

-----Original Message-----

From: Todd Galiga

Sent: Tuesday, July 01, 2014 12:11 PM

To: 'mcurwd@wcc.net'

Subject: RE: query on statutory authority

Ms. Runge,

Under Texas Water Code Section 11.021(a), surface water in a stream is state water owned by the state of Texas. Under Water Code Section 5.013(a), the Texas Commission on Environmental Quality has general jurisdiction over state water and water rights, including the issuance of water rights permits and enforcement of water rights. A person may acquire a right to use state water either by obtaining a water right permit (i.e., an appropriative right), or by owning land adjacent to a stream and using state water on their adjacent property for domestic and livestock purposes (i.e., a riparian right). Riparian rights are considered superior to appropriative rights because they existed under common law prior to the legislative adoption of the appropriation acts. *Humphreys-Mexica Co. v. Arseneaux*, 116 Tex 603, 297 S.W. 225 (1927). *Skillem*, Texas Water Law Volume 1, p. 26 (1988). However, between riparian rights, each riparian owner has equal rights in the stream of water which flows by him, and the use by each must be reasonable as regards the rights of others. *Watkins Land Co. v. Clements*, 98 Tex. 578, 86 S.W. 733, 736 (1905). Thus, a domestic and livestock reservoir owner must pass inflows to other domestic and livestock users as needed.

While the Commission has general jurisdiction over the enforcement of water rights statewide, the Commission does not usually enforce this common law requirement outside of watermaster areas. However, the Commission works informally with riparian right owners to attempt to resolve disputes, and the requirement to pass inflows may be enforced by an aggrieved riparian right owner in district court.

Please let me know if you have any additional questions.

Sincerely,

Todd Galiga

Environmental Law Division

Texas Commission on Environmental Quality

(512) 239-3578

Todd.Galiga@tceq.texas.gov