

Historical Overview of the Development of Illinois Water Law in the Illinois River Basin



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History of Conflict and Controversy

- Public Use Rights vrs. Special Interests
- Almost entirely low water issues
- Is it a navigable system – longitudinally?
(i.e. headwaters)
- Is it navigable for public use – laterally?
(i.e. backwaters)

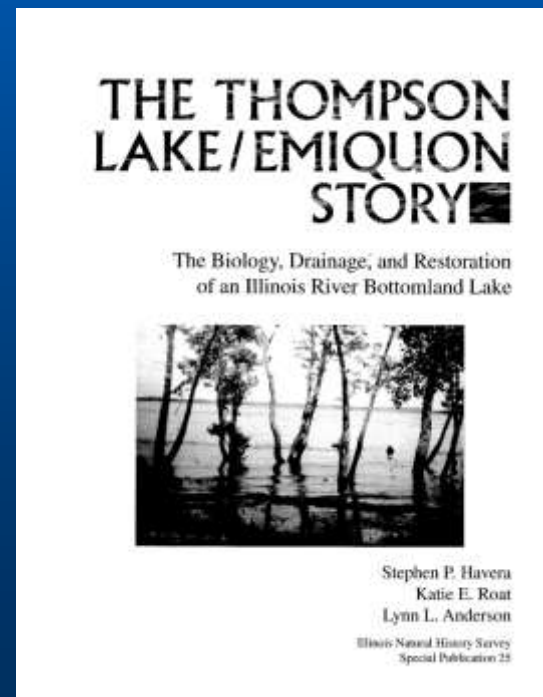
Historical References/Manuscripts



“Enclosing the Floodplain”
by Daniel Schneider, 1996

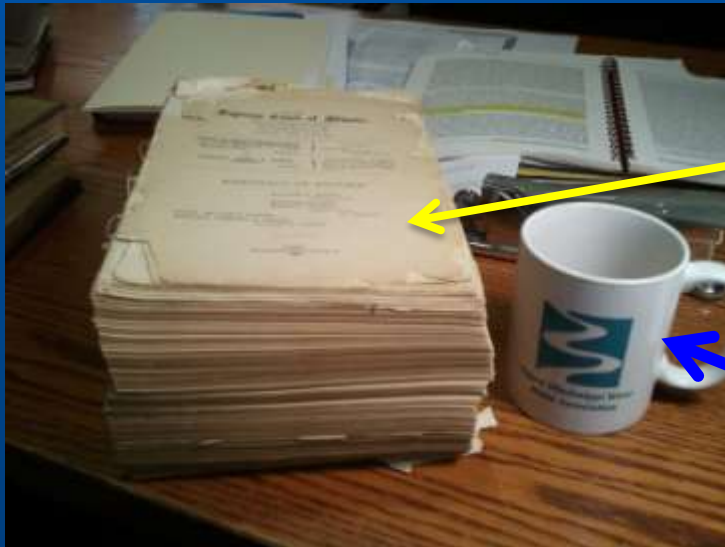
“The Thompson Lake/Emiquon Story”

by S. Havera, K. Roat & L. Anderson, 2003



Upper Illinois/Des Plaines River Navigable?

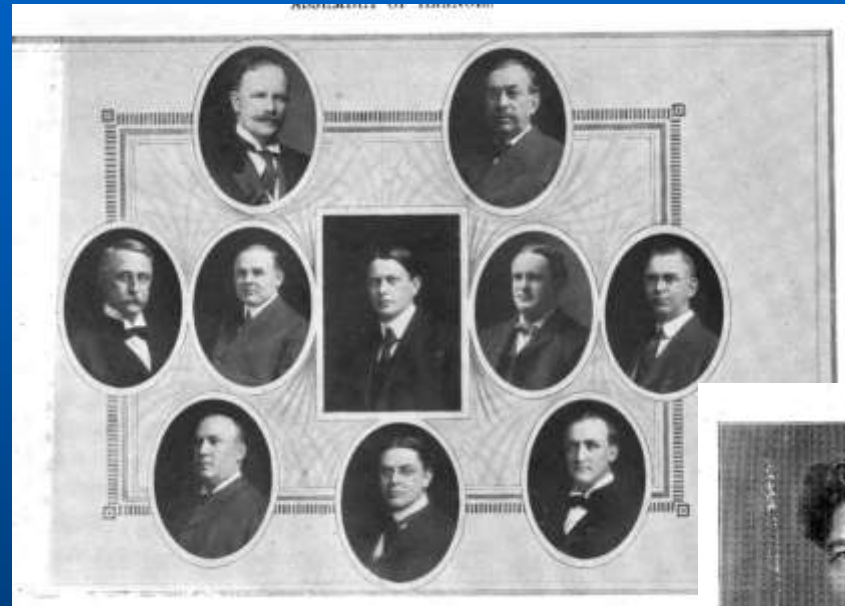
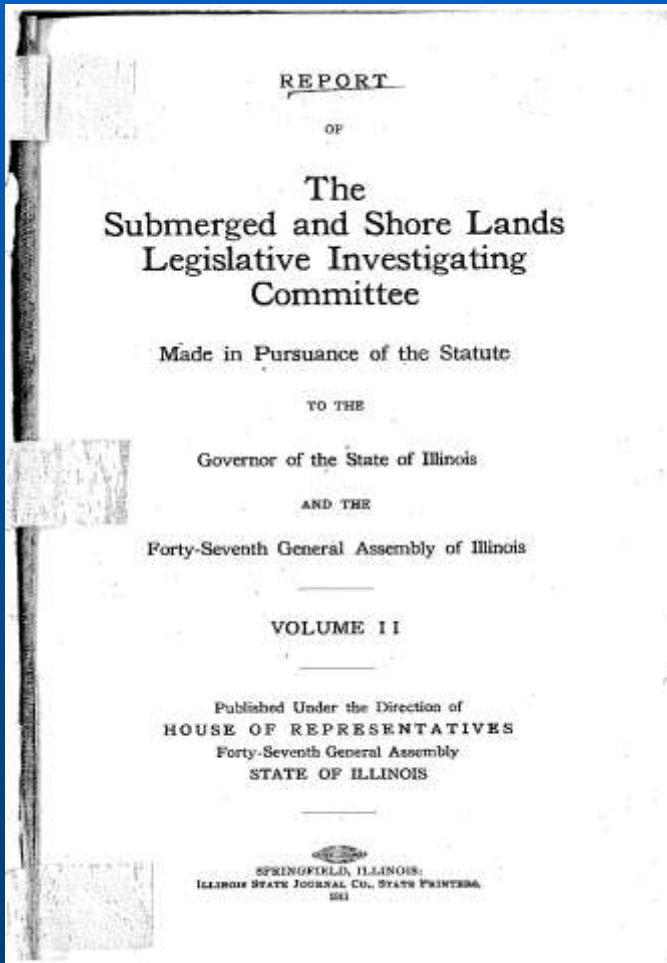
- Hydropower vrs. Navigation – Is the River Navigable?
- Illinois Supreme Court says NO!!
- People v. Economy Light & Power 1909 (241 Ill. 290)
- Decision reversed by U.S. Supreme Court in 1920,
(Economy Light & Power Co. v. United States)



**1908 Abstract of Record -
1946 pages of testimony!!**

4 inch UMRBA Coffee Cup!

Is the River “navigable” for public use – laterally?

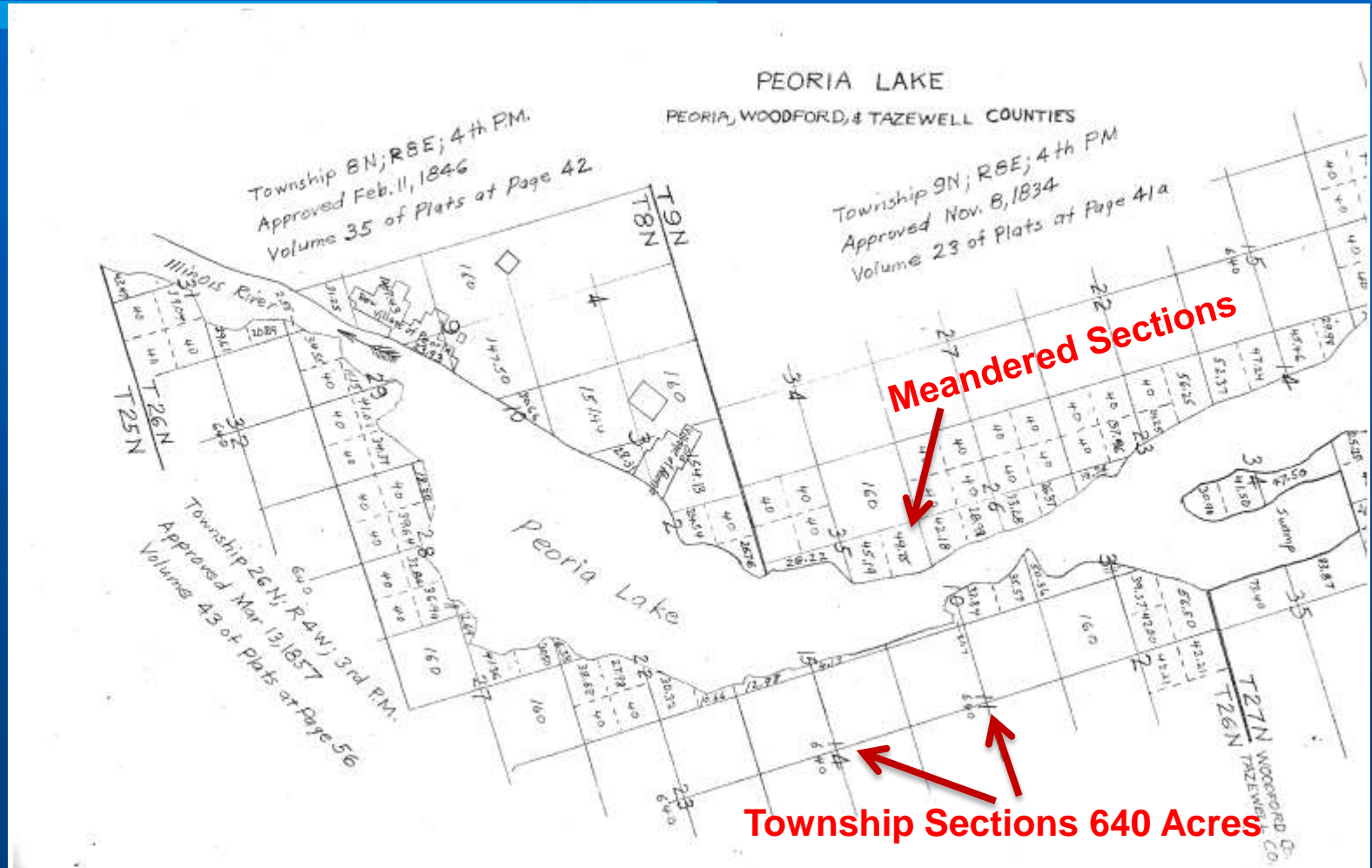


Published a Three Volume,
585 page report in 1911



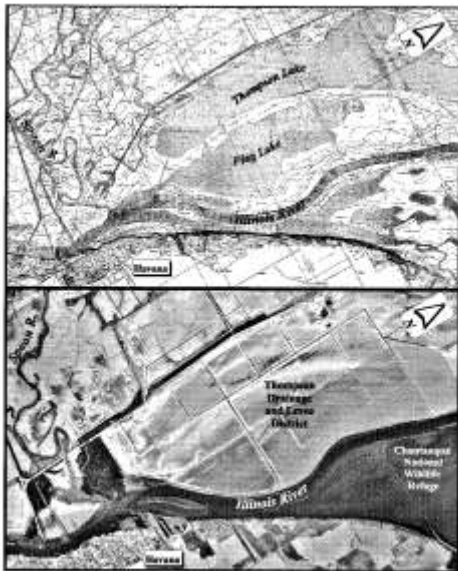
1846 Government Township Plats

Surveyed meandered line -> “navigable”



The Thompson Lake/Emiquon Story

- Submerged and Shore Lands Committee and state Courts found – navigable and public, 1911.
- Rivers and Lakes Commission letter to Governor Dunn – ruled public, 1915.
- Illinois Supreme Court ruled private in 1917.

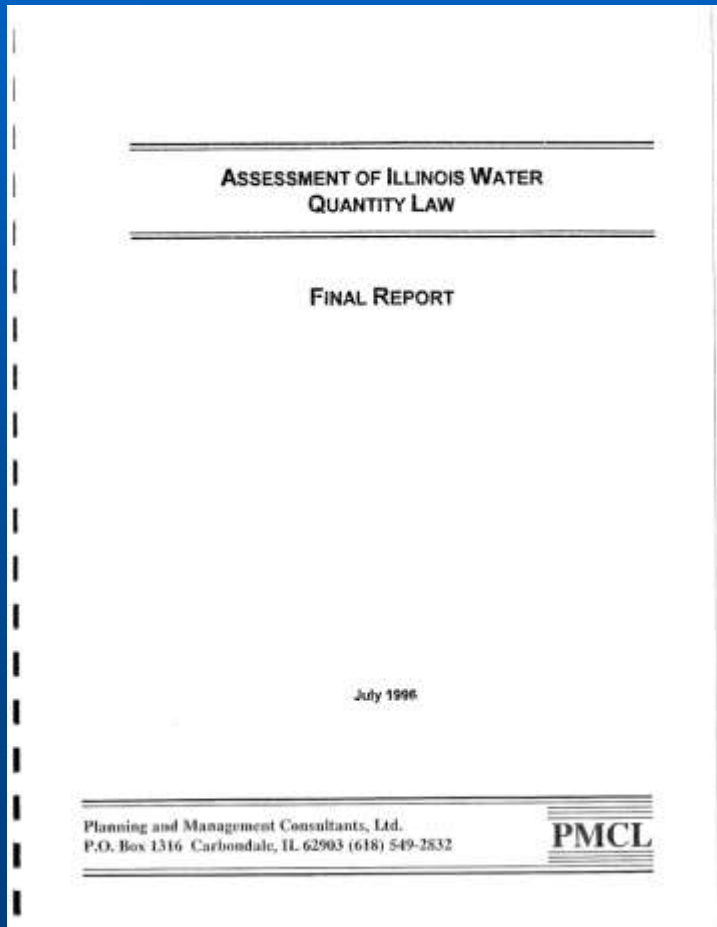


Between 1904 and 1930, many of the most important backwater lakes, including Thompson and Flag lakes (top), were drained. As the land was placed behind levees (bottom), ditches and farm lands took the place of the lakes. Source (top) U.S. Army Corps of Engineers, Map of Illinois & Des Plaines rivers, 1902-1904; (bottom) composite of USGS aerial photography, 1988.

Key Court Cases

- **Illinois Central Railroad v. Illinois – 1892**
(146 U.S. 387)
- **Economy Light & Power Co. v. United States**
1921 (256 U.S. 113)
- *Middleton v. Pritchard (1842), and Braxton v. Bressler, 64 Ill. 488 (1872)*

Recent Review of Illinois' Water Law



Independent review and evaluation by Water Law Professor Robert Beck, SIU-Carbondale and Attorney William Hardy of Hinshaw and Culbertson, Springfield.

Recent Review of Illinois' Water Law

The definition of public waters is very controversial in the Illinois water management community. There are two distinct dimensions of the controversy surrounding the definition of public waters: (1) the state's riparian jurisdiction and (2) recreation access.

Legal Options

- The first option is to do nothing.
- A second is to argue to the Illinois courts ->common law definition of navigability.
- A third option is to seek legislative clarification or change of the definition of what waters are open to the public for recreational navigation.
- A fourth option is for the option is to agency to change its interpretation of the scope of public waters under the River, Lakes, and Streams Act to which the public have access for recreation, making clear that it exercises different types of jurisdiction over different types of public waters. First, and most extreme, the agency could determine that under the Act as now written some test broader than commercial usability should be used. Second, the agency could refocus the definition of commercial usability under the Act, treating activity such as resort use, boat and canoe rental, and pleasure cruises as commercial uses.

General Observations and Conclusions

- **Strong Interest group issue more so than a public trust issue**
- **Federal Courts more “favorable” than State Courts**
- **State Agency views and policies easy attacked**
- **Illinois River an historically a low flow system**

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Questions ??



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