

CVEN 664 – Water Resources Planning and Management Study Questions #3

Doctrines of Water Law

1. In the U.S., what level of government has the power to decide which doctrine of water law is used? Why does this level of government have this power?
2. Explain the “Riparian Rights” (RR) doctrine. How does the right to use water arise under RR? Can water from a stream be used outside the stream’s watershed? What do the rules of “Source of Title” and “Unity of Title” mean? How is “Natural Flow Theory” different from “Reasonable Use Theory”? Are water use rights equal under RR or is there an order of precedence? What effect does this equality or precedence have on newer rights holders and older rights holders? Can a water use right be lost under RR? If so, how? How many states follow the RR doctrine? Name some of them and tell where the group of pure RR states are located.
3. Explain the “Prior Appropriations” (PA) doctrine. How does the right to use water arise under PAR? Can water from a stream be used outside the stream’s watershed? Are water use rights equal under PA or is there an order of precedence? What effect does this equality or precedence have on newer rights holders and older rights holders? What are “flood rights”? Can a water use right be lost under PA? If so, how? How many states follow the PA doctrine? Names some of them and tell where the group of pure PA states are located.
4. Explain the “Regulated Riparianism” (RegR) doctrine. How does the right to use water arise under RegR? How is this different from RR? Are water use rights equal under RegR or is there an order of precedence? What effect does this equality or precedence have on newer rights holders and older rights holders? Can a water use right be lost under RegR? If so, how? How many states follow the RegR doctrine? Names some of them and tell where the group of pure RegR states are located.
5. What alternative systems to the 3 above exist in the U.S.? Why have these alternatives developed? What states have the alternative systems?
6. What is water law doctrine governing surface waters in the State of Texas? Have other doctrines been in force in the past? If so, which ones and why have changes occurred? What is the doctrine governing groundwater in the State of Texas? What is the current status of this groundwater legal regime?

U.S. Federal Legislation and Institutions (Part a)

1. What Constitutional powers of the Federal government give it an interest in WRPM?

2. Explain how the committee system of the U.S. Congress affects the manner in which laws pertaining to water resources are developed and passed. What is the role of Congressional staff members in researching legislation and providing support to the law-making process?
3. *Scenario:* You are a water resources engineer considering construction of a new water supply intake. You sit down with three members of your legal counsel from the firm of Blood, Sukk, and Pairsites, and the conversation goes like this:
 - Blood:* “The proposed intake is in violation of 16 USC 1271.”
 - Pairsites:* “My colleague is mistaken. The governing statute would be the Wild and Scenic Rivers Act of 1968, you see.”
 - Sukk:* “I beg to differ with the findings of both of the opinions heretofore advanced. Said intake is clearly a matter governed by Public Law 90-542.”
 - Blood:* “Obviously, you will need to retain our firm’s services for at least another 90 hours (at \$350/hour, *ka-ching*) of considered and discerning legal research to resolve the matter of jurisdictional, jurisprudential, and jurisdoctoral ambiguity presently before your attention.”

What is your response?

4. How exactly does the Executive branch of the federal government carry out the laws enacted by the Legislative branch. What is the role of regulations in this process? How is a regulation different from a law? What is the process by which regulations are developed and finalized? What does a designation such as “40 CFR 122.26” mean?
5. What are the Executive branch departments that have jurisdiction and interest in water resources issues? Under each department, name the specific agencies and their responsibilities for water issues.