

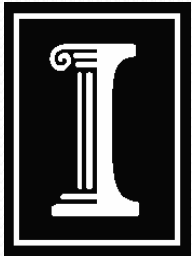
IL Agriculture & Water Law

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Three general ag issues ...

1. Getting rid of excess water (drainage law)
2. Landowners' rights to dig wells and pump ground water for agricultural uses
3. Riparian landowners' rights to withdraw water from a stream

So ... lets look at each of these in turn and then do some reflecting



IL Drainage Law Overview

- *Local* Ordinances are important, e.g., Storm-water Detention/Management Ordinances
- *State* laws are important, especially Court Decisions the Illinois Drainage Code
- *Federal* laws are important, e.g.
 - Wetlands provisions of '85 Farm Bill: Tie wetlands protection to Ag Program Benefits
 - Clean Water Act: Drainage improvements may require a Section 404 Permit from Army Corps of Engineers

State Drainage Law

Civil Law Rule (Landowners entitled to natural drainage) *plus* “Good Husbandry” Rule

- Higher landowner entitled to natural drainage and can improve drainage in the interests of good husbandry
 - e.g. drain or fill ponds
 - e.g. accelerate flow by tiling or ditching in course of natural drainage
 - See *Peck v. Herrington* (IL Sup Ct, 1884)
- But there are limitations . . .



Limitations on Ag Drainage Improvements

- Can *not* bring water in from another watershed
- *Must* discharge at point where water naturally enters lower land

Possibility of Other Limitations:

- Local Ordinances, e.g., storm-water detention
- Federal Laws, e.g., wetlands protection

Non-Ag Development

- No water from another watershed (same)
- No discharge unless at natural drainage point(same)
- No unreasonable increase in flows (New twist)
 - *Templeton v. Huss* (IL Sup Ct, 1974)
- But also remember . . .
 - Federal Wetlands Protections may apply, e.g., a permit from the Corps may be required
 - Local Ordinances may apply, e.g., storm-water detention requirements



2009 IL Supreme Court Case

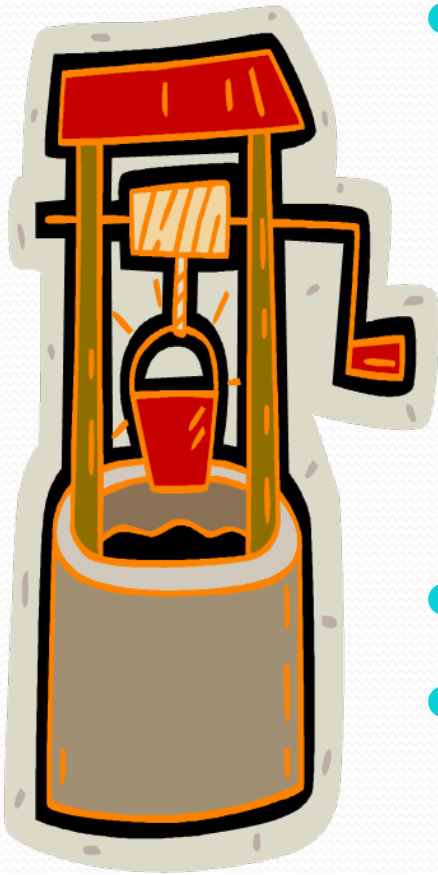
Halpin v. Schultz (IL Sup Ct, 2009)

- Key facts:
 - Grundy County dispute involving repairs to drainage tile
 - Upper landowner needed to enter lower owner's land to make repairs to drainage tile running from higher land across lower land
- IL Supreme Court confirmed the following principles:
 - Upper landowner can enter lower land to repair tile
 - Lower landowner entitled to
 - Damages caused by negligence, if this is a “mutual drain”
 - All damages, if this is an “extension” of upper landowner's drain

Drainage Law Summary

- Local, State and Federal laws are important
- Basic State Law of Drainage: Civil Law Rule
 - Additional rights to improve natural drainage
 - Limitations on drainage improvements
- Statutory Enlargements:
 - Extending Covered Drain; Mutual Drains
 - 2009 IL Supreme Court Case: Halpin v. Schultz
- Drainage Districts can be created (Drainage Code)
- Federal Environmental Considerations
 - Swampbuster provisions of the Food Security Act
 - Section 404 of the Clean Water Act

IL Water Use Law (Groundwater)



- **Doctrine of Reasonable Use**
 - IL Water Use Act of 1983
 - Landowners (e.g., farmers) can withdraw ... a fair share for artificial needs (e.g., irrigating crops, watering commercial livestock)
 - If planning a new well pumping > 100,000 Gal/Day, must notify SWCD
 - SWCD shares info but has no real power
- **IL Courts** resolve “fair share” disputes
- **Water Authority**
 - Has more regulatory power, but ...
 - Little of IL within boundaries of Water Auth.

IL Water Use Law (Streams)



- **Riparian Doctrine – Reasonable Use Rule**
 - Fashioned by courts over centuries
 - Riparian owners (e.g., farmers next to stream) can make ... reasonable use of stream for artificial uses
 - Irrigating crops
 - Watering commercial livestock
- **Courts resolve “what is reasonable use” disputes**

Implications for Agriculture

- Accessing water for irrigation, commercial livestock
 - Few legal hurdles before farmer can access water
 - But the same is true for any landowner
- Future planning by farmers, other water users
 - Planning for and investing in operations requiring large volumes of water is problematic
 - Hard to know what your “fair share” is, up front
 - As others also tap into your water source, your “fair share”, whatever it was initially, is likely to decline
 - Since nobody is managing the whole water resource, your source of water may become depleted

Ag Implications (Cont'd)

- IL has historically been a water surplus state
 - Generally, enough water to go around, for ag and others
 - Disputes over water use have been relativeley rare
- But the future may be more problematic
 - Need for water continues to increase
 - Growing population
 - New uses, e.g., ethanol plants, recreation
 - Recognition of ecological value of minimum stream flows
 - Uncertainty re effects of climate change on rainfall

The Big Question

Should IL Water Law further evolve, e.g., by

- Recognizing the connectedness between diffused surface water, stream water, and groundwater;
- Providing greater guidance regarding the rights of competing water users and uses; and
- Creating other tools to manage this increasingly scarce resource in ways that are sustainable?





Thank you!

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