

THE WATER LAWS OF MISSISSIPPI

by

Jack W. Pepper
Water Engineer, Mississippi Board of Water Commissioners

It may seem strange for an engineer to be discussing any form of law, when there is so much legal talent in the State, but the administration of Mississippi's Water Rights Act is the responsibility of the Board of Water Commissioners, and I have served as its administrative officer for almost ten years.

Prior to the passage of the water rights act in 1956, the people of Mississippi were more concerned with legal means to dispose of excess water than they were about rights to use water. To our knowledge, there have been no court decisions in this State dealing with the right to use water. Laws for the use of water were based on the Riparian Doctrine of the old common law, handed down from the earliest history of this country. When the first settlers came to Mississippi, the streams were important as a means of transportation, a source of power for small mills, water supply for domestic uses, and as habitat for fish life. When you carry water in buckets, you use a rather limited amount -- the other uses required the water to remain in the stream.

Under some definitions of Riparian Doctrine, a person whose property abuts on the bank of a stream is entitled to have the stream flow past his property--undiminished in quantity, and unimpaired in quality. This could mean that no dams could be constructed to store excess waters, and no water withdrawn from the streams for municipal, industrial or agricultural uses. To further complicate matters, it is difficult to define riparian land. Many streams have highways or roads running along their banks. These roads are owned by the State or County, and could cause the land away from the stream to be classified as non-riparian, since there is a break in the ownership.

In some states, the courts have followed a "reasonable use" concept that will allow restricted uses of water from the streams. A riparian owner can use a reasonable amount of the water from the stream flowing past his property. It is necessary for the courts to determine the extent of this "reasonable use", and if conditions change because of competition from additional water users, these amounts have to be adjusted. It is no wonder that very few people in Mississippi really understood just what water rights they possessed.

It might be helpful to review the development of legislation, prior to the passage of the Water Rights Act in 1956.

Our first water problems in Mississippi stemmed from damage

caused by excess water and problems of damage to water itself. As stated earlier, most uses of water required it to remain in the streams.

Some of the first legislation enacted was to enable the formation of drainage districts, making it possible for landowners to cooperate for removal of surplus water from agricultural lands.

Levee districts were formed to protect land, principally agricultural, from flood waters. The U. S. Corps of Engineers began many important projects of flood control on the Mississippi River, Yazoo River, and other major streams in the State.

Later, soil conservation districts were organized as political subdivisions of the state. These provided assistance to landowners in solving soil and water conservation problems. Federal and state agencies cooperated with these districts, making their work even more effective. Other conservation programs were put into operation, including some for education and information, cost sharing, loans and the like, under the direction of the Extension Service, the Agricultural Stabilization and Conservation Service, the Farmers Home Administration, and other Federal, State and local groups.

Congress provided for upstream flood prevention projects under the direction of the U. S. Department of Agriculture, and a project was started in Mississippi on the Yazoo-Little Tallahatchie Watershed. More recently, with the passage of Public Law 566, assistance for upstream protection and flood prevention has been extended to other watersheds. This law is administered by the Soil Conservation Service with local people sharing responsibilities and costs.

Several river basin districts have been created in recent years and I am sure that others will be created as the need arises. These districts are political subdivisions of the State, and are financed by State and County funds.

Pollution control laws were passed and programs of pollution abatement started under the direction of the Game and Fish Commission and the State Board of Health. Consequently, many industries and municipalities have installed waste disposal facilities, protecting the quality of Mississippi's water resources. Bills are currently before the Mississippi Legislature to improve the effectiveness of pollution control.

In 1952, the first of a series of dry years, many water users and citizens throughout Mississippi became conscious, as never before, of the increasing occurrence of other types of water problems -- those arising out of the day-to-day attempts to use water.

Attention was focused upon seasonal shortages and local competition for supplies. The leaders were aware that needs for water in all fields of use had expanded tremendously; and they felt certain that this expansion of need would continue. For the first time, questions were raised about whether existing laws would provide full opportunity and the protection needed for investments in developing, storing,

conserving, and using the water resources

Early in 1953, a number of organizations in the State became interested in these problems and possible solutions. To prevent the possibility of overlooking some of the organizations, I will simply summarize by saying that the Mississippi Inter-organizational Committee on Water Resources was formed in July, and had a membership representing agricultural, industrial, municipal, and recreational water users. Organizations and agencies helped the Committee gather data on state-wide problems concerning water resources, water use and needs, climate, rainfall and related matters. Mississippi water laws and court decisions, and those of other states, were studied by subcommittees. As a result of much work from a large number of people, in December, 1953, the Inter-organizational Committee released a printed report, "The Beneficial Use of Water in Mississippi."

The Mississippi Legislature took favorable action on the recommendations of the Inter-organizational Committee, and created the Mississippi Water Resources Policy Commission. The new commission continued to utilize the assistance of the various state and federal agencies, and maintained the old Inter-organizational Committee with its facilities. After presenting the preliminary report at a series of meetings around the State, a final revision of its report, under the title, "Water for the Future in Mississippi," was released in October, 1955. As a further effort to provide the 1956 Legislature with as sound recommendations as possible, the Commission called upon the Mississippi Bar Association to appoint a committee to help the Commission develop its broad recommendations into the form necessary to be introduced in the Legislature.

As the result of the cooperative efforts of many people, the Water Rights Act was passed by the 1956 Mississippi Legislature, and signed into law on April 6, 1956.

For the administration of the water law there was created a Board of Water Commissioners, consisting of seven (7) members appointed by the Governor, one from each of the congressional districts as was then constituted, and one from the state at large. The Act states that the membership of the Board shall have represented on it at least one member well versed in each of the major types of water users in the state as follows; recreational, industrial, municipal and agricultural.

In its declaration of policy, the Act states, "The general welfare of the people of the State of Mississippi requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, ... and that the public and private funds for the promotion and expansion of the beneficial use of water resources shall be invested to the end that the best interest and welfare of the people is served." It further states that water "occurring in any watercourse, lake, or other natural water body of the State, is subject to appropriation in accordance with the provisions of this Act." The Act does not apply to "ground or subterranean water rights or usage."

The Water Rights Act passed in 1956, is similar to most legislation in that it does not take rights away from anyone. On the contrary, it

recognizes some definite rights for persons owning property along a stream. As mentioned earlier, prior to the passage of the Act, it was not clear just what rights a person did possess.

The Board can not approve the appropriation of water below the "established average minimum flow; this will protect the low water flows, so that the riparian owners can have the benefit of water flowing by their property, at least it will not be dried up by future upstream water users.

Domestic uses are defined, and the Act states that nothing in the act will interfere with a person's right to use water for his domestic uses.

The Act also recognizes a person's right to construct a dam on streams, so long as it does not interfere with water rights below the dam. A simple procedure is set forth to be followed by the person desiring to construct a dam. Remember, construction of dams were questionable under the old Riparian Doctrine.

The Act also recognizes the rights of those persons actually using water from the streams at the time of the passage of the act, and even allowed a two year period in which persons could use water without a permit. Persons who used water prior to April 1, 1958, can file a claim with the Board of Water Commissioners to have their rights established.

All surface water uses initiated after April 1, 1958, require the person to make an application for a permit. After approval of a permit, the person must complete the construction of facilities and actually put the water to the designated beneficial use. After an inspection by personnel of the Board of Water Commissioners to determine the extent of the beneficial use, a license will be issued. This license is recorded in the Chancery Clerk's office in the same manner as other property rights.

I have purposely avoided going into too much detail about just how a person gets his water rights established. I will say that numerous public meetings were held over the State, and the Board of Water Commissioners worked closely with the agricultural workers in each county, trying to locate those persons who were actually using water prior to April 1, 1958, and assisted them in getting their rights established and recorded. After ten years, an occasional "sleeper" will turn up, but with the assistance and cooperation of a large number of people, we seemed to have found the bulk of those using water.

The Board of Water Commissioners was also given the responsibility of inventorying the water resources of the State. It will be impossible to administer the provisions of the Act without adequate stream flow information, at least on a sufficient number of streams to determine the "established average flows" where required. If the Act is amended, at a later date, to include provisions for the appropriation of underground water, it will be necessary to have information on the movement

of this water collected over long periods of time. The Board carries out its inventory responsibilities through cooperative programs with the U. S. Geological Survey, financed on a 50-50 State and Federal cost sharing basis. It may be of interest, that these programs are the principal sources of all basic data on the water resources in Mississippi, and many of the research projects financed by the Institute have utilized some of this information.

The legislation setting up the Mississippi Board of Water Commissioners was intended to bring about an orderly development and best use of the available water supplies in the State. It should be obvious that the mere possession of a right to use water issued by the Board is no guarantee that the water will be available in the stream when needed. In 1963, many streams in the southern part of the State, experienced low flows that were below any previously recorded -- even lower flows will occur eventually. The only sure way to have water available when desired is through water storage. Excesses during the winter and spring should be stored for use in the summer and fall, when stream flows will limit the amount of water use. The efforts of the Board of Water Commissioners are directed toward assisting water users and prospective water users achieve this goal.

Now to illustrate how the priority system for water use will work in the future. In winter and early spring, water will be available in most streams to provide sufficient amounts to fulfill all rights to store water. Early in the growing season, there may be enough water in the streams to satisfy the needs of all valid water users. As the stream flows decrease, users may begin to feel shortages on some streams. In order for the high priority users to get water in the amounts covered by their written water rights, it may be necessary for the junior priorities to cease using water from the streams. It may be necessary for all other users in the entire river basin to yield to the person with the highest priority.

Experience, and adequate information on the availability of water, will prevent some of the future competition. Additional storage can have water available for use instead of being in the Gulf of Mexico. Irrigators with low priorities can begin their water uses earlier, and can have the level of soil moisture raised to a point that could carry them through the dry periods when it will be necessary to yield the stream flow to high priority users. There are ample supplies of water in Mississippi, it is the distribution that needs to be managed better.

Mississippi is the only state east of the Mississippi River that has adopted the prior appropriation system for water rights. Ten years of experience have shown that the principle will work in this State. There have been only a very few protests registered in attempts to prevent the Board from issuing permits, and these were usually withdrawn after a simple explanation. To date, there have been no court decisions to reverse a finding of the Board of Water Commissioners. I hope that we can keep this record for a long time.

As more and more industries move into our State, and as more and more farmers use irrigation as part of their farming practices, even greater amounts of water will be required in future years. Creation of the various districts has provided a means to finance the construction of the facilities necessary to manage our water resources. With the passage of the Water Rights Act, we

now have the legal authority that is needed to protect the investments. By continuing to work together at all levels of government, the water resources can be developed to the fullest that they are capable.

How well our water resources are managed will determine the future of our State.