

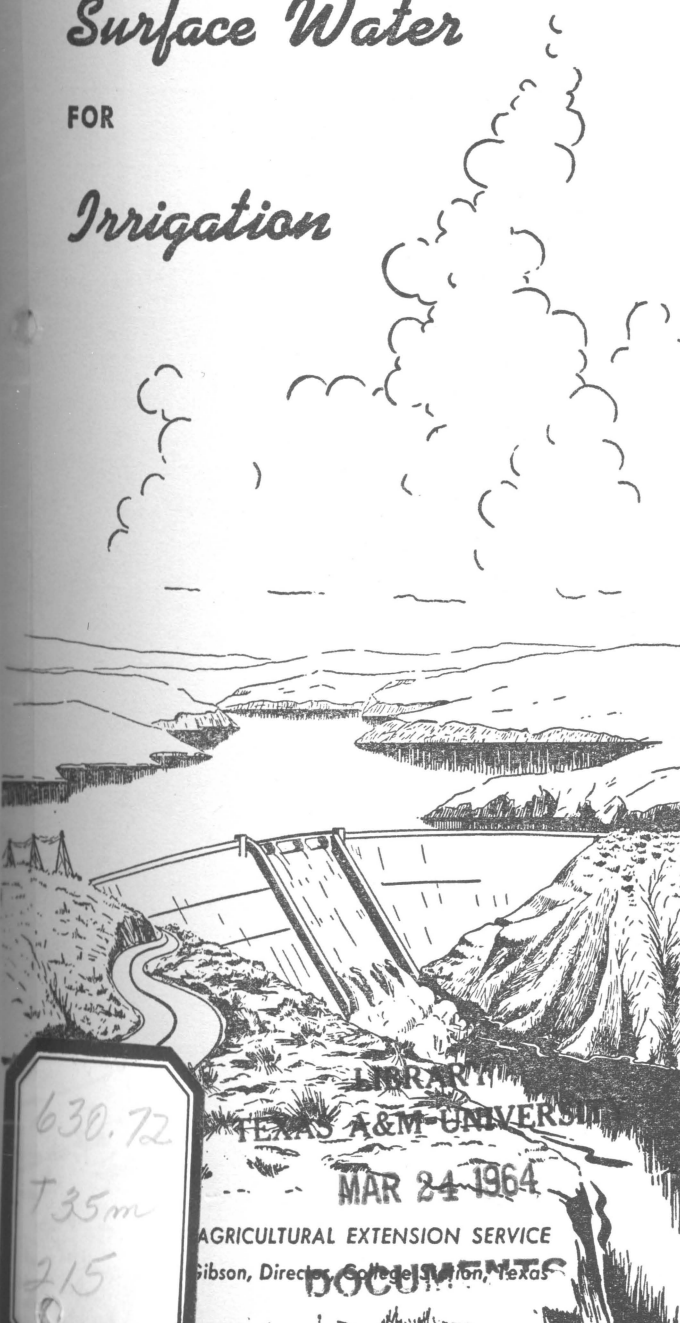
QUESTIONS AND ANSWERS ON

Rights IN

Surface Water

FOR

Irrigation



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DOCUMENTS

ANSWERS to the following questions have been prepared by attorneys familiar with Texas water laws. These laws are very complicated and for that reason, the answers are not discussed in full detail. The reader is urged to consult his attorney and engineer before making an investment in irrigation which depends on a surface water supply.

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Questions and Answers on RIGHTS IN SURFACE WATER for Irrigation

1. What is surface water?

Generally, it is considered as water found on the surface of the earth. It does not include water in the atmosphere or beneath the surface of the earth, except the underflow of surface streams and subsurface channels.

2. Are there different classes of surface water?

Yes. *Diffused* surface water originates as rain, snow or sleet, and continues to be such until it reaches some natural channel or watercourse. Once it reaches such a watercourse, it becomes part of the stream and is no longer diffused.

3. Who owns surface water?

Diffused surface water belongs to the owner of the land on which it falls if he can capture the water before it enters a watercourse. Once in a watercourse, the water becomes the property of the state, subject to the rights of owners of riparian lands and those who have obtained appropriation rights.

4. What is a natural watercourse?

A channel, consisting of a well-defined bed with visible banks, down which water flows recurrently, is a natural watercourse, though it may be dry for months at a time.

5. Does water from springs belong to the person on whose land the springs exist?

Normally, *no*, if the springs constitute a source of supply for a creek or stream on which those below depend for their water supply; *yes*, if the water does not flow from the tract on which the spring is located.

6. What are a landowner's rights relative to taking water for irrigation from a running stream?

Owners of land abutting a watercourse which was sold by the state prior to 1889 may have a right to divert their proportionate part of the normal flow of the stream for irrigation purposes, but have no right to divert storm and flood waters. The right to appropriate storm and flood waters can be obtained only by complying with the statutes relating to water appropriations. The present statutes require the issuance of a permit from the State Board of Water Engineers before the right to appropriate such waters can be obtained.

7. What is a riparian water right?

It is a right to use a proportionate part of the normal flow of a stream as part of the ownership of lands abutting the stream.

8. May riparians divert water to irrigate their land?

Generally, yes, if the land was patented prior to 1889, if the diversions are from the normal flow and are reasonable, and if they do not deprive other riparians of their proportionate share.

9. Is a permit necessary when riparian rights are used for irrigation?

No. However, one should clearly satisfy himself that he does in fact have riparian rights before incurring heavy expenses for irrigation equipment.

10. What is an appropriative right?

This is the right, acquired under the procedure provided by statute, to divert from a water supply a specific quantity of public water, provided it is available in excess of the requirements of all

earlier vested rights, and to apply such water to a specific beneficial use or uses.

11. How does one obtain a permit to divert and use public waters?

Water permits can be granted only by the State Board of Water Engineers. For full information concerning the procedure to follow in obtaining a permit, write to the Board.

12. Is the Board of Water Engineers presently granting permits to divert water in the summer for irrigation?

Most Texas streams are over-appropriated and under such circumstances, the law forbids the Board granting additional permits unless adequate storage is provided. Permits are being granted for diversions during the winter and where storage is provided. If interested, write the Board explaining your plans.

13. May a person construct a dam or reservoir on his own land to impound surface waters to be used for irrigation without a permit?

According to laws enacted by the Texas legislature, no. However, no permit is required for a reservoir on one's own land if its capacity is less than 200 acre-feet and if the water is used solely for domestic and livestock purposes.

14. Does the irrigation of feed crops for cattle, sheep, hogs and other farm animals constitute a livestock use of water?

No. Livestock use refers to water consumed by animals and does not include irrigation.

15. Is a permit needed to use water for irrigation from a dam and reservoir originally constructed for domestic and livestock purposes?

Yes, unless the dam was constructed prior to 1941 and the reservoir did not have a capacity at that time in excess of 500 acre-feet.

16. Do riparian rights attach to a natural lake?

Yes. An owner of land adjoining a natural lake may utilize the waters for the irrigation of his riparian land, subject to the rights of his neighbors who also may own land fronting on the same lake.

17. Can the waters of a stream be diverted and used for irrigation if those downstream are deprived of domestic and livestock water?

No. Diversions for irrigation must be reasonable, and the courts consider it unreasonable to deprive those below of water for essential livestock and domestic needs.

18. If a person obtains a permit to construct a dam and impound water, does the Board of Water Engineers attempt to protect the rights of downstream users of water?

Yes. The Board requires that a sluiceway be constructed in the bottom of every dam, and the dam owner must allow the normal flow of the stream and flood waters to which others may be entitled to pass through the dam at all times.

19. Where can one obtain information on how to obtain a permit to use surface water for irrigation?

By consulting an attorney or engineer familiar with such procedure or by writing the Board of Water Engineers, 1410 Lavaca Street, Austin, Texas.

20. How could one learn whether a permit can be obtained to use water for irrigation from a certain stream, river or lake?

Only after a full public hearing on an application for a permit before the Board of Water Engineers. However, the Board often can advise one in advance if a stream is closed for further appropriation or can suggest alternatives.

21. How much will it cost to obtain a permit?

The statutes require a filing fee of \$25, a recording fee that varies with the length of each application but seldom exceeds \$2.50, a mailing fee which depends on the number of notices required for the watershed from which the applicant proposes to divert water and a use fee that is a charge for the use of public waters. All such fees are paid but one time. If the purpose is irrigation, the use fee is 10 cents for each acre of land proposed to be irrigated annually, not to exceed, however, \$1500. If the use fee exceeds \$1,000, only 10 percent need be paid in advance. The applicant also must bear the expense of publishing in a newspaper notices of the public hearing. Private engineering and legal services are a matter of individual agreement.

22. Are users of surface waters for irrigation required to make a report of use each year?

Yes. All users of surface waters, whether riparian or appropriators, are subject to penalties for failure to file annual reports on water use for all purposes except domestic and livestock uses. It is advantageous for the user to file these reports with the Board (which furnishes the forms) so as to establish and maintain a history of water use.

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