45:66: Corporations, described in R.S. 45:64 shall have a right of way not exceeding six hundred feet wide for the building and construction ... of canals, lateral ditches and conduits, under, over, and across all public lands and not exceeding fifty feet for hydro-electric lines.

R.S. 45:67: [The right to construct works by corporations described in R.S. 45:64 across all streams and waters shall not impede or interfere with navigation, drainage, or the natural servitude of the lands on which the rights of way may be exercised.]

R.S. 45:68: [The corporations described in R.S. 45:64 have the right to build and maintain their works across all public rural highways and roads, with the consent of the local authorities having jurisdiction upon such terms as the authorities may impose.]

R.S. 45:69: [The corporations described in R.S. 45:64 have the right to build and maintain, along the route of their works, telephone and telegraph lines, and to erect poles for the transmission of electric power for all uses incident to and connected with the operations and purposes of these works.]

R.S. 45:70: No corporation, operating under R.S. 45:64, shall exercise any right of expropriation or be considered as a public utility until it has filed with the Secretary of State a resolution of its board of directors ... agreeing that the corporation shall be a public utility for the distribution of water for irrigation, for the transportation of freight and passengers, and for furnishing hydro-electric power and electricity, or either of them.

R.S. 34:361: The constructing, deepening, widening, improving and maintaining of navigation canals ... existing streams, lakes or other water courses for navigation purposes, and the acquiring of property for such purposes ... no part of which shall be more than one-half mile from the center of [the water courses] are declared to be works of public improvement, the title to which shall vest in the public and for public purposes.

R.S. 34:362: [The municipalities and the parishes are authorized to acquire property for any of the works enumerated in R.S. 34:361 either by purchase, donation or expropriation and may contract for these works necessary to carry out this grant.]

Sec. 3. Use of Banks of Watercourses

(Louisiana Civil Code)

Art. 455: The use of the banks of navigable rivers or streams is public; accordingly, every one has a right freely to bring his vessels to land there, to make fast the same to the trees which are there planted, to unload his vessels, to deposit his goods, to dry his nets, and the like.

Nevertheless the ownership of the river banks belongs to those who possess the adjacent lands.

Jurisprudence

Riparian Rights: The right which the public in Louisiana has to use the banks of navigable rivers does not enable one other than

a riparian proprietor to appropriate part of such bank for his private use, and a riparian proprietor has such an interest, distinct from that of the public, as entitles him to recover for another's appropriation of a part of the bank for a private use. Pittsburgh & Southern Coal Co. v. Otis Mfg. Co., 249 F. 667 (1918); Means v. Hyde, 18 La. Ann. 515 (1866); Duverge's Heirs v. Salter, 6 La. Ann. 450 (1851).

A tacit consent to the erection of a wharf in front of the property of the builder on the banks of the Mississippi river, within the limits of the town of Baton Rouge, does not give to the owner of the wharf the exclusive use of the bank of the river covered by the wharf. Hart & Co. v. The Mayor and Board of Selectmen of the Town of Baton Rouge, 10 La. Ann. 171 (1855).

Sec. 4. Alluvion and Dereliction

(Louisiana Civil Code)

Articles 509-518 are merely mentioned to make the picture complete. They are not considered important enough to warrant reproduction here.

Sec. 5. Ground Water

(Louisiana Civil Code)

Art. 505: The ownership of the soil carries with it the ownership of all that is directly above and under it.

The owner may make upon it all the plantations, and erect all the buildings which he thinks proper, under the exceptions established in the title: Of Servitudes:

He may construct below the soil all manner of works, digging as deep as he deems convenient, and draw from them all the benefits which may accrue, under such modifications as may result from the laws and regulations concerning mines and the laws and regulations of the police.

Jurisprudence

Fugitive Minerals: Oil and gas are fugitive minerals, and the owners of lands which contain such deposits do not own them until they are reduced to actual possession. Herkness v. Irion, 278 U.S. 92, 73 L. Ed. 198 (1926); Arkansas Fuel Oil Co. v. State of Louisiana ex rel Muslow, 58 S. Ct. 832, 304 U. S. 197 (1938); Dixon v. American Liberty Oil Co., 226 La. 911, 77 So. 2d 533 (1955); Southport Petroleum Co. of Delaware v. Fithian, 203 La. 49, 13 So. 2d 382 (1943); Continental Securities v. Wetherbee, 187 La. 773, 175 So. 751 (1937); Gulf Refining Co. of Louisiana v. Glassell, 186 La. 190, 171 So. 846 (1937); Federal Land Bank of New Orleans v. Mulhern, 180 La. 627, 157 So. 370 (1934); Wright v. Imperial Oil & Gas Products Co., 177 La. 482, 148 So. 685 (1933); Frost-Johnson Lumber Co. v. Salling's Heirs, 150 La. 756, 91 So. 207 (1922); Higgins Oil & Fuel Co. v. Guaranty Oil Co., 145 La. 233, 82 So. 206 (1919); Rives v. Gulf Refining Co. of Louisiana, 133 La. 178, 62 So. 623 (1913); State ex rel. Muslow v. Louisiana Oil Refining Corp., 176 So. 686 (1937).

They alone have the right to sever and appropriate these minerals beneath their land and this right they may cede to another. Federal Land Bank of New Orleans v. Mulhern, 180 La. 627, 157 So. 370 (1934); Allies Oil Co. v. Ayers, 152 La. 19, 92 So. 720 (1922); DeMoss v. Sample, 143 La. 243, 78 So. 482 (1918).

A landowner may prevent fugitive oil from being drawn from under the surface of his own land, if he can do so by some mechanical means

which does not interfere with the rights of adjoining landowners to draw off the oil under their respective lands; however, such landowner cannot complain that the oil under his land is being drawn off by a well sunk by an adjoining landowner. Higgins Oil & Fuel Co. v. Guaranty Oil Co., 145 La. 233, 82 So. 206 (1919);

Subterranean waters, by analogy, must be classified with oil and gas as fugitive substances. Higgins Oil & Fuel Co. v. Guaranty Oil Co., 145 La. 233, 82 So. 206 (1919); Rives v. Gulf Refining Co. of Louisiana, 133 La. 178, 62 So. 623 (1913); Adams v. Grigsby, 152 So. 2d 619 (1963). Therefore, the above rules on ownership of oil and gas apply also to subterranean or percolating waters. Adams v. Grigsby, 152 So. 2d 619 (1963).

The "American Rule," which is predicated upon the equitable conclusion that the rights of ownership in subterranean waters from the same source are correlative and subject to the restriction of reasonable use, is not adopted in Louisiana because to do so would require an unjustified reversal of the uniform body of our jurisprudence with respect to the ownership of fugitive minerals. Adams v. Grigsby, 152 So. 2d 619 (1963).

Sec. 6. State Department of Public Works

(Louisiana Revised Statutes)

R.S. 38:2: The functions of the Department of Public Works shall comprise all of the administrative functions of the state in relation to the planning, design, survey and construction, operation, maintenance and repair of public buildings used in connection with the operation of the department, and levees, canals, dams, locks, spillways, reservoirs, drainage systems, irrigation systems, landing fields and other aeronautical facilities ... inland navigation projects, flood control and river improvement programs .... The department shall render all engineering, economic and other advisory services within the scope of its functions to port terminal districts and other local government subdivisions and special districts which its facilities allow, subject to the right to be reimbursed for reasonable costs.

Comment: A person desiring to divert water for irrigation purposes by pumping from the Houston River, which is navigable, would not need the permission of the Louisiana Flood Control and Water Conservation Commission, but would need the permission of the State Board of Engineers. Op. Atty. Gen. 1936-1938, p. 582.

R.S. 38:3: The Department of Public Works shall plan systems of inland waterways, navigation, drainage; irrigation and water conservation projects ... and initiate, sponsor, and carry through to completion all waterway projects which will further develop and expand the water resources of Louisiana, whether projects are under the Flood Control Act or any other federal agency ....

R.S. 38:4: [The Department of Public Works may, on its own initiative and at its own expense with any money from the state, drain and reclaim the marsh, swamp and overflow lands in the state, with the view of controlling floods and causing settlement and cultivation of the lands.]

R.S. 38:6: [The co-operation with a drainage district is upon any terms and conditions prescribed by the Department of Public Works.]

Sec. 7. Department of Conservation

(Louisiana Revised Statutes)

R.S. 30:1: [All natural resources of the state not within the jurisdiction of other state departments or agencies are within the jurisdiction of the State Department of Conservation.]

R.S. 30:4: [The commissioner has authority to make, after notice and hearing, any reasonable rules, regulations, and orders that are necessary: (1) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the intrusion of water into oil or gas strata; to prevent the pollution of fresh water supplies by oil, gas, or salt water; and to require reasonable bond with security for the performance of the duty to plug each dry or abandoned well. (4) To prevent the drowning by water of any stratum or part thereof capable of producing oil or gas in paying quantities, and to prevent the premature and irregular encorachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool. (10) To regulate secondary recovery methods, including the introduction of gas, air, water, or other substance into producing formations.]

R.S. 30:22: [Prior to the use of any underground reservoir for the storage of natural gas the commissioner, after public hearing shall have found: (2) That the use of the underground reservoir for the storage of natural gas will not contaminate other formations containing fresh water, oil, gas or other commercial deposits.]

Sec. 8. Municipal Corporations

(Louisiana Revised Statutes)

R.S. 33:361: The municipal corporation shall have the power

(2) To purchase, accept, receive by donation or otherwise, hold and sell or otherwise dispose of movables and immovables within or without the corporate limits, for parks, cemetaries ... waterworks ... and for all other municipal purposes.

(3) To make all contracts and to do all other acts in relation to its property and concerns necessary to the exercise of its corporate powers.

Jurisprudence

The Town of Golden Meadow, incorporated under the provisions of the Lawrason Act and its amendments, had the power, under R.S. 33:361, to expropriate land located beyond the corporate limits for the construction of a protection levee. Town of Golden Meadow v. Duet, 121 So. 2d 288 (1953).

R.S. 33:401: [The mayor and board of aldermen of every municipality shall have the power:

[(12) to grant to any person the use of the streets, alleys, and public grounds for the purpose of laying gas, water, sewer, or steam pipes to be used in furnishing or supplying the municipality and inhabitants or any person or corporation, with gas and water. This right of use, no matter what character it takes, shall not be granted for longer than twenty-five years, and the right of use shall not be exclusive. If approval of the proposed grant is required by law, it shall be approved by a majority of the property taxpayers in the municipality.

[(20) to exercise the right of eminent domain for the purpose of perfecting its drainage system, and may exercise the right without as well as within its limits.

[(23) to erect, purchase, maintain, operate, and regulate waterworks; to lease the same to any person; to prescribe the rate at which water is to be supplied; to acquire by purchase, donation, or condemnation in the name of the municipality, suitable grounds within or without the corporate limits, upon which to erect water works, the right of ways to and from such works, and also the right of way for laying water pipes within the corporate limits, and from such water works to the municipality, and to extend such rights from time to time; or to contract with any person for the erection and maintenance of water works, fixing water rates in the contract subject to municipal regulation. But such a contract shall not be entered into for a longer term than twenty-five years nor until submitted to the vote of the qualified electors, and approved by a majority of them.

[(24) To establish and change the channel of streams and water courses whenever to do so will promote the health, comfort, and conveniences of the inhabitants.

[(25) To control, guide, or deflect the current of a river, with the approval of the State Department of Public Works.]

Jurisprudence

A state may either expressly or by reasonable implication delegate to a municipal corporation, or to some subordinate board or commission

lawful exercise of police power for rate-making purposes within boundaries of such municipality, board, or commission. The authority of a city to provide an adequate water supply includes the power to do and perform everything incident thereto and necessary to obtain that object. Baton Rouge Waterworks Co. v. Louisiana Public Service Commission, 156 La. 539, 100 So. 710 (1924).

An ordinance of the City Council of New Orleans authorizing the lessee of the St. Charles Hotel to supply that Hotel with water from the Mississippi River by means of pipes and mains laid in the streets of the city, is void as being in violation of the New Orleans Water-Works Company's contract with the State of Louisiana and New Orleans granting the company the exclusive privilege of supplying that city with water from the Mississippi River. New Orleans Water-Works v. Rivers, 6 S. Ct. 273 (1885).

The court will not issue an injunction to prevent a defendant from procuring water from a river in pipes, in a city where the exclusive privilege to do so has been granted to a company, when such company has no mains, or no adequate mains, for the delivery of water in sufficient quantities for the needs of the defendant. New Orleans Water-Works Co. v. Ernst, 32 F. 5 (1887).

R.S. 33:404: [The mayor shall have the jurisdiction vested in him by ordinance over all places within five miles of the corporate limits for the enforcement of any cemetary or waterworks ordinance and regulation thereof.]

R.S. 33:841: Property within the corporate limits of the city may be expropriated for any public or municipal purpose, and to the full extent of the authority granted by the constitution of the state .... By such expropriation the city may acquire perfect ownership or any less interest, servitude, or use. Expropriation of property located outside the limits of the city shall be made according to the requirements of, and as provided by general law.

R.S. 33:842-845: [Give procedure for expropriation of property.]

Sec. 9. Police Juries

(Louisiana Revised Statutes)

R.S. 33:1236: The police juries shall have the following powers:

(2) To regulate the proportion and direction, the making and repairing of the roads, bridges, causeways, dikes, dams, levees, and highways.

(3) To regulate the clearing of the banks of rivers and natural drains ... for the purpose of securing a free passage for boats and other water craft ... or the towing of logs or timber ... to build dams to prevent the encroachment of salt water from the Gulf of Mexico or any bays, inlets, or streams connected therewith, into fresh water streams, when such salt water shall be found injurious to property.

(12) To cause to be opened in any town or suburb ... such ancient natural drains as have been obstructed by the owners of the adjacent lands ... to cause any water course which is not navigable to be filled up for the purpose of carrying the public highways over the same; provided no injury thereby be caused to the neighboring inhabitants; and whenever an application is made by more than twelve inhabitants ... and it is found necessary to dig one or more common draining ditches, the juries may order such to be done at the expense of the inhabitants ... [provided that persons aggrieved have the right of complaining of such works.]

[(13) To construct and maintain drainage ditches and drainage canals to acquire lands for necessary public purposes, including rights of way, canals and ditches by expropriation, purchase, prescription or by donation; to enter

into contracts for the construction of such works, and to purchase machinery; to allocate, use and expend the general alimony of the parish; to incur debt and issue bonds for the construction of such works and to tax for maintenance of such works; to enter into contracts under such terms and conditions as may be mutually agreeable with the State, through the Department of Public Works for the securing of State aid for the purposes herein authorized; to cooperate and participate in any State or Federal aid program.

[(26) The police juries are given the right to expropriate property in order to facilitate the construction, maintenance and operation of canals.]

Jurisprudence

The creation and delimitation of drainage districts within the parish, are entirely within the discretion of the police jury and since it acted within its powers, the courts are without authority to impugn or inquire into its motive, unless fraud or manifest invasion of a private right is proved. Bernard v. Bayou Portage Drainage District, 130 La. 637, 58 So. 493 (1912).

R.S. 33:1237: A police jury may close and dam, on its own initiative, small canals or streams of water in the parish which it finds hazardous or detrimental ... destructive or harmful to property or to the public health and which are not under the jurisdiction of the United States, when it has the written approval of the Department of Public Works; and if within a levee district, the written approval of the board of commissioners of the levee district.

R.S. 33:1238: [Provides procedure to be followed in R.S. 33:1237.]

Sec. 10. Water Works District

(Louisiana Revised Statutes)

R.S. 33:3811: [Police juries may divide their respective parishes into one or more waterworks districts. The police jury may abolish a waterworks district or may change its boundaries; provided that obligations existing at the time of such abolishment or change shall not be affected. Before the abolishment or change, the police jury shall adopt a preliminary resolution declaring the intention of the police jury. Notice of a hearing shall be given to the public and a hearing shall be held.]

R.S. 33:3814: Police juries shall form a waterworks district when petitioned to do so in writing by not less than twenty-five persons owning and assessed for lands in the district. Corporations may sign the petition only if domiciled in the district. The petition shall set forth the boundaries of the district and the names of persons to be appointed as commissioners of the district.

R.S. 33:3815: [The waterworks district shall constitute a body corporate in law, with all the powers of a corporation. The water works district may expropriate property for any purpose it deems necessary in the operation of its waterworks system, and may acquire by donation, purchase, or expropriation any existing waterworks system in the district. The districts may dig and excavate the roads, streets, sidewalks, and alleys in the district for the purpose of laying pipeline or water mains. It may acquire all machinery necessary and shall own all sites, acquired by the above methods, in full ownership.]

Waterworks districts may co-operate with other waterworks districts within their respective parishes, or with private individuals, associations, corporations, or municipalities.

R.S. 33:3818: [The board of commissioners of the district shall have absolute control and authority over the waterworks in the district. The Board shall adopt by-laws, rules and regulations, for the proper conduct and operation of the district. They may employ the necessary labor for directing and installing a waterworks system.

[They may enter into contracts to improve the water system.]

R.S. 33:3820: [The Commissioners of a district may fix the rates at which it will supply water within as well as outside the district and may dispense water from its system upon a flat rate or upon a meter rate. The cost of connecting and installing meters shall be borne entirely by the person using them.]

R.S. 33:3822: The governing authority of any parish, municipality or waterworks district ... is hereby vested with full power and authority, after having been petitioned by sixty per cent of the resident property owners of any such political subdivision, or by a vote of a majority in number and amount of the resident property taxpayers qualified to vote ... in the discretion of the governing authority, to establish, acquire, construct, improve, extend and maintain within the political subdivision a waterworks system or systems, including such treatment facilities as may be required, with all necessary equipment and installations in connection therewith, including such extensions as may be proper to connect the system or systems with the main waterworks system of said political subdivision ... whether within or without any such political subdivision; or, if the area which is to be served be an area within a parish, municipality or waterworks district already having water facilities or which may be able to acquire such facilities within or without such political subdivision, then by petition of the property owners in such area owning property comprising not less than sixty per cent of the frontage of all lots ... to be improved or benefited by the laying of such water lines or the installation of such improvements, or by vote of the qualified resident property taxpayers within such area, and they shall have full power and authority to levy and collect local or special assessments on the real property within ... the area so served, sufficient in amount to defray the total cost of said work, including the cost of street intersections and installations and connections necessary to connect said system with the main water system of the political subdivision or necessary to connect said system with any facilities outside of such political subdivision, including the cost of acquiring any such outside facilities whether by purchase, lease or otherwise, or including the cost of the construction of complete waterworks facilities, either within or without the political subdivision, all within the form and manner and subject to the limitations and restrictions herein contained.

R.S. 33:3823: [Requires the giving of detailed notice of intention by the political subdivision to establish, acquire, construct, improve, extend and maintain a water system. All objections are then to be heard in open session on a date, time and place named. Then, if still desired, by the political subdivision the improvements may be put into effect.]

R.S. 33:3827: Upon receipt of the certified statement ... of the engineers of the political subdivision ... [giving the total cost of the improvement, plus the amount of the cost chargeable to each lot to be improved] the governing authority shall adopt an ordinance levying a local or special assessment on each lot ... to be improved or benefited in proportion that its front footage bears to all the abutting lots ... to be improved ... provided that where the construction of the improvements is financed partly under the provisions hereof, and partly by the issuance of tax secured bonds, or by any other method, then the total of all assessments levied hereunder shall represent the total cost of the work contemplated less the amount provided by tax secured bonds, or such other method .... [All unpaid assessments, when filed with the clerk of court in the parish where the property is located, shall operate as a lien against all such real estate.]

R.S. 33:3828: [Provides for the issuance of negotiable interest bearing coupon certificates of the political subdivision which are not to exceed the amount of the improvement costs.]

R.S. 33:3829: [If the local and special assessments originally levied are insufficient to cover the costs of the improvements, the political subdivision is authorized to levy additional local or special assessments.]

R.S. 33:3835: No contest or proceeding to question the validity or legality of any resolutions or ordinances adopted or proceedings had under the provisions of R.S. 33:3822 through 33:3835 shall be begun in any court by any person for any cause whatsoever, after the expiration of thirty days from the date when the resolution, ordinance or proceeding was published, and after such time the regularity of such resolution, ordinance, or proceeding shall be conclusively presumed. If the validity of any certificates issued under the provisions of R.S. 33:3822 through 33:3835 is not raised within thirty days from the date of publication of the resolution or ordinance issuing said certificates and fixing their terms, the authority to issue said certificates, the legality thereof and of the local or special assessments necessary to pay the same shall be conclusively presumed and no court shall thereafter have authority to inquire into such matters.

Sec. 11. Fresh Water Districts

(Louisiana Constitution)

Art. XV Sec. 3: The Legislature is authorized, for the purpose of furnishing fresh water from the Mississippi River to the villages, towns, and cities within its boundaries or adjacent thereto, to create, out of all parts of the Parishes of Ascension, Assumption, and Lafourche, a fresh water district, to be known as Bayou Lafourche Fresh Water District, which shall be a subdivision of the State with power to sue and be sued and to have all the powers of taxation vested in other subdivisions of the State ... and with further power to levy fixed charges, on a gallonage basis, for water so furnished ....

(Louisiana Acts)

Act 113 of 1950: [The affairs of said district shall be governed by a board of commissioners, to be selected by the police juries.

[The act merely enacts the provisions of Art. 15 Sec. 3 of the Louisiana Constitution which are outlined above.]

Act 191 of 1952: [This authorizes the Board of Commissioners of the Atchafalaya Basin and Lafourche Basin Levee Districts to make available the sums of $250,000 each, for the construction of a pumping facility, appurtenant pipeline and other facilities to provide fresh water in Bayou Lafourche from the Mississippi River; to authorize said Boards to contract with other agencies, departments, political subdivisions, persons, firms, or coporations for the exercise of the authority herein granted.]

Act 192 of 1952: [Act 113 of 1950 was amended in this act to require the Board of Commissioners of the district to maintain the drainage improvements, floodgates, channel improvements and drainage structures of the district, with the view of providing and maintaining fresh water therein and authorizing the Board to contribute to the cost of construction and installation of the pumping facilities.]

Act 566 of 1952: [This authorizes the Department of Public Works to construct a pumping facility and appurtenant pipeline facilities at the head of Bayou Lafourche.]

Sec. 12. State Soil and Water Conservation Districts

R.S. 3:1204: [A. The State Soil and Water Conservation Committee, consisting of seven members, is an agency of the State. The Dean of the College of Agriculture of Louisiana State University and the Commissioner of Agriculture of the State of Louisiana shall automatically be members of this committee. The other five members shall be elected, one from each of five designated areas within the state. Each elected member shall be a landowner or operator actively engaged in farming or animal husbandry, within the district and area he represents, and shall be a qualified voter in that district.

[D. The committee shall have the following duties and powers:
[1. To offer appropriate assistance to the supervisors of the soil and water conservation districts.
[2. To inform each district of the activities of the other districts.
[3. To coordinate the programs of the districts.
[4. To secure the cooperation or technical and financial assistance of the United States or the State.
[5. To encourage the formation of districts in areas where needed.]
6. The State Soil and Water Conservation Committee and the Soil and Water Conservation Districts shall be the official state agencies for cooperating with the Soil Conservation Service of the United States Department of Agriculture, and for promulgating and enforcing land-use regulations or adjustments in carrying on all measures for the control and prevention of soil erosion, and for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water.

E. Nothing contained in this Part shall have the effect of taking away or abridging any of the functions presently being exercised under existing law by the Department of Public Works, State of Louisiana ....

R.S. 3:1205: A. Any twenty-five owners of land lying within the limits of the territory proposed to be organized into a district may file a petition with the State Soil and Water Conservation Committee asking that a soil and water conservation district be organized .... [The petition must set forth, among other things, that there is a need, in the interest of public health, safety, and welfare for such a district to be formed. Where more than one petition is filed covering parts of the same territory, the State Soil and Water Conservation Committee may consolidate all or any such petitions.

[B. After a hearing with all owners of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described teritory, and all other interested parties, if the committee shall determine, upon the facts presented at the hearing and upon such other relevant facts and information as may be available, that there is a need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the territory considered at the hearing, it shall define the boundaries of the district. In defining such boundaries the committee shall give due weight and consideration to the physical, geographical and economic factors as are relevant, keeping in mind that the purpose is to conserve soil resources, control and prevent soil erosion, prevent floodwater and sediment damages, and further to dispose of, or develop, conserve and utilize water. The territory to be included within such boundaries need not be contiguous. If the petition is denied, after six months, subsequent petitions covering the same or substantially the same territory may be filed again, new hearings held and determinations made.

[C. After the committee has made a determination that there is a need for the establishment of the district, it shall consider the question whether the

operation of a district within such boundaries, with the powers conferred upon the districts by this Part is administratively practicable and feasible. To assist the committee in answering this question, it shall hold a referendum within the proposed district upon the proposition of the creation of the district. Only owners of land within such boundaries shall be eligible to vote on the referendum.

[E. The committee, considering the relevant facts which are suggested in this Part, may determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible only if a majority of the votes cast in the referendum upon the proposition of the creation of the district shall have been in favor of the creation of the district.]

R.S. 3:1208: [A soil and water conservation district shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers. The district shall have the following powers:

[1. To carry out preventive and control measures and works of improvement for flood prevention or the conservation, development, utilization and disposal of water within the district on lands owned or controlled by the state and on other lands within the district upon obtaining the consent of the owner as well as occupants of such lands;]

2. To cooperate, or enter into agreements ... to furnish financial or other aid to, any agency, governmental or otherwise, or any owner of lands within the district, in the carrying on of erosion control and prevention operations and works of improvement for flood prevention or the conservation, development, utilization, and disposal of water within the district ....

[3. To acquire in any manner, maintain, administer and dispose of property in furtherance of the purposes of this Part;

[4. To make available to land occupants machinery, fertilizer, seeds and other material or equipment in furtherance of the purposes of this Part;

[6. To develop comprehensive plans in order to accomplish the purposes of this Part;

7. To take over by purchase, lease, or otherwise, and to administer and manage any soil-conservation, flood prevention, drainage, irrigation, water management and erosion-control projects located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies ....

[8. To sue and be sued; to make and execute contracts and other instruments necessary in the exercise of its powers; to make, amend and repeal rules and regulations not inconsistent with this Part to carry into effect its purposes and powers;

[9. In order to receive any benefits under this Part, the landowner may be required to contribute money, services or materials to the operations conferring such benefit.]

10. No provision with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

11. No district organized under the provisions of this Part shall have power to levy, assess, or collect any taxes or special assessments.

R.S. 3:1209: The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and soil resources and preventing and controlling soil erosion ....

R.S. 3:1215: [Gives the procedure for the discontinuance of a district which is very similar to the procedure used in the creation of a district.]

Sec. 13. Iatt Lake Water Conservation District

(Louisiana Constitution)

Art. 15 Sec. 4: Iatt Lake Water Conservation District shall be a body politic and corporate and political subdivision of Louisiana. The District shall include all the land within Grant Parish located west of U.S. Highway 167 and all the land located within Police Jury Wards 9 and 10 of Rapides Parish, exclusive of that land located within existing municipalities and waterworks districts.

[C. The purpose of the District is to furnish fresh water to cities, towns, villages, industries, corporations and persons both within and outside of the District; to preserve, store, control, conserve, utilize and distribute the waters of the lakes, streams and other bodies of water in the District; to prevent the pollution and blocking of such streams; to acquire, maintain and operate facilities, including the construction of new ditches, channels, dams and levees, and all other work necessary to the drainage of lands in the District; to prevent the escape of such waters until employed to maximum public advantage and in insuring a fair and just distribution of all of said waters for all of the people of the area for the purposes shown.

[E. As the exercise of the powers will be in all respects for the benefit of the people of the State, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, the Board shall not be required to pay any taxes or assessments upon any property acquired or used by it.

[F. The powers granted to the District include the following:
[(1) to sue and be sued;
[(3) to acquire by purchase, donation, lease, or otherwise any property necessary for carrying out the objects of the District;
[(4) to expropriate property and to exercise the power of eminent domain;
[(5) to effectuate and maintain proper depths of water to accommodate the business of the District, and to adopt and enforce such regulations as may be reasonably necessary to control the pollution and blocking of streams and other fresh water bodies within the District;
[(6) to construct, acquire and maintain pumping stations, pumps and facilities, reservoirs, dams, levees, canals, locks, conduits, pipes, water treatment plants, and such other works as are necessary for carrying out the purposes of this amendment. There is hereby vested in the District the right to transfer water between watershed in the District, to control the water level in and discharge rates from the District's reservoirs and the lakes, streams and other bodies of water in the District and to take and dispose of all natural water flowing into or originating within the District for all purposes of this amendment; provided only, that the District shall not have authority to destroy or substantially diminish vested water rights without the making of proper compensation therefor; also, no adverse conditions shall be created by the construction of any dam or reservoir;

[(7) The District may impound, treat and distribute to consumers all the water which may be made available by reason of its facilities and may make appropriate charges therefor provided only that no charges or fees shall be imposed which shall have the effect of materially impairing any water rights presently vested in the owners of property in the District;

[(8) to adopt rules governing the fixing of charges for water and services and enter into contracts, operative within or without the District, with any consumer of water or water service and to enter into such contracts as it may see fit looking to the acquisition, construction, maintenance and operation of properties for carrying out any of its corporate powers;

[(9) to incur non-funded debt not to exceed in the aggregate the net of the unpledged estimated revenue for the current year;]

[P. This amendment is self-sufficient and self-executing without any supplementary action on the part of the Legislature. The Legislature is nevertheless authorized to further develop this amendment.]

Sec. 14. Bayou D'Arbonne Lake Watershed District

(Louisiana Revised Statutes)

R.S. 38:2552: [The Bayou D'Arbonne Lake Watershed District shall be a political subdivision and budgetary unit of the State of Louisiana. The purpose of this district is the conservation of soil and water and the development of natural resources and wealth of the district for sanitary, agricultural and recreational purposes.]

R.S. 38:2553: [The district shall have all the powers of a corporation. It may incur debt and issue negotiable bonds, contract, exercise the power of eminent domain and expropriation, conserve the fresh water supply within its boundaries, provide water for commercial, municipal and any other uses, both within and without the district and own property interests in full ownership.]

R.S. 38:2554: [The Board of Commissioners shall aid and assist the Department of Public Works in building such dams and other works as may be necessary to carry out the purposes of the district and to create and impound an industrial water supply.]

R.S. 38:2558: [The Board of Commissioners may:

[(1) Purchase and sell personal and real property;
[(2) Acquire servitudes, rights of way and flowage rights by purchase or expropriation;
[(3) Assist in conserving soil and water;
[(4) Contract for construction of works;
[(5) Cooperate with the Department of Public Works in its construction of any drainage works and constructions of works for the control, retention, diversion or utilization of water;
[(7) Levy taxes and incur indebtedness;
[(10) Do and perform any and all things necessary to the fulfillment of the purposes for which this district is created;
[(11) (c) Secure the general health of the district;
(e) Grant franchises for the purpose of laying gas, water, sewer or other facilities supplying inhabitants or corporation with water.]

R.S. 38:2559: [The Board may make and enforce such rules and regulations as it shall deem necessary:

[(1) To protect the works;
[(4) To prescribe the permissible uses of the water supply, provided by the impoundment constructed.]

Comment: The Department of Public Works is given similar powers in order to aid the district in accomplishing its purposes. The Department of Public Works and the Wild Life and Fisheries Commission are given supervisory control over the board of commissioners.

Sec. 15. Recreation and Water Conservation Districts

There are four recreation and water conservation districts now in existence: (1) Recreation and Water Conservation District, St. Helena Parish; (2) Cypress-Black Bayou Recreation and Water Conservation District; (3) Black Lake Bayou Recreation and Water Conservation District of Red River Parish; and (4) Bayou Desiard-Bayou Bartholomew Cut-Off Loop Water Conservation Board. Each has purposes and powers very similar to those of the Cypress-Black Bayou Recreation and Water Conservation District, which are set out below in R.S. 38:2603 and R.S. 38:2608.

(Louisiana Revised Statutes)

R.S. 38:2603: [The Cypress-Black Bayou Recreation and Water Conservation District shall be a political subdivision of the State which shall have for its purposes the development of the wealth and natural resources by the conservation of soil and water for agricultural, recreational, commercial, industrial, and sanitary purposes. It shall have complete control over the supply of fresh water made available by its facilities which shall be administered for the benefit of the persons residing or owning property within the district and if it should be for the benefit of the district it shall have the authority to sell such water for irrigation, municipal and industrial uses both within and outside the district. This statute gives the district the necessary powers to carry out the purposes for which it was created.]

R.S. 38:2608: [The board of commissioners may make such rules and regulations as it shall deem advisable to:
(1) Protect and preserve the works of the district ... and to prescribe the manner of their use;
(2) Prescribe the manner of buildings, bridges, roads, fences or other works in, along or across any channel, reservoir or other construction of the district;
(3) Prescribe the manner in which ditches, sewers, pipelines or other works shall be connected with the facilities of the district or any water course within the district and the manner in which the water courses of the district may be used for the disposal of waste;
(4) Prescribe the permissible uses of the waters of the district made available by its facilities and to prevent the pollution of such water;
(5) Prohibit or regulate the discharge by sewers into the district of any waste ... deemed detrimental to the waters or facilities of the district.

Sec. 16. Sabine River Authority

R.S. 38:2322: [The governing power of the Sabine River Authority shall be vested in a board of commissioners composed of twelve members, eleven appointed for four years by the governor, the twelfth being the Director of Public Works.]

R.S. 38:2324: [The Sabine River Authority is an agency and instrumentality of the state with corporate powers, possessing all privileges, rights and

immunities conferred by law upon other corporations of like character within the state, but without power to levy taxes. The Authority will be performing an essential public function under the constitution and shall not be required to pay any tax or assessment on its properties, any excise, license or other tax on its operating revenues, nor will there be any tax on the income derived from bonds issued.]

R.S. 38:2325: [The Authority shall have the power:

[2. To acquire, encumber and dispose of real or personal property within its territorial jurisdiction, whether or not subject to any mortgage or lien.

[3. To contract in carrying out corporate objectives.

[5. To incur debts which shall be payable only from the revenues to be derived by the Authority from sources other than taxation.

[6. To fix, collect and revise rates, charges and rentals for the facilities of the Authority and the services rendered.

[10. To conserve, store, control, preserve, utilize and distribute the waters of the rivers and streams of the Sabine watershed; to drain and reclaim swamp and overflow lands in the district, with the view of controlling floods and causing cultivation of such lands; to control and employ the waters of the Sabine River and its tributaries:

[(b) To provide for the preservation of the equitable rights of the people in the beneficial use of the waters of the Sabine River and its tributaries;

[(c) To obtain the maximum service from the waters of the Sabine River and its tributaries;

[(e) For irrigation of Louisiana lands;

[(f) For the development of drainage systems;

[(h) For the development of commercial and industrial enterprises;

[(i) For the development of hydro-electric power.]

Sec. 17. Irrigation Districts

(Louisiana Revised Statutes)

R.S. 38:2101: [The police juries of the different parishes of the state may form an irrigation district comprised of lands in one or more parishes or comprising any portion or portions of one or more parishes.]

R.S. 38:2102: [The irrigation districts shall be created by the police juries when petitioned to do so by the property owners owning a majority of the land within the limits of the proposed district, outside the limits of any towns or cities.]

R.S. 38:2104: [Any interested person must contest the legality of the district in the district court of the domicile of the district within sixty days from the date of the second publication, or of the date of the last posting of the ordinance creating the district.]

R.S. 38:2112: [All irrigation districts shall constitute a body corporate in law, with all the powers of a corporation. They may incur debt, issue negotiable bonds and expropriate property.

[All districts may conserve water for the benefit of the inhabitants and property owners within the district, to provide water for irrigation and other uses, both within and without the district. The governing authority may do and perform all acts necessary to construct, lease, acquire, maintain and operate dikes, dams, reservoirs, storage basins, locks, levees, flumes, conduits, and acquire or lease any private canals and other bodies of water within or without the district and necessary or suitable to the operation of the district.

[The districts may construct, lease, maintain, acquire and operate any machinery necessary. They may own in full ownership all servitudes, rights of

way, and other sites, no matter how acquired. They may transfer title to the Federal Government of any property they may own.

[The districts may enter into any agreements necessary with the Federal Government for carrying out the purposes of the district.

[They may acquire water from any other irrigation system, or from any other source, and distribute the water, and make a uniform rate for its use. The charge shall be in addition to any tax that may be levied to pay the principal and interest on any bonds issued. No part of the money from the bonds shall be used to pay for the water so purchased but must be used to construct the irrigation systems.]

R.S. 38:2113: [Any and all contracts may be let without advertising to accomplish the goals of the district.]

R.S. 38:2116: [When petitioned by landowners owning a majority of the acres within a district, a tax not exceeding ten cents per acre for a period not exceeding forty years shall be levied on each acre within the district.]

R.S. 38:2117: Lands within the corporate limits of incorporated towns and cities, although within the limits of an irrigation district, shall not be liable to taxation for any purpose under this Part, nor shall these lands be considered in calculating the number of proportion of acres of land required to sign any petition or make any recommendation under this Part. The owners of the lands shall not, by reason of the ownership, sign any petition or participate in any election required or permitted under this Part.

R.S. 38:2120: Whenever landowners, owning not less than twenty-five per cent of the total acreage of the land in an irrigation district outside of the corporate limits of incorporated towns and cities, shall petition the governing authority of the district to call an election to submit to the property taxpayers therein qualified to vote, a proposition to authorize the incurring of debt and issuing of bonds for the purpose of acquiring, constructing, leasing, maintaining, and operating canals, locks, dams, reservoirs, storage basins, dikes, ditches, levees, flumes, machinery, and other works, or for the purchasing of works already constructed, in the district, the governing authority of the district shall call a special election for the purpose of obtaining the will of the property taxpayers qualified to vote in the district, in regard to the proposition to incur debt and issue bonds, as petitioned for as aforesaid.

Sec. 18. Drainage Districts

(Louisiana Revised Statutes)

R.S. 38:111: [Any drainage or subdrainage district, gravity drainage district, levee board, or political subdivision may contract with the Department of Public Works upon any terms for the payment of the cost of the different projects involved proportionately by the Department of Public Works and the districts.]

R.S. 38:113: [The districts shall have control over all public drainage channels within the limits of their districts and for a space of one hundred feet on each side of the channel whenever the channels, improved or unimproved, have been adopted as necessary parts of or extensions to adopted channels.]

R.S. 38:141: [The Louisiana parishes, Orleans excepted, may expropriate land and improvements, outside the levee districts, necessary for the construction of drainage canals and projects with enough adjoining property on which to build spoil banks and on which to place the removed dirt, and property next to or in the vicinity of the projects necessary for construction and maintenance.

[The parishes may acquire clear title to the land and improvements or any servitude, right, or interest necessary.]

R.S. 38:214, 215: [State that no person may interfere with or obstruct the drainage and set fines for violations.]

R.S. 38:217: [Drainage of water into a public road is prohibited.]

R.S. 38:218: No person diverting or impeding the course of water from a natural drain shall fail to return the water to its natural course before it leaves his estate without any undue retardation of the flow of water outside of his enclosure thereby injuring an adjacent estate.
[Provides fine for violation.]

R.S. 38:1521: [The board of commissioners of drainage districts may borrow the sums which in their judgment may be required for the needs of the district for the current year, upon terms they may see fit, not exceeding the rate of six per cent per annum, and secure the loans by a pledge of the revenues of the district for the current year. In arriving at the amount to be borrowed, the district may anticipate the current revenues of each year.]

R.S. 38:1543: [The board, so long as any of the bonds are outstanding shall assess an acreage tax or forced contribution against each acre of land in the district or each acre of land specified in the petition of the property owners, not to exceed two dollars and fifty cents per acre per annum.]

R.S. 38:1545: [Provides for the funding or refunding of bonds and sets out the procedure for such.]

R.S. 38:1571: [A district wholly within the boundaries of any municipality may be dissolved, and all the canals, works and property of the district, and the control thereof, may be transferred to the municipality, all by resolution of the board of commissioners of the district.]

R.S. 38:1574: [Any district, when requested by written petition, signed by the landowners owning 95 per cent of the lands in the district shall, through its governing authority, adopt a resolution declaring the district to be dissolved.]

R.S. 38:1575: [There may be no dissolution without the consent of all bondholders or the retirement of all outstanding bonds.]

R.S. 38:1602: [For the purpose of draining and reclaiming the marsh, swamp, and overflowed lands in Louisiana that must be pumped and leveed in order to be reclaimed the various parishes on their own initiative, may create drainage districts embracing all or part of the land in their parishes. All land in any district must be contiguous. There must be no less than five landowners, resident or non-resident, and no land shall be included within more than one drainage district.]

R.S. 38:1603: [Drainage Districts may be composed of contiguous lands situated partly in one parish and partly in one or more adjoining parishes when approved by the respective governing authorities of the parishes.]

R.S. 38:1604: Upon the failure or refusal of any parish to create drainage districts when used ... then the parishes shall create a drainage district when petitioned to do so by the property owners owning a majority of the acres in the proposed district ....

R.S. 38:1605: No drainage district shall be created until the Department of Public Works shall have first approved the formation of the district with

respect to the body of land to be included therein .... If in the opinion of the Department it is necessary to include in the district any high lands for the purpose of reclaiming the body of unreclaimed lands, the inclusion shall not invalidate the creation of the district ... but the high lands shall be taxed only in the proportion, if any, as they shall be benefited by the works of the district ....

R.S. 38:1614: [Any drainage district shall constitute a body corporate in law, with all the powers of a corporation. It shall have perpetual existence, incur debts and contract obligations, sue and be sued and perform all acts in its corporate capacity necessary for carrying out the purposes and objects for which it was created.

[The district may expropriate property for pumping station sites or for any other purpose. It may acquire machinery needed and maintain pumping plants and shall own the right of way for levees, canals and ditches, and all sites which are acquired either by donation, purchase or expropriation, in full ownership.

[The drainage districts may contract with the other various types of drainage districts, and municipal corporations to undertake projects as a joint enterprise. The works shall be owned by the different districts or municipal corporations in proportion to the contribution by such, which will be figured in advance of the work.

[A district may open, deepen and enlarge natural drains within or without the district which may be deemed necessary. It may cut and open new drains and canals wherever deemed necessary and may enter into contracts for the performance of this work.

[A district may extend canals and ditches beyond its limits for the purpose of securing a proper outlet for the waters of the district.]

R.S. 38:1617: [Any interested person may contest the legality of any drainage district by suit against the district brought in the district court of the domicile of the district within sixty days from the date of the second publication or the date of the last posting of the ordinance creating the district. The right to bring this suit lapses after this sixty day period and no court shall have jurisdiction to entertain any suit afterwards.]

R.S. 38:1619: [Immediately after organizing, the board of commissioners shall levy the assessment and collection of a uniform acreage tax of not more than twenty-five cents per acre upon each acre of land within the limits of the district for the purpose of meeting organizing expenses and operating expenses such as making surveys of the district and assessing benefits and damages. It is necessary to incur these expenses before the board of commissioners shall be empowered to provide funds to pay the total cost of works of the district. The tax shall operate as a regular tax lien upon the property.

[If the amount received from the tax exceeds the needed amount, the surplus shall be prorated and refunded to the landowners paying the uniform tax.

[Any land within the district not benefited by the plan for reclamation will not be subject to this acreage tax.]

R.S. 38:1621: [A competent civil engineer, appointed by the Board of Commissioners, shall have control of the engineering work in the district. The engineer shall submit a plan for reclamation.]

R.S. 38:1622: [Upon the adoption and filing of the plan for reclamation, the owners of a majority in acres of land within the district, if they desire to proceed with the work of reclaiming the lands, may present a petition to that effect to the board of commissioners. When so petitioned, the board shall proceed with the reclamation of the district, the incurring of debt, the issuance of bonds, and the levy, assessment, and collection of taxes.]

R.S. 38:1623-1628: [Provide for the selection of a board of appraisers, their reports and the procedure for the expropriation of property.]

R.S. 38:1629: [If after hearing all contests and considering the report of the board of appraisers, the court shall find that the estimated costs of works exceed the estimated benefits, the court shall decree the board of commissioners unauthorized to put into effect the plan. The plan may then be amended if the landowners desire such.]

R.S. 38:1630: [After filing with the secretary of the board of commissioners a certified copy of the decree of the court, the board may proceed with the plan for reclamation, and may employ men and machinery to complete all works and improvements needed. After advertising they may, in their discretion, let the contract for the works and improvements to the lowest bidder, who shall furnish security. The chief engineer shall be the superintendent of all the works and improvements.]

R.S. 38:1631: [After the list of lands with the assessed benefits and the decree of court have been certified and sent to the secretary of the board of commissioners, then the board may levy a tax of the portion of the benefits on all lands to pay the costs of completion of the proposed works and improvements. In case bonds are issued, then the amount of the interest, plus ten per centum for emergencies, which will accrue on the bonds shall be included and added to the tax.]

R.S. 38:1633: [After the works and improvements are completed, the board may levy a maintenance tax on the land within the district.]

R.S. 38:1638: [In order to effect the drainage, protection and reclamation of the land in the district:

[A. The board of commissioners may:

[1. clean out, straighten, widen, change the course and flow, alter or deepen any ditch, drain, watercourse, pond, lake, creek, bayou or natural stream in or out of the district,

[2. fill up any creek, drain, channel, watercourse or natural stream, and

[3. concentrate, divert or divide the flow of water in or out of the district,

[4. construct and maintain main and lateral ditches, canals, levees, dikes, dams, sluices, revetments, reservoirs, holding basins, floodways, pumping stations and syphons and any other works and improvements deemed necessary to preserve the works in and out of the district.

[B. The board of commissioners shall:

[1. make adequate provision for the drainage of all lands,

[2. construct or enlarge any and all bridges needed in or out of district across any work or improvement,

[3. construct any and all of the works and improvements across, through or over any public highway, railroad right of way, track, grade, fill or cut in or out of the district,

[4. remove any fence, building, or other improvements in or out of the district, and

[5. hold, control, and acquire by donation or purchase, and if need be, expropriate any land, servitude, railroad right of way, sluice, reservoir, holding basin or franchise in or out of the district for any purpose herein provided.]

R.S. 38:1661: [Where the works set out in the plan for reclamation are found insufficient, the board of commissioners may formulate new or amended plans. The additional assessments shall be made in conformity with R.S. 38: 1623 et seq.]

R.S. 38:1662: [If necessary for drainage, the constructed ditches shall be connected with the existing ditches, etc., in the district.]

R.S. 38:1751-1802: [Concern gravity drainage districts, which are similar to the revised statutes summarized above.]

R.S. 38:1841-1904: [Concern consolidated districts.]

There now exist the Cane River, Lafourche Basin and Red River-Bayou Pierre Levee and Drainage Districts.

(Louisiana Constitution)

Art. XV. Sec. 1 (1921): The Louisiana Legislature may enact legislation for the purpose of draining and reclaiming the undrained marsh, swamp and overflow lands in the State and may delegate the power necessary for such to an agent or agencies, as may now exist, or as may be created; to organize drainage or sub-drainage districts; to impose taxes and forced contributions on land benefited by such drainage; to issue bonds, for which the credit of the State shall never be pledged, when payment is based upon such tax or forced contributions; and also to cooperate with the federal government.

Sec. 19. Levee Districts

(Louisiana Revised Statutes)

R.S. 38:281: The levee boards of this state, Orleans Parish excepted, may construct and maintain levees, levee drainage, and do all other things incidental thereto ....

R.S. 38:221: [No person shall place in, through, or under any public levee any rice-flume, dahl, pipe, or other conduit or, after due notification, shall fail to remove from the levee such works that may exist. A fine of not more than five hundred dollars or imprisonment for not more than sixty days or both is provided for violation.

[This Section shall not be applicable to levees on the Mississippi River not embraced within the limits of the Fifth Louisiana, the Atchafalaya Basin, the Lafourche Basin, the Grand Prairie, the Buras, and the Orleans Levee Districts.

[This Section shall not apply to pipes or other conduits placed through or under the public levees in New Orleans, or in municipalities or parishes when and where needed for the purpose of sewerage, gas, or for furnishing gas or electricity for the use of cities or parishes and their inhabitants.

[The laying of such pipes through or under the public levees in cities, municipalities, or parishes shall be with the consent and approval of the levee board, the Department of Public Works and the governing authorities of the cities, municipalities, or parishes and under the supervision of the Department of Public Works.]

R.S. 38:222: Any authority granted under the provisions of R.S. 38:221 to operate a siphon over the public levees shall be subject to the following regulations:

(1) The location of all siphons shall be at right angles to the axis of the levee.

(2) The levee shall [not be cut into nor disturbed] in placing of the siphon .... This siphon shall be made either to span the levee or in a practicable manner to conform to the prescribed section of the levee.

(3) The intake and discharge ends of all siphons shall be located at distances not less than thirty feet on the river side nor sixty feet on the land side from the base of the levee.

(4) Both the intake and discharge ends of all siphons shall be so protected as to guard against any local excavation or washout.

(5) In the operation of the siphons for irrigation or other purposes, no area within one hundred and fifty feet of the base of any public levee on the land side shall at any time be flooded.

(6) All areas subject to flooding by siphons or otherwise, shall be provided, by the owners or operators, with low level ditches, located at suitable distances apart to at all times care for the proper drainage of the public levees and highways.

(7) [No siphon shall be placed over the levees included within the provisions of R.S. 38:221 until permission has been obtained.]

Sec. 20. State Contracting Power With Federal Government

It must be realized that any use of water within the state is always subservient to the contracts which the Governor of the State has made with the Federal Government in relation to flood control.

(Louisiana Revised Statutes)

R.S. 38:81: The governor on behalf of the state or any state board, commission, agency, body politic or political subdivision or any section of the state may make and execute with any person who is an authorized representative of the federal government, any contract, transaction, or undertaking, designed to carry out, accomplish, or secure the benefits and obligations of any state or federal law with respect to the control of flood waters, the navigation or use of rivers flowing through this state, the development of our waterways, lowlands, drainage areas, storage basins, reservoirs, spillways, floodways, diversion channels for flood waters and all similar undertakings. The governor shall see to it that the interests of the state and its subdivisions, the rights and interests of its citizens and their property are adequately protected.

The governor may utilize whatever power he is given by law to function the various levee boards, the Department of Public Works, or any other state board, commission, agency, or political subdivision. These authorities shall fully cooperate and coordinate their efforts under his direction in carrying out and accomplishing the obligations and requirements of the agreements and undertakings.

R.S. 38:83: The governor may enter into any other contract with ... the United States Government, which may become necessary to make effective in Louisiana the provisions of the Flood Control Act and to secure for the State the aid and relief provided for in the Act. To this end the Governor may perform any act or thing which, in his judgment, may become necessary to obtain the relief provided for by the Flood Control Act.

Sec. 21. Expropriation

The following statutes provide for the acquisition of property for public purposes by expropriation.

(Louisiana Revised Statutes)

R.S. 19:2: Where a price cannot be agreed upon with the owner, any of the following may expropriate needed property:

(1) The state or its political corporations or subdivisions created for the pupose of exercising any state governmental powers;

(3) Any domestic or foreign corporation created for the construction of ... navigation canals;

(6) Any domestic or foreign corporation created for the construction or operation of waterworks, filtration and treating plants, or sewerage plants to supply the public with water and sewerage;

R.S. 33:4621: Municipalities and parishes may expropriate and otherwise acquire any private property, within or without their limits, for any of the purposes for which they are organized, and for any works that they are authorized to own or operate, or which they are authorized to lease or donate to the United States. This Part shall not be construed to confer authority upon a parish or municipality to expropriate property in any other parish without the consent of the police jury of the parish in which the property is situated.

Jurisprudence

Where a property owner claimed that land sought to be expropriated was not suitable for location of pumps for a municipal waterworks system because of possible contamination of water, the court held that since the city had a right to determine whether the location was suitable, the claim should be rejected. City of Gretna v. Brooklyn Land Co., 182 La. 543, 162 So. 70 (1935).

The city of Thibodaux could not expropriate the pipelines or other facilities of Lafourche Parish's water district in the area which came under the city's jurisdiction by their extension of the city limits, because there was no express authority to do so. Op. Atty. Gen. May 1, 1963.

CHAPTER 3: MISCELLANEOUS

Sec. 22. Protection of Navigable Waters by the Federal Government

(United States Code)

33 U.S.C.A. 401: [It shall not be lawful to construct any bridge, dam, dike, or causeway over or in any port, roadstead, haven, harbor, canal, navigable river, or other navigable water of the United States without the consent of Congress and without having the plans approved by the Chief of Engineers and the Secretary of Army; provided, that such structures may be built under authority of the State legislature if the navigable portion of such waters lies wholly within the confines of the state and if the plans are approved by the Chief of Engineers and the Secretary of the Army and not deviated from.]

33 U.S.C.A. 403: The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build ... any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines ... except on plans recommended by the Chief of Engineers and authorized by the Secretary of Army; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor or refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of Army ....

Sec. 23. Prescription of Drainage Claims Against State

(Louisiana Revised Statutes)

R.S. 9:5624: When private property is damaged for public purposes any and all actions for such damages are prescribed by the prescription of two years, which shall begin to run when the damages are sustained.

R.S. 9:5626: When lands are appropriated for levees or levee drainage purposes all claims and actions for payment ... for lands and improvements thereon actually used or destroyed ... shall prescribe within two years from the date on which the property was actually occupied, used or destroyed .... This prescription shall run against interdicts, married women, absentees, minors, and all others now excepted by law.

Sec. 24. Water Resources Study Commission

Comment: Act 188, 1964. This is an act to create a Water Resources Study Commission; to declare a policy of the state in regard to ground and surface waters; to provide for the preservation of existing rights in and to the use of such waters; and to provide that the commission shall conduct a study and prepare a report of its findings and recommendations to the next regular session of the Legislature.