

A rancher whose land borders a stream used it to water his livestock. The owner of a small waterpark, in existence before the ranch, was located upstream of the rancher's land. The water park required a significant amount of water in order to function properly, so the owner diverted almost all of the stream water into the water park. No longer able to adequately water his livestock from the stream, the rancher filed an action against the owner.

In a jurisdiction that recognizes the riparian doctrine with regard to water usage, who will prevail?

- A. The owner, because he made reasonable use of the water.
- B. The owner, because his use of water has priority as he was on the land first.
- C. The rancher, because he made beneficial use of the water.
- D. The rancher, because the owner's commercial use of the water unreasonably interfered with the rancher's domestic use.

## Explanation:

### Water rights doctrines

<b>Riparian doctrine</b> (eastern states)	Water belongs to owners of adjoining land Reasonable use that does not unreasonably interfere with downstream use permitted (reasonable-use doctrine) Domestic use trumps commercial use Water rights <i>cannot</i> be sold or transferred separate from adjoining land
<b>Prior-appropriation doctrine</b> (western states)	Water rights determined by priority of beneficial use ("first in time, first in right") Water rights are unconnected to adjoining land & <i>can</i> be sold or transferred separately

Water rights have evolved differently in eastern states (where water is plentiful) and western states (where water is scarce). **Eastern states** favor the **riparian doctrine**, where water rights belong to riparians—ie, those who own the land that borders the watercourse. A riparian is generally free to make **any reasonable use** of the water that does **not unreasonably interfere with downstream use**.<sup>\*</sup> However, **domestic** ("natural") use **trumps commercial** ("artificial") use and can be unlimited.

Here, the rancher used the stream to water his livestock (domestic use), while the owner used it to run his water park (commercial use). The owner's use of the water was likely *unreasonable* since he diverted so much of it into the water park that the rancher was no longer able to adequately water his livestock (**Choice A**). And since domestic use of water trumps commercial use in this riparian jurisdiction, the rancher is likely to prevail.

<sup>\*</sup>This is known as the reasonable-use doctrine.

**(Choices B & C)** Western states follow the prior-appropriation doctrine (not applicable here), under which water rights are determined by the "first in time, first in right" rule. This gives the first person who uses or diverts water for a beneficial purpose (ie, agricultural, industrial, household) priority to use the water.

### Educational objective:

Under the riparian doctrine (favored in eastern states), water rights belong to the owners of the land that borders the watercourse (ie, riparians). A riparian may make any reasonable use of water that does not unreasonably interfere with downstream use, and domestic ("natural") use of water trumps the commercial ("artificial") use of it.

### References

78 Am. Jur. 2d Waters §§ 35, 37 (2020) (riparian rights generally and requirement for reasonable use).

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