

# THE HISTORICAL FOUNDATIONS OF ILLINOIS WATER LAW: PRIVATE AND PUBLIC

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## SURFACE WATERS

### 1819—Prologue

In the early 1800's to build and operate a grist mill on a small stream in Illinois you needed to dam the stream to collect enough water to regularly turn the water wheel, and if you did not own land on both sides or a large enough tract for a reservoir, you had to get the consent of the appropriate landowner before you could build the dam or flood the land. Building or flooding without consent would be trespass and the standard remedy would be an injunction to stop the trespass.

By 1819, the General Assembly had seen a public purpose in, and a need for, grist mills so they passed a law regulating grist mills and allowing a person seeking to establish a water-powered grist mill to use the power of eminent domain to acquire a site for the dam abutment on the opposite shore and/or for the reservoir. Act Regulating Grist Mills and Millers (1819). In an Act passed in 1827, the General Assembly included both grist mills and saw mills. Act Regulating Mills and Millers (1827).

So often from, you might say, Day 1 of statehood to modern times, the General Assembly has passed statutes, such as the grist mill law, to facilitate a specific use of water for what the Assembly saw as serving an important public need at the time. This has included legislation to facilitate construction of canals and ports for commerce, disposal of Chicago sewage, development of municipal water supplies, draining of lowlands, flood control, water pollution control, Illinois River watershed restoration, and so on. Often these laws included provision for creating local districts or oversight committees to oversee the activities. However, never has the General Assembly passed a comprehensive water resource management statute for the entire state. Thus the common law, that is judge-made law, is still important in the management of Illinois water resources.

The foundation common law case on private rights in surface water was decided in 1842.

### 1842 – “Private” Use

In 1834 Smith and Baker owned land abutting a small stream in Greene County on which they built a steam operated mill, converting water from the stream into steam. Around two years later Evans also built a steam operated mill on land he owned upstream of Smith and Baker. In the fall of 1837 there was a drought and an employee of Evans, the person upstream, diverted the entire stream to Evan's mill. Merriweather, who had acquired ownership of the Smith & Baker mill, sued and in the December term of 1842, the Illinois Supreme Court decided what came to be a landmark case. *Evans v. Merriweather* (1842). The Court observed first, that natural wants would always trump artificial wants in the use of water and that natural want users can fill their wants “in ... turn” until there is no water left. To the court, natural wants are those of absolute

necessity to exist and: “In a civilized life, water for cattle is also necessary.” *Evans v. Merriweather* 495. By “in . . . turn”, the court apparently meant that upstream location controls. Artificial wants are those that merely supply comfort and prosperity. The court did not examine what the mills produced but said simply that “man . . . could live if water was not employed in irrigating lands, or in propelling machinery.” *Evans v. Merriweather* 495. So in *Merriweather’s* case both parties were satisfying artificial wants.

The court could have decided that *Evans* would prevail because he was upstream and had physical control, just like the court intimated a natural want user would. Or it could have decided that *Merriweather* would prevail because his use of the water came first. Or it could have followed what it saw as the law in some other states, that the water had to be allowed to flow naturally with only consumption for natural wants allowed. But it did none of these. Instead it decided that each riparian landowner has a right to make a reasonable use of the water and “neither has a right to use all the water.” *Evans v. Merriweather* 496. This means that each riparian’s right is subject to the right of every other riparian owner to also make a reasonable use. So you cannot just look at reasonable use in the abstract, you have to look at it in the context of that particular body of water. The court says that, in general, it is up to a jury to decide whether “under all of the circumstances” the party complained of has used “more than his just proportion.” *Evans v. Merriweather* 496. So this is how in 1842 the riparian rights doctrine of reasonable use came into being in Illinois – in the context of a dispute between two steam mill owners. The mills are gone from along the rivers in Illinois, but the rule remains.

In 1903, the Illinois Supreme Court made it clear that the right to reasonable use extended to the quality of the water as well as to quantity, when it affirmed the lower court’s injunction prohibiting the City of Kewanee in Henry County from polluting a small stream. The City was discharging sewage into the stream, and the riparian owner was unable to use the riparian land for pasturage as the animals would be injured by the polluted water. *City of Kewanee v. Otley* (1903).

Turning then to public rights in surface waters; there are two common law foundation cases from the Illinois Supreme Court. The first of these was also decided in 1842.

### **1842 – “Public” Rights versus “Private” Use**

Around 1840 or 1841 Pritchard and Hafford cut trees on an island in the Mississippi River, in Madison County, land that Middleton, the shoreland owner, claimed as his. So Middleton sued for damages. Under federal doctrine, when a territory became a state, the new state succeeded to the ownership of the beds underlying navigable waters, but as of 1842, the U.S. Supreme Court had made no clear decision what navigable meant in this context. The Illinois Supreme Court noted that in England only water subject to the ebb and flow of the tide was deemed navigable in law, despite many fresh waters being recognized as navigable in fact. *Middleton v. Pritchard* (1842). The court also noted that while some states had applied the bed ownership doctrine to their navigable in fact watercourses, other states had declined to do so. The court said that because Illinois had adopted the common law, the court was bound to follow it and ruled that the island, as a part of the bed, belonged to Middleton the shoreland owner and not to the State of Illinois. The Mississippi River was not subject to the ebb and flow of any tide, and, therefore, it was not navigable in law. However, at the same time the court did say that if the stream is navigable in fact, the public have a right to navigate in that water and the shoreland owner takes the bed ownership subject to the “public easement of navigation,” which includes “the right to land, and fasten to the shore, as the exigencies of the navigation may require.” *Middleton v. Pritchard* 521-22. But the bed owner has the exclusive right to fish above the owned portion of the bed.

Thirty years later, in 1872, the Illinois Supreme Court acknowledged that the U.S. Supreme Court had now adopted the navigable in fact definition for purposes of bed ownership,

but said it was too late for Illinois to go back on its earlier decision. *Braxton v. Bressler* (1872). Thus the Rock River, in Whiteside County, was held to be not navigable in law. However, in a series of decisions from 1860 to 1896, the Court resisted extending private ownership to all beds of lakes, primarily by finding shore boundaries for the tracts from the language used in the conveyances. *Seaman v. Smith* (1860); *Trustees of Schools v. Schroll* (1887); *Fuller v. Shedd* (1896). These cases involved respectively Lake Michigan, Meredosia Lake, and Wolf Lake. Finally in 1896, in the Wolf Lake case, the court said: “the state exercises control, and holds the same [that is, waters and beds of navigable in fact lakes which the court has held to include all meandered lakes] in trust for all the people who alike have benefit thereof, in fishing, boating, and the like.” *Fuller v. Shedd* 493. This sounds like the public trust doctrine that the United States Supreme Court had applied in 1892 in an Illinois case involving the transfer of a portion of the bed of Lake Michigan to the Illinois Central railroad. *Illinois Central Railroad Co. v. State of Illinois* (1892). There the U.S. Supreme Court stated the doctrine as: “It [bed ownership] is a title held in trust for the people of the state, that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein, freed from the obstruction or interference of private parties.” *Illinois Central Railroad Co. v. State of Illinois* 452. In 1911, the Illinois Supreme Court clarified the Illinois law relating to beds of lakes and ponds concluding that despite some broader language in earlier opinions, ownership is in the state only where the lake or pond is navigable in fact or where the lake or pond has been meandered by the federal surveyor. *Wilton v. Van Hessen* (1911). In 1937 the General Assembly passed an act which provided that the State was reclaiming title to both existing submerged lands and formerly submerged lands that had been illegally filled in. *Submerged Lands Act* (1937).

Anyway, having decided the public right to navigate in navigable in fact waters in 1842, not until almost 30 years later, in 1870, did the Illinois Supreme Court decide what constitutes navigability in fact for purposes of this public right. Bell owned and operated a saw mill on the banks of the Cache River in Union County. Bell acquired trees and logs from land located above Hubbard’s property on Big Creek, a tributary of the Cache, and then floated the logs down the creek past Hubbard’s property and on down the Cache to his, Bell’s, mill. Hubbard started cutting his own trees so they fell into the creek and cut off Bell’s opportunity to float his logs past Hubbard’s property. Bell sued Hubbard to stop this interference. *Hubbard v. Bell* (1870). The court concluded that for a body of water to be navigable in fact, that body had to be “generally and commonly useful to any purpose of trade or agriculture.” *Hubbard v. Bell* 119. The court concluded that Big Creek was capable of floating logs only in the spring (“in times of freshets of melting snows”) and there was no evidence of general use of the creek for log floating. So Bell lost. Big Creek was not navigable in fact.

In 1905, the court concluded that the public right to navigate does not include a right to hunt or fish. *Schulte v. Warren* (1905). Because the case involved only hunting, it can be argued that the inclusion of fishing is dictum and therefore not binding on a future court. A clear distinction could be made between hunting and fishing if the court chose to do so because the public trust doctrine as it relates to the water resource clearly includes fishing but says nothing to include hunting as seen in the quotation above from the U.S. Supreme Court. And in *Fuller v. Shedd* also discussed above, the Illinois Supreme Court recognized the right to “fishing, boating, and the like” as far as lakes are concerned. However, in *Schulte v. Warren*, the court appears to require bed ownership, although in *Fuller v. Shedd*, the court referred to “waters and bed” and said the doctrine is applicable to meandered streams and rivers as well as lakes.

So on to the second public rights foundation case. It was decided in 1884.

### **1884 – Public Rights**

In 1836 a dam had been built across the Fox River in Kendall County. In 1842 Michael Parker had acquired the land on which the dam is located from the government. Since 1871,

William Parker had owned the land and facilities. In 1879, the General Assembly passed a statute providing that any person owning a dam or other obstruction across any “rivers, creeks, streams, ponds, lakes, sloughs, bayous, or other water-courses” has a duty “to place therein suitable fishways, in order that the free passage of fish up or down or through such waters may not be obstructed” with an up to \$200 a year fine for failing to do so. Act to Amend Act to Secure the Free Passage of Fish in all the Waters of this State (1879). William Parker refused to provide a fishway saying it would cost \$600 to do so. He was prosecuted and he lost. Parker v. The People of the State of Illinois (1884).

In upholding the statute and the judgment against Parker, the Illinois Supreme Court said that while a riparian owner has the right to take fish when over the riparian’s soil, “the fish being the common property of the people, such owner has never had the right to obstruct their passage from that portion of the river which flows over his land, nor has he the right to wantonly destroy the fish passing over it, and thus deprive the community of their right to and ownership in the fish,—hence the manner in which, the time when, and the amount such riparian shall take, for the preservation of the common property, is a legislative and governmental function.” Parker v. The People of the State of Illinois 589. If a riparian land owner may not interfere with the passage of fish without authorization from the state, there is no reason to believe that a riparian landowner may interfere with fish habitat period, absent authorization from the state.

So by 1911 it is clear that the public have two general rights in the waters of Illinois. First, they have the right to navigate in the navigable in fact waters. Second, they have an interest in common in the fish found in any Illinois waters. In 1911, the Illinois General Assembly created a Rivers and Lakes Commission to classify the waters in Illinois and to protect public rights in the waters.

### **1911 – Rivers and Lakes Commission**

In 1911, then, the General Assembly passed a statute creating a Rivers and Lakes Commission to which it gave a number of tasks. Act Creating a Rivers and Lakes Commission (1911). Two tasks were primary. First the Commission was to identify and classify all the waters in Illinois, preparing a list by counties “showing both navigable and non-navigable” waters, collecting data about the waters, and sharing that data with the public. Act Creating a Rivers and Lakes Commission § 5. Second, the Commission was to have “general supervision of every body of water within the State of Illinois, wherein the State or the People of the State have any rights or interests, whether the same be lakes or rivers, and at all times to exercise a vigilant care to see that none of said bodies of water are encroached upon, or wrongfully seized or used by any private interests in any way ... .” Act Creating a Rivers and Lakes Commission § 7.

This law has been amended over the years and is now administered by the Department of Natural Resources. However, its fundamental purpose, to protect the public rights in the waters of Illinois, remains.

The foregoing portion of the paper sets out the foundational law for dealing with surface waters located in streams and lakes, as contrasted with diffused surface waters such as rain and snowmelt runoff which are usually covered by the law of drainage. This paper does not explore the law of drainage; however, Professor Uchtmann explores the law of drainage in his paper.

Because generally surface waters and groundwaters are interconnected, it is necessary to explore the foundational history for groundwater law in Illinois as well.

## **GROUNDWATER**

In 1848 Dewese began ditching water from a “wet and springy” area on his land to a grist mill he had erected. Later he conveyed the land with the grist mill and ditch to Green while

retaining the rest of the land. Ultimately the mill came to Haeger. In 1896, Edwards, the successor in ownership to the rest of the Deweese land dug a well near the mill tract and began using the water for a dairy operation. Haeger contended that Edward's well intercepted water that would otherwise reach the wet and springy area Haeger was using for his mill supply, so Haeger began interfering with Edward's use of the water. Edwards sought an injunction from the courts. In an 1899 opinion, the Illinois Supreme Court decided that the lower court was wrong in throwing out Edward's request for an injunction. *Edwards v. Haeger* (1899). The court said that water percolating through the ground "is part of the land itself, and belongs absolutely to the owner of the land" and thus the land owner can interrupt the flow even though the interruption interferes with springs or wells on neighboring land. *Edwards v. Haeger* 106. The court said nothing about natural or artificial wants, nothing about reasonable use, and nothing about just proportion, all of the things it had considered in the surface water cases. While it did recognize the possible connection between surface water and groundwater, that connection was not a basis for the decision. Courts in other states had concluded that landowners could not act with malice in withdrawing groundwater nor could they waste water. Where the facts would have warranted it, would the Illinois court have applied the no malice limitation or the no waste limitation? We do not, and apparently will not, know. Nothing much happened in the courts. An Illinois appellate court criticized the absolute ownership rule in 1959. *Behrens v. Scharringhausen* (1959). But then in 1981 the Appellate court declined to abandon the rule and specifically refused to adopt the reasonable use rule for groundwater. *Lee v. City of Pontiac* (1981).

In 1983, the Illinois General Assembly passed the Water Use Act, in which they provided that "[t]he rule of 'reasonable use' shall apply to groundwater withdrawals in the State." Water Use Act (1983), § 6. In 1987, the Illinois Appellate court concluded that the intention of the General Assembly was to apply the same body of common law to groundwater that applies to surface water. *Bridgman v. Sanitary District* (1987). So that is how, apparently, in Illinois the surface water and groundwater bodies of disparate law came together as one.

Having covered the three basic categories of water for which the law developed rules, it is necessary next to discuss the basic role of the federal government in relation to waters within Illinois. This is necessary because to the extent that the federal government is acting within its constitutional authority, it represents the supreme law of the land and any inconsistency in Illinois law must yield. U.S. Const. art. VI.

## **FEDERAL LAW TRUMPS STATE LAW**

Historically, the constitutional power most frequently relied on by the federal government in acting with reference to the water resource has been the power to regulate interstate commerce. U.S. Const. art. I, § 8. Obviously in the late 1700s and early 1800s most of our commerce took place by river transport, in other words by navigation.

The U.S. Army Corps of Engineers was founded in 1802. Act Fixing the Military Peace Establishment of the United States (1802). Since then the Corps has had an ever increasing role to play as to the water resource. The Corps has both the authority to improve the navigability of waters that are navigable in fact for interstate commerce and the power to veto state and private activity that it determines would be detrimental to the navigability of those waters. The Rivers and Harbors Act of 1899 (1899). When a lower federal court enjoined the Sanitary District of Chicago from withdrawing more than 250,000 cubic feet per minute of water from Lake Michigan, the United States Supreme Court affirmed on January 5, 1925, because that was all that the Secretary of War, the then head of the Corps, had given the District permission to withdraw. *Sanitary District of Chicago v. United States* (1925). In 1919, the Illinois General Assembly had passed legislation to authorize the construction and development of the Illinois waterway. Act in Relation to the Construction, Operation and Maintenance of a Deep Waterway from the Water

Power Plant of the Sanitary District of Chicago at or near Lockport to a Point in the Illinois River at or near Utica, and for the Development and Utilization of the Water Power thereof (1919). In 1923, the state filed a petition in county court to condemn a tract of land for the waterway project. On February 17, 1925, the Illinois Supreme Court affirmed the lower court's dismissal of the petition because the State did not have the consent of the federal government. *Department of Public Works and Buildings v. Engel* (1925). In 1929 the General Assembly enacted legislation directing cooperation with federal agencies "for the regulation and maintenance of the levels of Lake Michigan and the Great Lakes." Act Vesting Authority in the Department of Purchases and Construction (1929).

When the Corps simply gives its consent, that is, declines to veto a project, it does not mean the project can go forward, state law would apply and might require approval. In 1919 the Wakonda drainage and levee district was formed in Fulton County. It failed to get consent for its drainage and levee plans from either the state or federal agencies although these agencies indicated that they would have approved modified plans. However, because carrying out the modified plans would have cost substantially more than carrying out the district's plans, a petition to dissolve the district was approved by the lower court. *Duck Island Hunting & Fishing Club v. Edward Gillen Dock, Dredge & Construction Co.* (1928). In 1928, in affirming the dissolution, the Illinois Supreme Court noted: "As it requires in this case both the consent and authority of the state and the federal governments to construct and place an obstruction in the Illinois river, we must hold that such right and power have not been obtained by appellant, and will not be obtained until consent and authority are obtained from both the state and federal governments." *Duck Island Hunting & Fishing Club v. Edward Gillen Dock, Dredge & Construction Co.* 131-32.

The Corps authority extends to nonnavigable tributaries of navigable in fact waters because obviously if every nonnavigable tributary could be blocked off or drained dry that could greatly impact navigability on the main stem. Furthermore, floating trash and trash that has settled to the bottom can affect navigation as can flooding of the stream. Rivers and Harbors Act of 1899. Flood Control Act of 1936 (1936). Thus Corps jurisdiction is broad as to the water resource. However, other federal agencies also have considerable authority over water resources. Consider just the following historic pieces of federal legislation: Reclamation Act of 1902; Federal Water Power Act of 1920 (1920); Oil Pollution Act of June 7, 1924 (1924); Federal Water Pollution Control Act of 1948 (1948).

A second very important federal power over water is the power to allocate interstate waters. The U.S. Constitution extends federal judicial power "to Controversies between two or more States." U.S. Const. art. III, § 2. In 1789 Congress gave the U.S. Supreme Court original and exclusive jurisdiction over law suits between states. Act to Establish the Judicial Courts of the United States (1789), § 13. When Kansas sued Colorado in 1901 to have the waters of the Arkansas River allocated, the Supreme Court accepted jurisdiction in 1902. *Kansas v. Colorado* (1902). Since then the court has done so in a number of cases that have resulted in the allocation among states of various interstate waters. Several Supreme Court opinions have limited the use of Lake Michigan waters. In a series of opinions beginning in 1929 and running through 1980, the U.S. Supreme Court decreed the circumstances under which Illinois may withdraw water from Lake Michigan. *Wisconsin v. Illinois* (1929), (1930), (1933), (1967), (1979), (1980). The primary opinion was issued in 1967. With amendments over the years, the Act Vesting Authority in the Department of Purchases and Construction noted above has been designed to facilitate carrying out the Supreme Court's 1967 decree. Level of Lake Michigan Act (2009). The legislation was upheld by the Illinois Supreme Court in 1979. *Village of Riverwoods v. Department of Transportation* (1979). The U.S. Supreme Court, however, has stated its preference for the states themselves to allocate interstate waters through the formulation of interstate compacts, which under the constitution require congressional consent. Such a compact was negotiated recently among the Great Lakes States, and it was approved by Congress in October of 2008. Great Lakes—St. Lawrence River Basin Compact (2008). However, the Compact expressly provides

that “current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Water by the State of Illinois shall be governed by the terms of the United States Supreme Court in *Wisconsin et al. v. Illinois et al.* and shall not be subject to the terms of this Compact nor any rules or regulations promulgated pursuant to this Compact.” Great Lakes—St. Lawrence River Basin Compact § 4.14. A proposal for diversion outside of Illinois would however be covered by the terms of the compact. Great Lakes—St. Lawrence River Basin Compact § 4.14(5). The U.S. Supreme Court also has recognized that Congress has the power to allocate interstate waters and thereby foreclose the Court from doing so. *Arizona v. California* (1963).

Numerous water projects have been constructed under the auspices of the federal government, and different agencies of the federal government may be managing those projects. Thus the Corp of Engineers is the overall manager of Rend Lake and surrounding public lands, and the U.S. Fish and Wildlife Service manages the Crab Orchard National Wildlife Refuge. The Natural Resources Conservation Service has significant responsibility for small dams and reservoirs. To determine the scope of any federal agency’s operational authority, it is necessary to examine congressional documents authorizing the projects involved. In 1988, for example, the U.S. Supreme Court ruled that despite permission from the State of South Dakota and from the U.S. Department of the Interior, the ETSI Pipeline Project did not have the proper authorization to withdraw water from the Oahe Reservoir to use for creating coal slurry for transport via a pipeline. *ETSI Pipeline Project v. Missouri* (1988). The Court concluded that the permission had to come from the U.S. Army Corps of Engineers. However in 2009, the federal district court in charge of the litigation over the use of three rivers in the southeast ruled that the Corps of Engineers did not have authority to allocate water from the Lake Lanier reservoir to the City of Atlanta that it had been allocating from that Reservoir to Atlanta for several years. *In re Tri-State Water Rights Litigation* (2009).

## **QUESTIONS FROM THE AUDIENCE**

One question from the audience raised the issue of the origination of the Chicago Sanitary and Ship Canal. A second question asked whether Illinois should enact a general water resource management statute. Some material relevant to those two questions has been added to the discussions above; further material is presented in this section. Hopefully these additions will provide anyone seeking to pursue the issues further easier access to relevant material.

### **Chicago Sanitary and Ship Canal**

Before there was a Chicago Sanitary and Ship Canal there was the Illinois and Michigan Canal. On March 30, 1822, Congress authorized Illinois to proceed with the canal. Act to Authorize the State of Illinois to Open a Canal through the Public Lands, to Connect the Illinois River with Lake Michigan (1822). On February 14, 1823, the Illinois General Assembly passed legislation that would authorize the Illinois and Michigan Canal. Act to Provide for the Improvement of the Internal Navigation of this State (1823). The Act did so by appointing commissioners “to consider, devised, and adopt such measures as shall or may be requisite to effect the communication, by canal and locks, between the navigable waters of the Illinois River, and Lake Michigan....” Act to Provide for the Improvement of the Internal Navigation of this State § 1. On January 17, 1825, the General Assembly passed an act incorporating a company to carry out the project. Act to Incorporate the Illinois and Michigan Canal Company (1825). On January 20, 1826, the General Assembly repealed both of these statutes so that the state could direct the construction of the canal. An Act to repeal an Act to incorporate the Illinois and Michigan Canal Company, and for other purposes (1826), § 1. The General Assembly then memorialized Congress requesting donation of land along the route of the canal, complaining that

the company had not been able to do anything because the area was too remote. Memorial to Congress on the Subject of the Illinois and Michigan Canal (1826). On March 2, 1827, Congress responded with a grant of land to Illinois. Act to grant a quantity of land to the state of Illinois, for the purpose of aiding in opening a canal to connect the waters of the Illinois river with those of Lake Michigan (1827). The canal, which stretched from the Chicago River to LaSalle-Peru, opened in 1848.

After industrialization in Chicago, many industries were dumping refuse into the Chicago River. However, at this point the flow of the Chicago River had not been reversed so it was still basically flowing into Lake Michigan. In 1889 the Illinois General Assembly authorized the creation of Sanitary Districts. Act to Create Sanitary Districts, and to Remove Obstructions in the Des Plaines and Illinois Rivers (1889). This Act contemplated construction of the Chicago Sanitary and Ship Canal. Act to Create Sanitary Districts, and to Remove Obstructions in the Des Plaines and Illinois Rivers §§ 23 & 24. The Sanitary and Ship Canal opened in 1900. *Vette v. Sanitary District of Chicago* (1913); *Brockschmidt v. Sanitary District of Chicago* (1913). The canal stretched from the south branch of the Chicago River to the Des Plaines River.

### **General Water Resource Management Statute**

There could be two main advantages from the adoption of a comprehensive water resource management statute in Illinois. First, a comprehensive water resource management statute would most likely consolidate Illinois water law now located in disparate statutes and court opinions into one body. Second, a comprehensive water resource management statute would most likely allow determination of whether a use of water would constitute a reasonable use of the water in advance of commencing development of that water use rather than by a jury after the use has commenced. A third possible benefit could be from filling gaps in the existing law.

Currently 18 of the 30 states that follow riparian doctrine for use of surface water have enacted water resource management statutes that are comprehensive enough to have been labeled as constituting regulated riparianism. Dellapenna (2007). Thus Illinois would not have to act without having the experience of other states to review. One such considerable review has already taken place under the auspices of the American Society of Civil Engineers, through their Water Laws Committee, with the creation of the Regulated Riparian Model Water Code published in 1997. Regulated Riparian Model Water Code (1997). Thus Illinois would have the benefit of working with a document that has been drafted to represent the best of the statutes in existence in other states.

### **REFERENCES**

- Act of March 16, 1802, ch. 9, §§ 26-28, 2 Stat. 132, 137.
- Act Creating a Rivers and Lakes Commission, 1911 Ill. Sess. Laws 115.
- Act Fixing the Military Peace Establishment of the United States §§ 26-28, 2 Stat. 132, 137 (March 16, 1802).
- Act in Relation to the Construction, Operation and Maintenance of a Deep Waterway from the water power plant of the Sanitary District of Chicago at or near Lockport to a point in the Illinois river at or near Utica, and for the development and utilization of the water power thereof, 1919 Ill. Sess. Laws 978.
- Act Regulating Grist Mills and Millers, March 25, 1819.
- Act Regulating Mills and Millers, June 1, 1827.
- Act to Amend Act to Secure the Free Passage of Fish in all the Waters of this State, 1879 Ill. Sess. Laws 171.



Act to Authorize the State of Illinois to Open a Canal through the Public Lands, to Connect the Illinois River with Lake Michigan. 3 Stat. 659 (1822).

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Act to Establish the Judicial Courts of the United States, Ch. XX, 1 Stat. 73 (1789).

Act to grant a quantity of land to the state of Illinois, for the purpose of aiding in opening a canal to connect the waters of the Illinois river with those of Lake Michigan, 4 Stat. 234 (1827).

Act to Incorporate the Illinois and Michigan Canal Company. 1825 Ill. Sess. Laws 160.

Act to Provide for the Improvement of the Internal Navigation of this State, 1823 Ill. Sess. Laws 151.

Act to repeal an Act to incorporate the Illinois and Michigan Canal Company, and for other purposes, 1826 Ill. Sess. Laws 63.

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Edwards v. Haeger, 180 Ill. 99 (1899).

ETSI Pipeline Project v. Missouri, 484 U.S. 495 (1988).

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Federal Water Power Act of 1920, 41 Stat. 1063.

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Great Lakes—St. Lawrence River Basin Compact, 122 Stat. 3739 (2008).

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Illinois Central Railroad Co. v. State of Illinois, 146 U.S. 387 (1892).

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Kansas v. Colorado, 185 U.S. 125 (1902).

Lee v. City of Pontiac, 99 Ill. App. 3d 982 (1981).

Level of Lake Michigan Act, codified at 615 ILCS 50/1 to 50/14 (2009).

Memorial to Congress on the Subject of the Illinois and Michigan Canal, 1826 Ill. Sess. Laws 97.

Middleton v. Pritchard, 4 Ill. 510 (1842).

Oil Pollution Act of June 7, 1924, 43 Stat. 605 Ch. 316.

Parker v. The People of the State of Illinois, 111 Ill. 581 (1884).

Reclamation Act of 1902, 32 Stat. 388.

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Trustees of Schools v. Schroll, 120 Ill. 509 (1887).  
U.S. Const. art. I, sect. 8.  
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U.S. Const. art. VI.  
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