

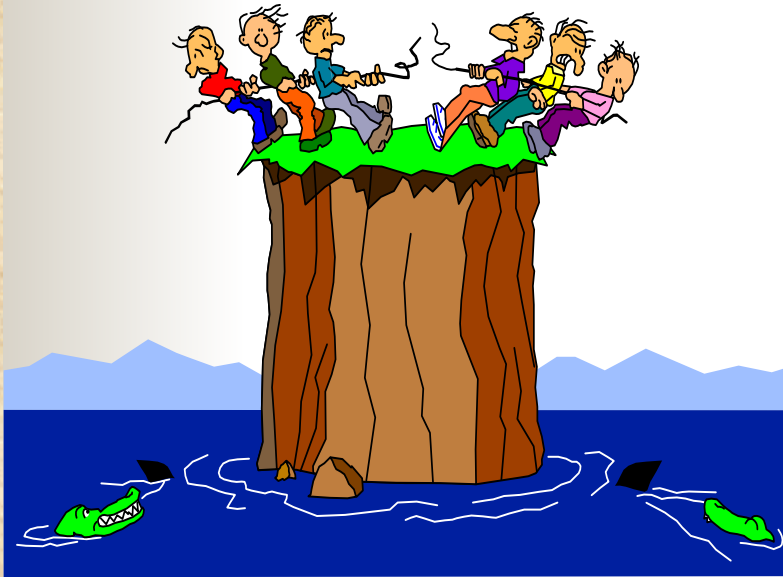
# The Changing Nature of Water Rights in the Southern United States

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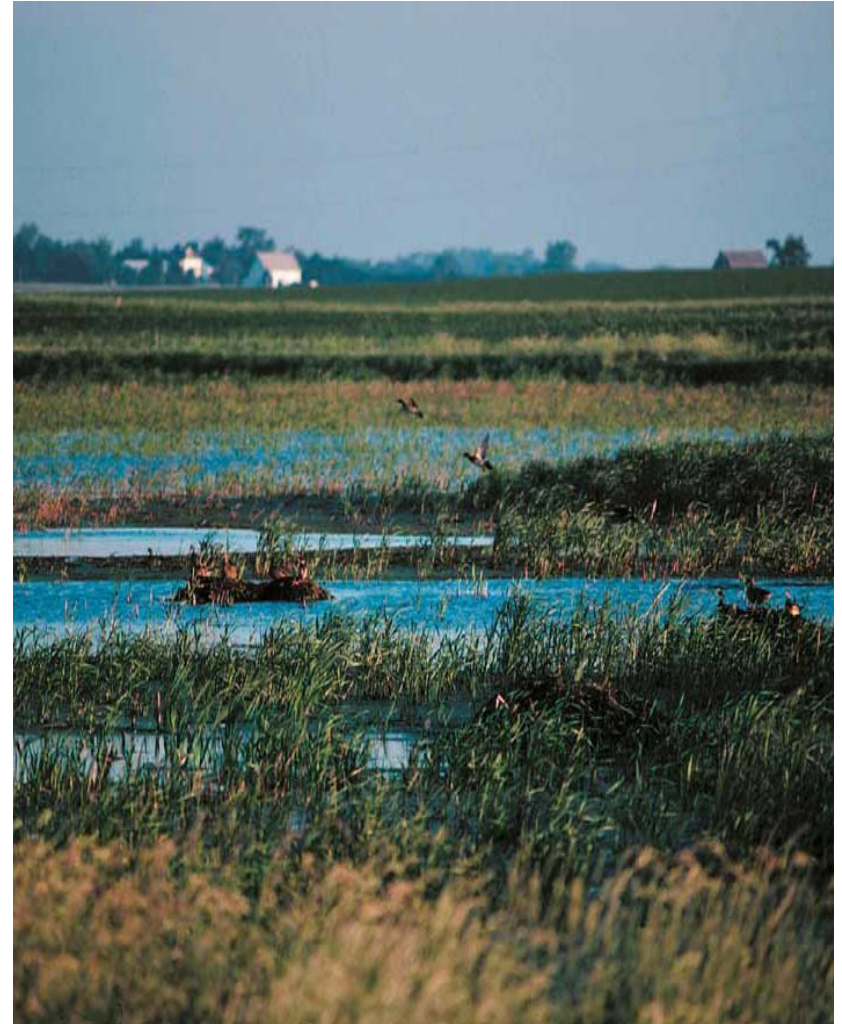
# Expanding Water Conflict

- New Mexico, Texas and Mexico – Rio Grande
- Colorado, New Mexico and Texas – Rio Grande/Rio Bravo
- Maryland and Virginia – Potomac River
- Arizona and California vs. the Quechan tribe - Fort Yuma Reservation - Colorado River
- Kansas and Nebraska – Republican River
- Alabama, Georgia and Florida – Apalachicola – Chattahoochee – Flint Rivers
- Arkansas and Oklahoma – Illinois River and others



# Driving Forces

- Population Growth
- Below Normal Rainfall
- Economic Development
- Changing Public Perception of Use Values
- New Rules
- Better Information



# Overlapping Jurisdictions: State and Federal

- Federal: 25 Agencies, eleven independent federal agencies in nine cabinet depts., three agencies in the executive branch, five river basin commissions, federal courts and two bureaus currently exercise responsibility for water programs. (Rogers – Harvard)
- State: In AR – some 27 agencies have some authority related to water. It is equally confusing in other states.



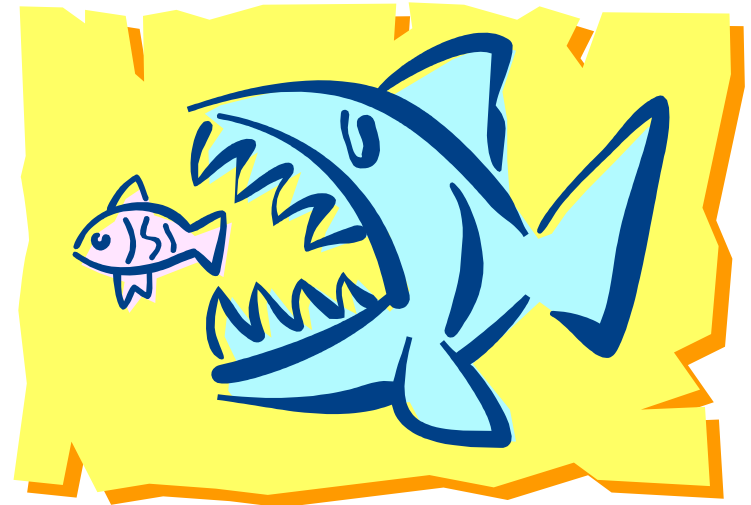
# Competing Approaches: Riparian versus Appropriation Rights

- Riparian: Right tied to the land. Can't be sold separately. Reasonable use required. One right does not supercede another. Right exists with or without use.
- Appropriation: First developed use has priority right. The Right can be conveyed. Rights exist in a hierarchy, Senior to Junior. Right can be lost if not exercised.



# New Model Water Codes: Combine Riparian and Appropriation Doctrines

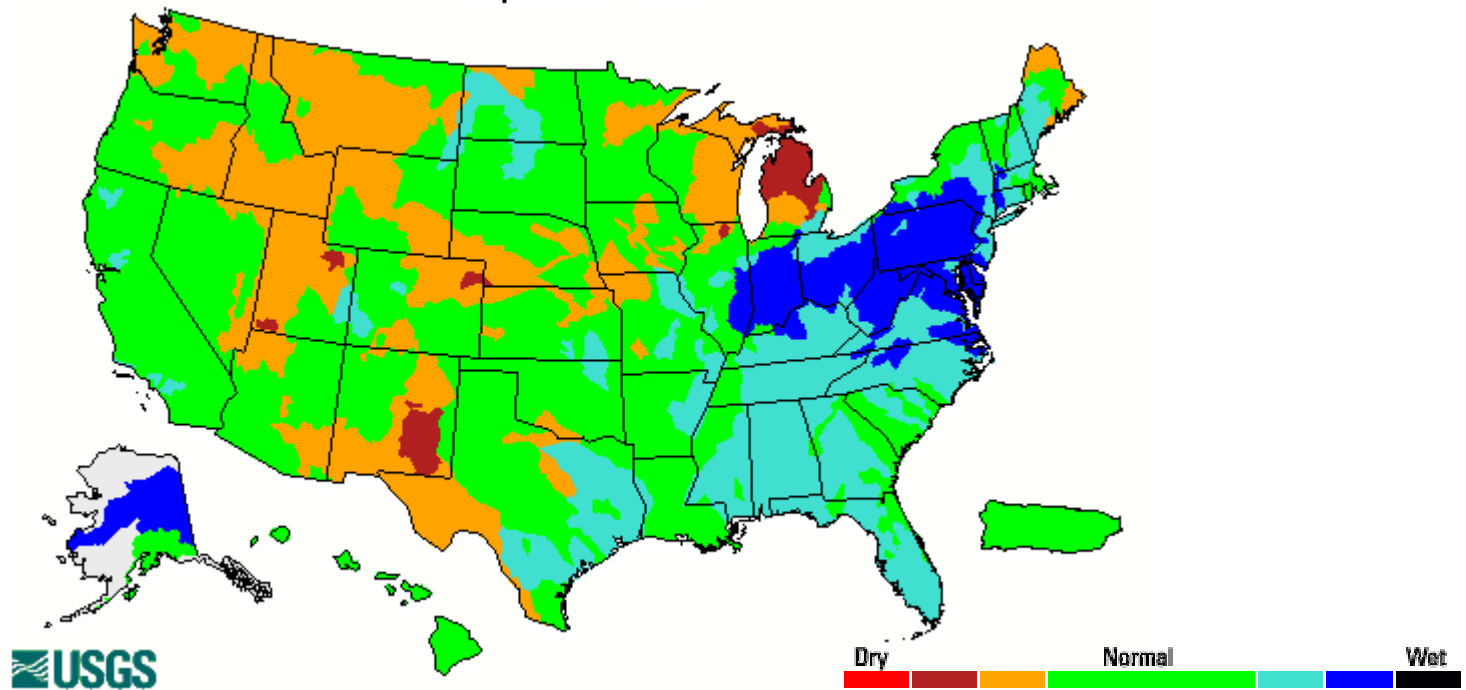
- Honor Riparian Right.
- Reserve Right for social benefit
- Identify “Excess Waters” above that needed or used by Riparian
- Authorize Non-Riparian use Right
- Set requirements for reporting as a function of maintaining Right
- Link groundwater and surface water in a conjunctive use concept



# WaterWatch -- *Current water resources conditions*

Map of monthly-average streamflow for the month of the year

September 2003

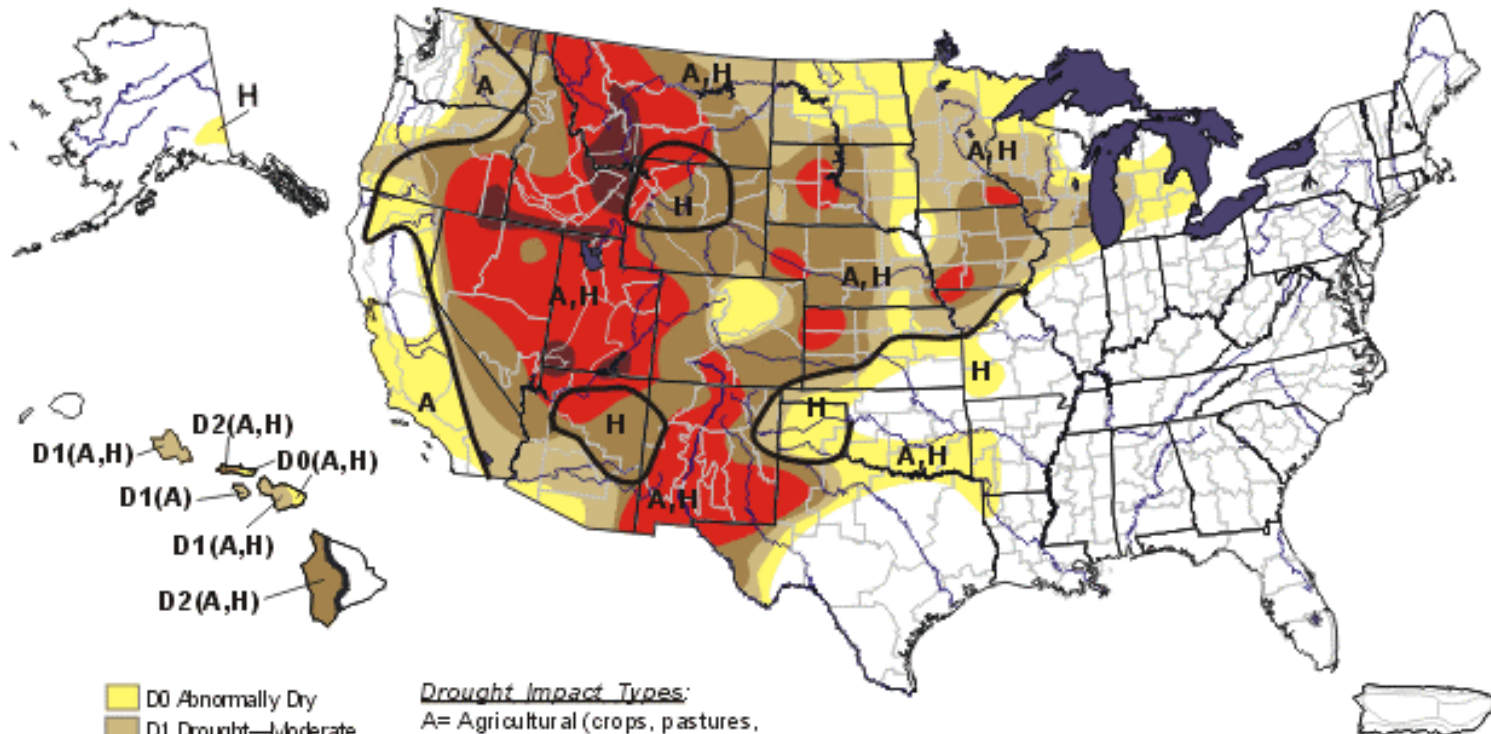


## Explanation - Percentile classes

New low	< 10	10 - 24	25 - 75	76 - 90	>90	New high	No data

# U.S. Drought Monitor

October 14, 2003  
Valid 8 a.m. EDT



- D0 Abnormally Dry
- D1 Drought—Moderate
- D2 Drought—Severe
- D3 Drought—Extreme
- D4 Drought—Exceptional

Drought Impact Types:

- A= Agricultural (crops, pastures, grasslands)
- H= Hydrological (water)
- No type = both impacts
- Delineates dominant impacts

The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. See accompanying text summary for forecast statements.

<http://drought.unl.edu/dm>



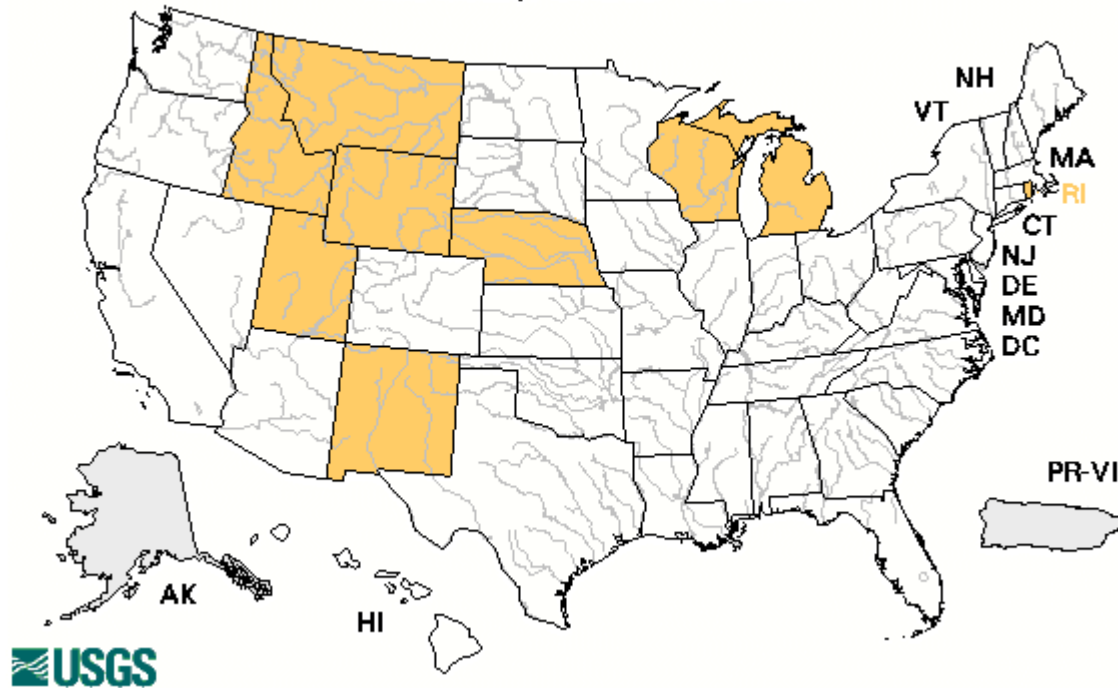
Released Thursday, October 16, 2003  
Author: Rich Tinker, NOAA/NWS/NCEP/CPC



# Drought Watch -- *USGS State Information on Drought*

States where average streamflow was  
below normal during the previous 7 days

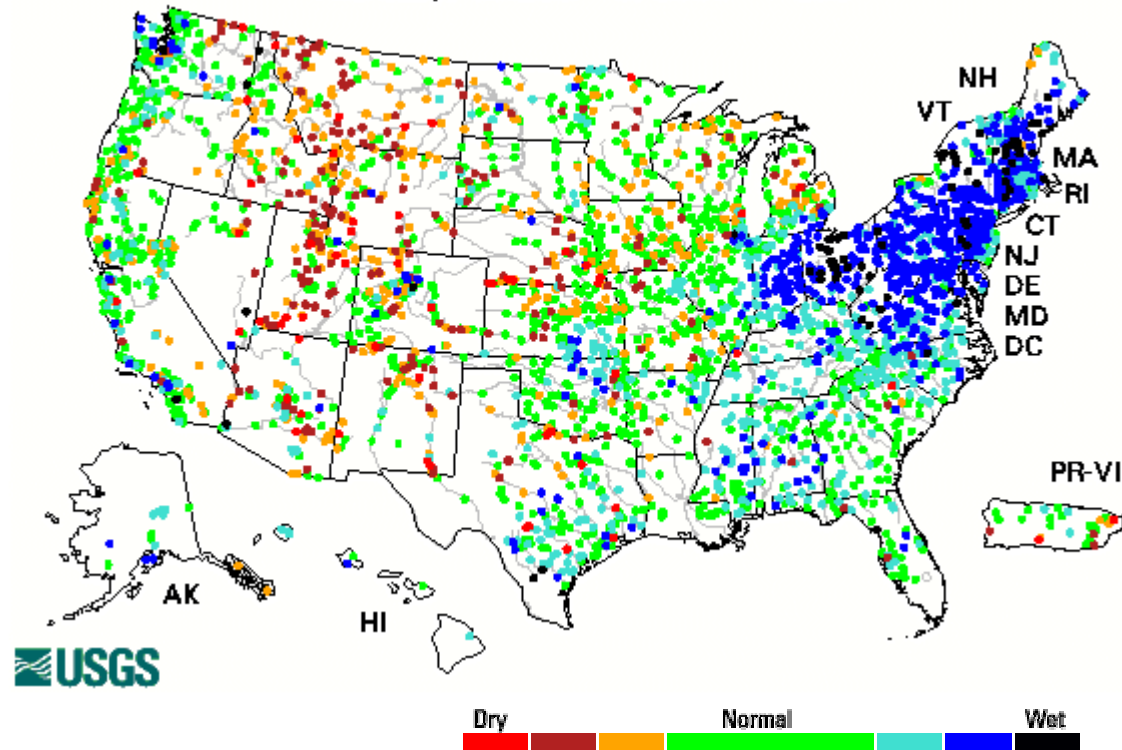
Wednesday, October 15, 2003



# WaterWatch -- *Current water resources conditions*

Map of real-time streamflow compared to historical streamflow for the day of the year (United States)

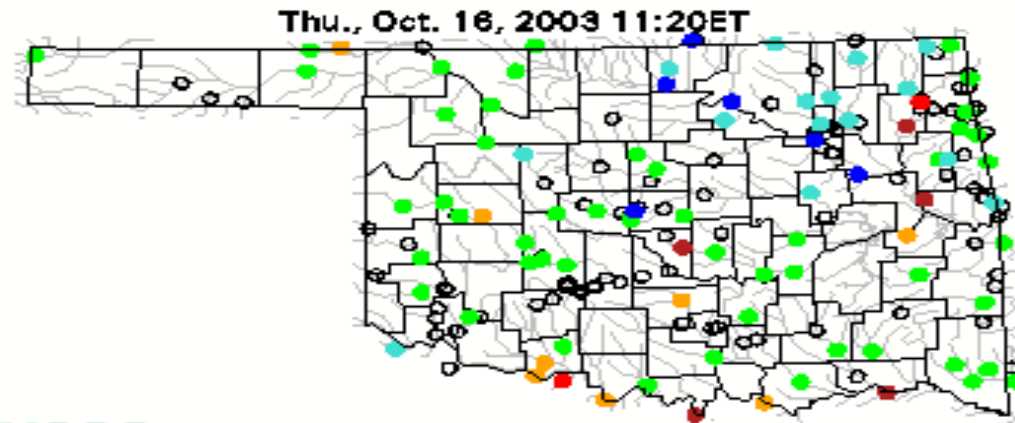
Thursday, October 16, 2003 11:20ET



# WaterWatch -- *Current water resources conditions*

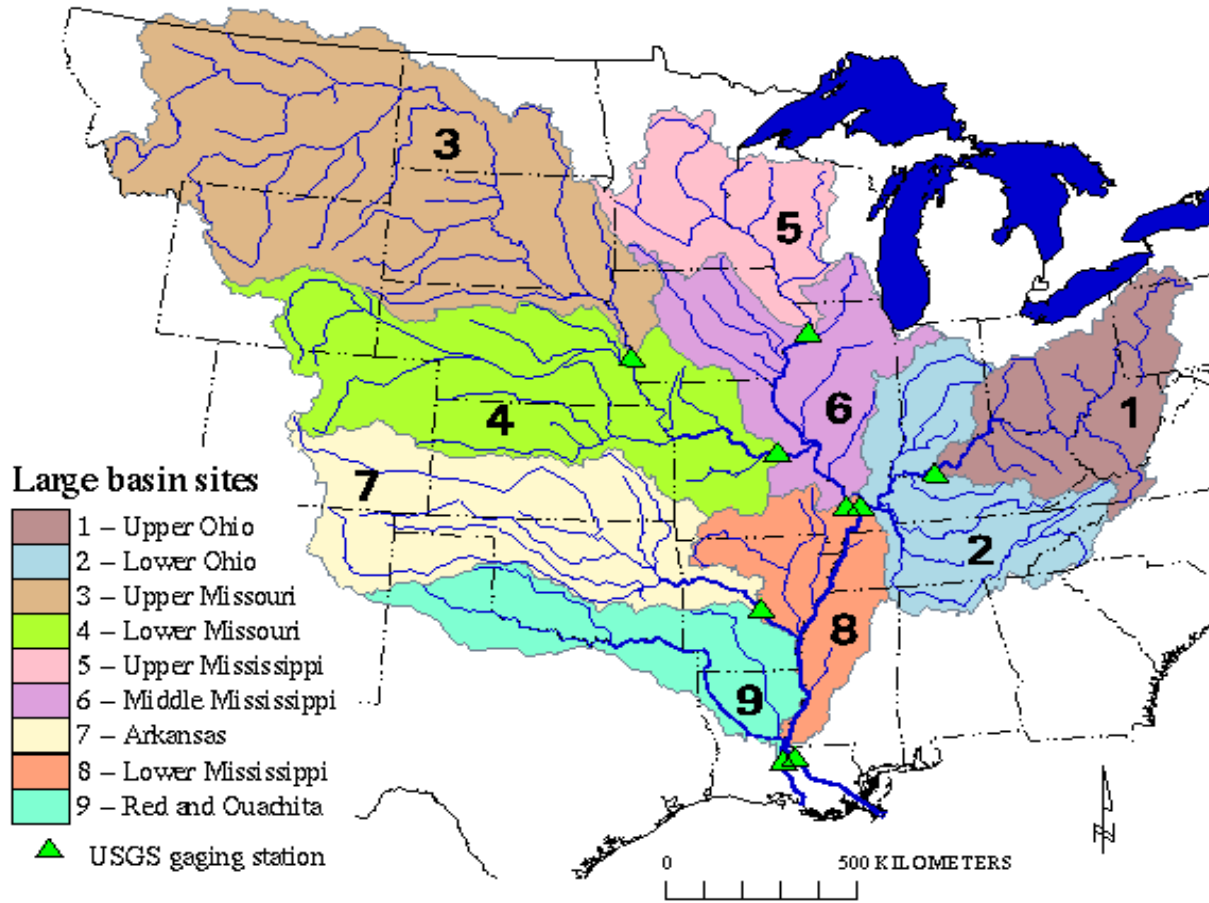
Map of real-time streamflow compared to historical streamflow for the day of the year (Oklahoma)

Q = .00 cfs, Gage height = 6.98 ft, 2003-10-16 09:00:00, Not ranked. Coldwater Creek near Guymon, OK

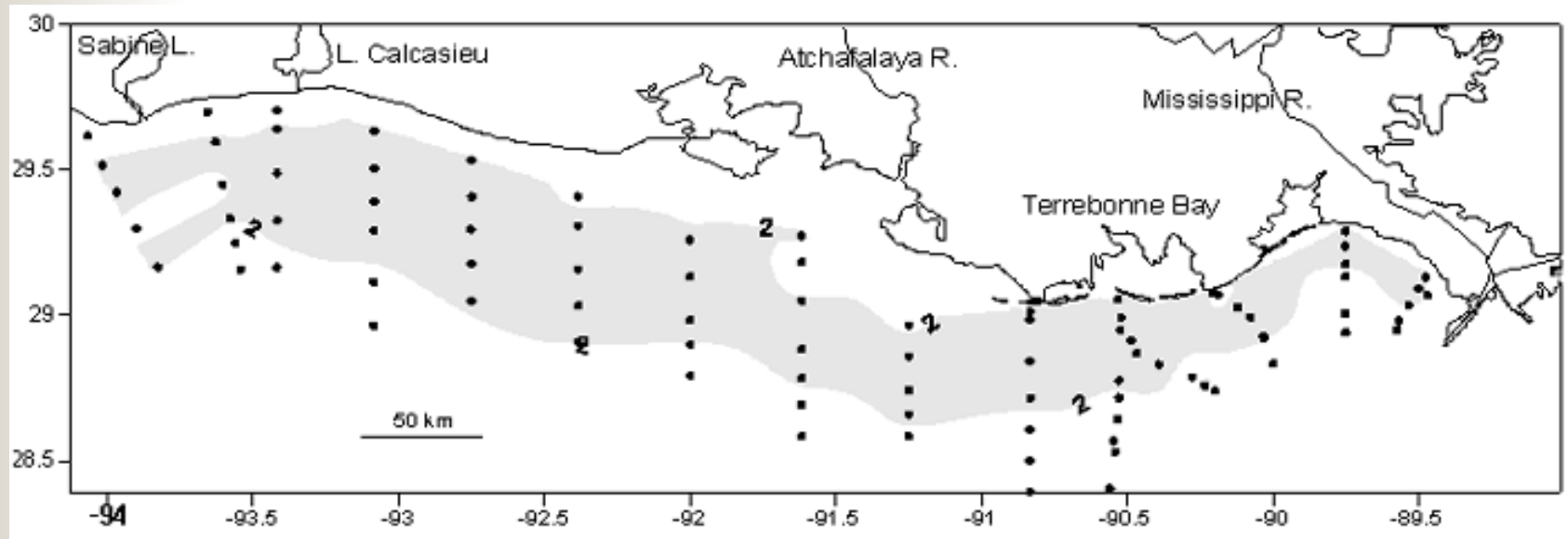


Explanation - Percentile classes							
New low	< 10	10 - 24	25 - 75	76 - 90	> 90	New high	Not ranked

# Mississippi River Watershed



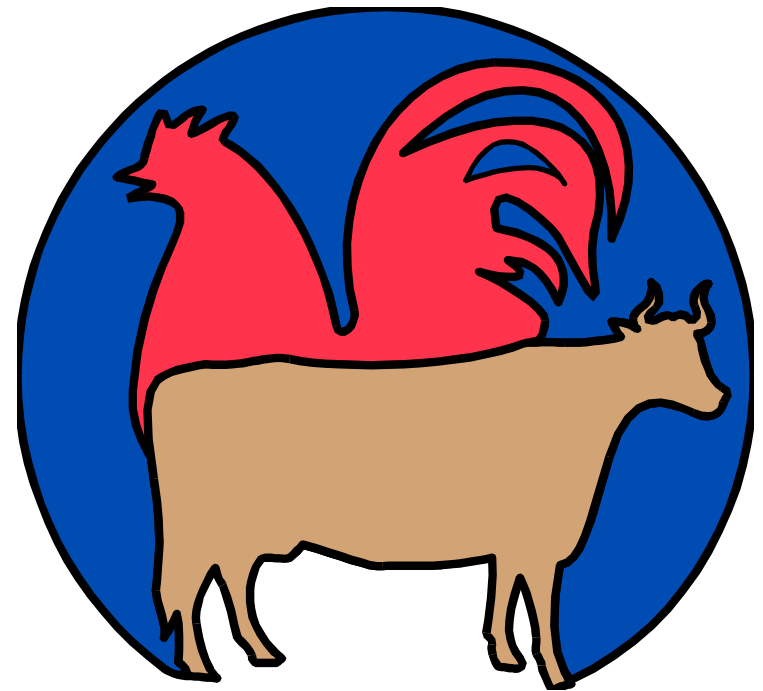
# Gulf Hypoxia Issue



# AFO/CAFO - Animal Feeding Operation, Concentrated Animal Feeding Operation

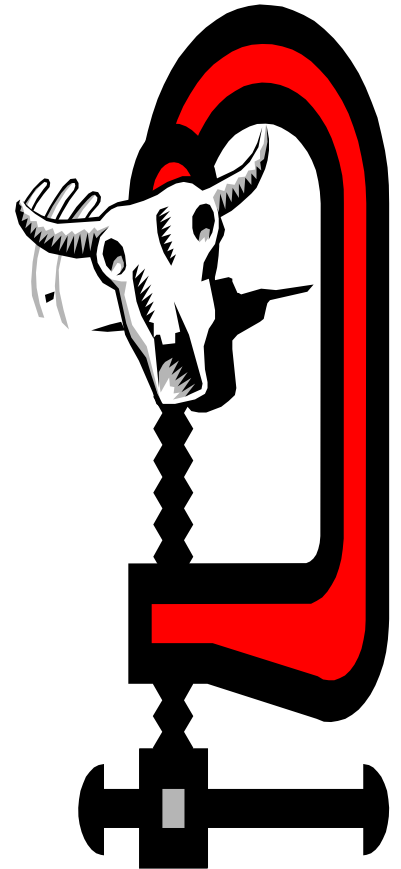
- Public water supply watersheds
- In-stream needs for water – both quality and quantity
- Sensitive biological species
- Competing uses
- Meeting TMDL standards

All potentially individual  
Right limiting



# The Result: The Right Squeeze Hierarchy

- International Treaties, ex. U.S. and Mexico
- Federal Commerce – Navigation, flood control, etc.
- Federal Supremacy – constitutionally based public needs
- Case Law Precedents and Interstate Compacts
- State and local social obligations – protect life and health, protect environment
- Individual Rights – Riparian, Appropriated or some combination



# Prevailing Legal Framework:

- United States Constitution
- Commerce Clause
- NEPA: National Environmental Policy Act - 1969
- US EPA - Created by Executive Order in 1970
- CWA: Clean Water Act - 1972 Amended in
- SDWA - Safe Drinking Water Act - 1974 Amended in 1986 and 1996
- Endangered Species Act – Reauthorized 1995
- State Water Codes – or lack thereof
- Local Ordinance





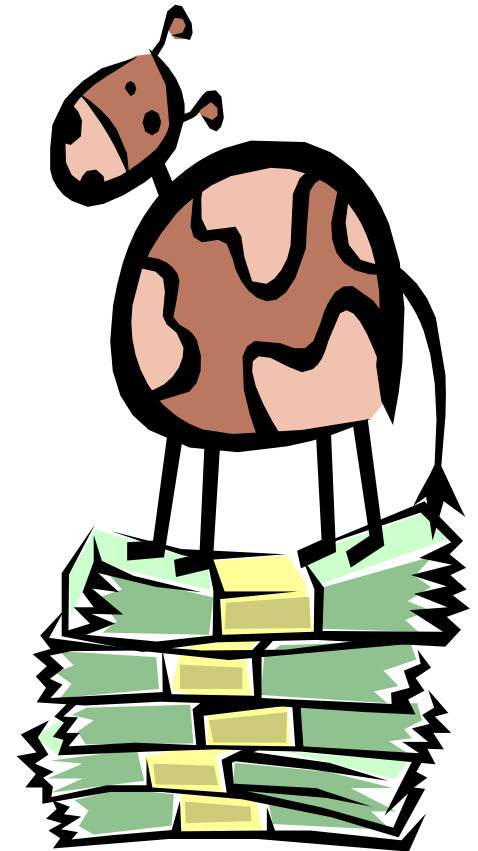
# A Key Consideration in Federal Statutes – Authorize Citizen Lawsuits

## The Effect of Citizen Suits:

TMDLs lawsuits filed in 37 states 28 states  
under Court Order or Consent Decree..

Nonpoint pollution included in TMDL by Court  
Order in California.

Yet to be used in Rights Issues but the potential  
exists.



# Competition – A Defining Factor

- Riparian Right – unsuited for situations of limited supply
- Disparate state legal frameworks constitutionally suspect from a “Commerce” perspective – Water as a commodity
- Socially acceptable definition of beneficial use in question
- Development of “Rural Water Supply System” introduces a new Superior Right



# Individual Water Rights Increasingly Subject to Society Pressures and Competition –

- Questions that must be answered –

Can a Riparian Rights Doctrine be maintained in this era of competing uses and needs? Should Riparian Rights be protected?

What's the most efficient system of water allocation? Can efficiency and social acceptance be achieved in concert?

How can any change in rights be made without a property right “takings”?



## Sources:

- Allen Beall et al. – University of Colorado – Denver
- Roy Carriker – University of Florida
- Charles DuMars – University of New Mexico School of Law
- Jamie Hartshorn – CA Farm Water Coalition
- Jake Looney – University of Arkansas Law School – Fayetteville (Emeritus)
- Peter Rogers – Harvard University
- Otis Templar – Texas Tech University
- University of Arizona – Water Law Primer – author unknown



Questions????

