

Missouri's Laws relating to Streams

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The law of streams is not just about water, but the things in it, the use of the water itself, the right to withdraw the water and discharge into it, the use of the streambanks, and rights of access.

The legal rules regarding running water must be drawn from a mess of federal and state statutes and the common law.

A helpful resource is the 300-page compilation made in 2000, [*A Summary of Missouri Water Laws*](#), prepared by Richard Gaffney and Charles Hays, with contributions by William J. Bryan IV and Amy E. Randles, published by the Missouri Department of Natural Resources.

Basic principles

1. The water in streams belongs to the people of the state.
2. The wildlife in streams belongs to the people of the state. [§ 252.030 RSMo.](#) State and federal agencies regulate if, how and when wildlife may be taken from streams.
3. The concept of navigability is historically important in understanding statutes and case law, but is now of limited use in explaining rights, which are mostly governed by administrative regulations adopted under modern statutes.
 - Historically, if a stream was navigable it was a public highway, with the state owning the streambed.
 - Historically, if a stream was not navigable, real estate titles from adjacent land extended from the meander line to the middle thread of the stream, subject to the police power of the state.
 - No court or government agency determines points of navigability under state or federal law in advance of disputes.
4. Riparian owners have rights of access to the adjacent stream and rights to take (but not to own) water and gravel from the stream for use on the riparian property.

5. Federal and state administrative law governs most legal issues regarding streams and their uses, at least in part, except for disputes between neighbors, which is a matter for state courts.

Laws affecting fish and other stream life

By tradition and statute, fish belong to the state, subject to laws that allow lawful capture of game fish and non-game fish, frogs, crayfish and aquatic mammals, such as beaver and muskrat. The law relating to the taking of other forms of life from streams is not developed, probably because our economic system does not value these life forms.

Under traditional English legal principles, embodied in what is called the “common law,” wildlife was owned by the King, but could be possessed by capture. The right to capture was given by the King. This principle of law, with the state taking the place of the King of England, [was adopted by the State of Missouri with the rest of the common law](#), which has been modified over the years by decisions of Missouri’s courts. In the 20th century, federal and state governments began to enact statutes and regulations regarding fish and game and other stream life.

Stream life receives some legal protection through the administration and enforcement of laws regarding pollution, dam-building, mining from streams, modification of streambanks, and protection of wetlands, but little from the common law.

Federal agencies

The [U. S. Fish and Wildlife Service](#), which is a part of the Department of Interior, also enforces federal regulations relating to wildlife, such as migratory birds. The Fish and Wildlife Service also operates the [Endangered Species](#) and [Wetlands Inventory](#) Programs. In Missouri, the Fish and Wildlife Service operates the [Neosho National Fish Hatchery](#) and manages several wetlands and other sites.

The [U. S. Army Corps of Engineers](#) also has authority over modification of navigable streams and over modification of wetlands.

Missouri Department of Conservation (MDC)

The Missouri Conservation Commission was established by adding [Art. IV, § 40\(a\)](#) to the Missouri Constitution. The Conservation Commission adopts rules relating to the taking of fish and game, which are administered and enforced by the Missouri Department of Conservation. [Section 43\(a\) to Article IV](#) of the Missouri Constitution was added in 1977, imposing a one-eighth cent sales tax to provide funds to the Conservation Commission for its capital needs and administration of its programs, in

addition to revenues from the sale of hunting and fishing licenses. This source of funds, exempt from legislative appropriation, has provided many stream access points.

The [Missouri Department of Conservation \(MDC\)](#) manages the Conservation Commission's land inventory, stream and lake access points, nature centers, small lakes and wildlife areas, and state conservation areas. The conservation areas include forest prairies and wetlands.

MDC also enforces the [Missouri Wildlife Code](#), with the assistance of county prosecuting attorneys.

Missouri Department of Natural Resources (DNR)

Federal laws relating to protection of air and water allow each state to designate agencies to adopt and enforce regulations that meet federal standards. Congress and the EPA have established standards. The Missouri legislature has created several commissions (including the [Clean Water Commission](#), [Safe Drinking Water Commission](#), [Land Reclamation Commission](#) and the [Dam and Reservoir Safety Council](#)) to adopt regulations implementing the [federal](#) standards. The [Missouri Department of Natural Resources](#) is charged with administering and enforcing these regulations.

With respect to streams, the most important programs that DNR administers are the [issuance of permits](#) for discharge into streams, grading and clearing, and commercial sand and gravel removal from streams. DNR also attempts to enforce the terms of permits and is represented by the [Missouri Attorney General](#) in enforcement actions.

Riparian rights

The rights and duties that go with ownership of land adjacent to a body of water (lake or stream) are referred to generally as riparian rights, which is a common law concept. The scope of riparian rights and applicability of riparian law principles has been almost completely modified by federal and state statutes and regulations.

Riparian right of access

In 1880, the St. Louis Court of Appeals announced that Missouri was one of those states that would follow this rule:

The right of the owner of a lot in a town to the use of the adjoining street is declared by our Supreme Court, in the case just cited, to be as much property as the lot itself, and that it is immaterial whether he owns to the middle of the street or not. So, the right of a riparian proprietor to the flow

of the water in front of his lot is as much property as the lot itself, and it is immaterial that he does not own to the middle of the stream.

Myers v. City of St. Louis, 8 Mo. App. 266 (Mo. App. 1880).

Reasonable use rule for diversions

Riparian rights include the right to divert water from natural watercourses on the riparian owner's property. Missouri law distinguishes the right to divert surface water (rainwater not in channels) from the right to divert water in natural watercourses. A person who causes flooding by obstructing a natural watercourse is strictly liable for damages, regardless of intent or lack of negligence, while the liability of a person who diverts stormwater runoff is determined by application of the reasonable use rule.

[*Klokkenga v. Carolan*](#), 200 SW3d 144 (Mo.WD 2006), contains a thorough discussion of whether a watercourse is natural. See [*Dudley Special Road District v. Harrison*](#), 517 SW2d 170 (Mo. App. 1974). A natural watercourse is a stream in a defined channel, though it may flow only intermittently.

The reasonable use rule was adopted by the Missouri Supreme Court in [*Heins Implement Company v. Missouri Highway & Transportation Commission*](#), 859 SW2d 681 (1993), with the express purpose of getting rid of the common enemy doctrine and the modified common enemy doctrines, which had protected persons who diverted surface waters to protect their own interests, regardless of the downstream effects. The court summarized the rule as follows:

Perhaps the rule can be stated most simply to impose a duty upon any landowner in the use of his or her land not to needlessly or negligently injure by surface water adjoining lands owned by others, or in the breach thereof to pay for the resulting damages. The greatest virtue of the reasonable use standard is its ability to adapt to any set of circumstances while remaining firmly focused on the equities of the situation.

Right to take water

Missouri, unlike the states west of Missouri, does not allocate the water in streams to particular uses. Unlike riparian owners in these "[prior appropriation](#)" states, Missouri's riparian owners may withdraw water for irrigation or other uses, subject only to the doctrine of reasonable use, which holds that one riparian owner's use is limited at the point that it unreasonably interferes with the rights of other riparian owners.

Reasonableness is a fact question for courts. [Section 393.030 RSMo](#) allows withdrawal from non-navigable streams for the purpose of supplying water to any city, town or village.

Riparian uses that have been recognized by Missouri courts include household use, irrigation of crops, livestock watering, and industrial uses. A rancher v. sodbuster dispute, [*Ripka v. Wansing*](#), 589 SW2d 333 (Mo.SD 1979) gave the Southern District a chance to refer to the factors mentioned in the RESTATEMENT OF TORTS, SECOND §§ 850-850A) to be considered in determining the reasonableness of riparian uses, as follows:

- (a) the purpose of the use,
- (b) the suitability of the use to the watercourse or lake,
- (c) the economic value of the use,
- (d) the social value of the use,
- (e) the extent and amount of the harm it causes,
- (f) the practicality of avoiding the harm by adjusting the use or method of use of one proprietor or the other,
- (g) the practicality of adjusting the quantity of water used by each proprietor,
- (h) the protection of existing values of water uses, land, investments and enterprises, and
- (i) the justice of requiring the user causing harm to bear the loss.

The State of Missouri does not allocate surface water or groundwater, but makes an effort to monitor the amount of water withdrawn from streams, lakes and underground. In 1983, the legislature created the classification of “major water user,” requiring such users to report their usage to DNR. The definition is found in § 256.400, and applies to “any person, firm, corporation or the state of Missouri, its agencies or corporations and any other political subdivision of this state, their agencies or corporations, with a water source and equipment necessary to withdraw or divert one hundred thousand gallons or more per day from any stream, river, lake, well, spring or other water source.” [DNR’s Missouri Water Resources Center](#) in Rolla (573 368-2175) collects the reports, though the rate of compliance with the reporting requirements is fairly low.

Right to discharge into stream

The federal Clean Water Act established the [National Pollutant Discharge Elimination System \(NPDES\)](#), which requires permits for discharge of pollutants. In Missouri, the federal standards are to be enforced by the Clean Water Commission, comprising persons appointed by the governor. The Missouri Department of Natural Resources administers the regulations adopted by the Clean Water Commission. See [§ 644.052 RSMo](#). NPDES is a system that allows holders of permits to discharge water having specified amounts of pollutants, such as phosphorus (expressed in parts per million) or milligrams per liter for [biological oxygen demand \(BOD\)](#).

The State of Missouri is obligated under the Clean Water Act to implement the [Total Maximum Daily Load](#) Standards, which replaces NPDES. The logic of TMDL is to limit the total quantities of pollutants that can be released into a watershed by all those who discharge into it. Once the TMDL is reached, no additional permits can be issued without reductions from the maximum. [The designation of "impaired waters" is a part of the TMDL framework](#), and the Clean Water Commission is lobbied heavily to minimize the portions of streams that are classified as impaired.

Modification of streambeds and streambanks

Though the right to modify the bed and bank of a non-navigable stream is a riparian right, under the common law, modern regulations may restrict these activities.

Dredging and Filling

The U. S. Army Corps of Engineers controls modification of the streambeds and banks of almost all flowing streams. [Dredging, filling streams or wetlands \(with rocks, dirt, concrete, etc.\), placement of docks, erection of bridges, and building dams is subject to the regulation of the Corps](#) and EPA, under section 404 of the federal Clean Water Act, which also requires a "section 401" certification from the Missouri Department of Natural Resources.

Construction of small dams

Erection of dams higher than 35 feet requires construction permits from the Missouri Department of Natural Resources, which has a [Dam and Reservoir Safety Council](#) to advise it. See [Chapter 236 RSMo](#). [Section 252.150 RSMo](#) requires owners of dams to provide for the free passage of fish.

Building of dams over non-navigable streams is a right affirmed by statute. Sections 236.010-236-020 RSMo.

However, obstruction of streams to prevent the free passage of fish is a misdemeanor. [Section 252.200 RSMo.](#)

Hydroelectric uses

The [Federal Energy Regulatory Commission](#) regulates the use of streams for generation of hydroelectric power. The Hydropower Reform Coalition has prepared information to inform citizens of [hydropower licensing issues](#).

Sand and Gravel Mining and Washing

Riparian owners may take gravel from streams without a permit for their own use, but not to sell. Commercial sand and gravel mining and washing from streams is regulated by the [Land Reclamation Commission](#), a state agency, connected to DNR.

Governmental entities are exempt from these regulations.

Commercial sand and gravel operations require permits from the Land Reclamation Commission. No commercial mining is permitted in “outstanding resource waters.”

Restrictions on ATVs and Motorized Vessels

[Subsection 304.013.2 RSMo](#) prohibits ATVs from being in streams except when operated by the riparian landowner as follows:

No person shall operate an off-road vehicle within any stream or river in this state, except that off-road vehicles may be operated within waterways which flow within the boundaries of land which an off-road vehicle operator owns, or for agricultural purposes within the boundaries of land which an off-road vehicle operator owns or has permission to be upon, or for the purpose of fording such stream or river of this state at such road crossings as are customary or part of the highway system. All law enforcement officials or peace officers of this state and its political subdivisions or department of conservation agents or department of natural resources park rangers shall enforce the provisions of this subsection within the geographic area of their jurisdiction.

A similar statute applies to “utility vehicles.” [Section 304.032.1 RSMo.](#)

Cattle and other livestock in streams

While no one disputes that cattle in streams can be harmful to water quality and stream life, many riparian landowners strenuously object to proposals which would prohibit or

limit access of cattle, swine or horses in streams. The Missouri Department of Conservation (MDC) and DNR have attempted through education programs to encourage keeping livestock out of streams and away from erosive streambanks.

Recreational use of streams

A 1954 Missouri Supreme Court case, [*Elder v. Delcour*](#), 269 SW2d 17 (Mo. 1954), made possible the growth of the recreational canoeing industry, giving the public the right to wade and boat on floatable streams, "for business or pleasure." *Id. at 26*. The case also affirmed the right of anyone with a fishing license to fish in a stream, but not to trespass on adjacent land.

The opinion holds that the Meramec River at the point in question is non-navigable, but a public highway. Thus, the public has an easement to travel its waters and submerged streambed and pursue fish. "Since the ownership of the fish in the stream belonged to the state and since respondent was not a trespasser in passing down the stream by boat or by wading, he had the right to fish and to take fish from the stream in a lawful manner." *Id.*

State law behavior restrictions directed as behavior on streams

Section [306.220 RSMo](#) requires children under the age of seven to always wear a personal floatation device. Lighting and PFDs for all vessels are described in § 306.100 RSMo.

Section [306.325 RSMo](#) applies to inner tubes, kayaks, and canoes:

1. As used in this section, the following terms mean:

- (1) "Navigable waterway", any navigable river, lake, or other body of water located wholly or partly within this state and used by any vessel;
- (2) "Vessel", any canoe, kayak, or other watercraft which is easily susceptible to swamping, tipping, or rolling, but does not include any houseboat, party barge, runabout, ski boat, bass boat, excursion gambling boat as defined in [section 313.800, RSMo](#), or similar watercraft not easily susceptible to swamping, tipping, or rolling.

2. Any person entering, traveling upon, or otherwise using navigable or nonnavigable waterways by vessel or innertube and transporting foodstuffs or beverages shall:

- (1) Use a cooler, icebox, or similar nonglass container, and shall not use, other than containers for substances prescribed by a licensed physician,

any glass container for beverages on a vessel within the banks of navigable waterways;

(2) Use a cooler, icebox, or similar nonglass container sealed in a way which prevents the contents from spilling into the water;

(3) Carry and affix to the vessel a container or bag suitable for containing refuse, waste, and trash materials and which is capable of being securely closed;

(4) Transport all refuse, waste, and trash materials to a place in which such materials may be safely and lawfully disposed; and

(5) Shall safely secure any glass containers to protect them from breakage or discharge into any stream.

3. Any person who violates the provisions of this section is guilty of a class C misdemeanor.

The General Assembly is always worried about nudity and drunkenness on Missouri's streams. Finally, in 2009, [section 306.109 RSMo](#) was enacted:

306.109. 1. No person shall possess or use beer bongs or other drinking devices used to consume similar amounts of alcohol on the rivers of this state. As used in this section, the term "beer bong" includes any device that is intended and designed for the rapid consumption or intake of an alcoholic beverage, including but not limited to funnels, tubes, hoses, and modified containers with additional vents.

2. No person shall possess or use any large volume alcohol containers that hold more than four gallons of an alcoholic beverage on the rivers of this state.

3. No person shall possess expanded polypropylene coolers on or within fifty feet of any river of this state, except in developed campgrounds, picnic areas, landings, roads and parking lots located within fifty feet of such rivers. This subsection shall not apply to high density bait containers used solely for such purpose.

4. Any person who violates the provisions of this section is guilty of a class A misdemeanor.

5. The provisions of this section shall not apply to persons on the Mississippi River, Missouri River, or Osage River.

The Missouri Department of Conservation enforces its regulations of vehicles, including bicycles and aircraft, and horses and pets, on all land and waters owned, leased or managed by the Conservation Commission. [Section 252.045 RSMo.](#)