

**TRANSLATION, THE LAW
OF WATERS IN FORCE IN
THE ISLAND OF CUBA**

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Translation, the Law of Waters in Force in the Island of Cuba by Various

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**TRANSLATION, THE LAW
OF WATERS IN FORCE IN
THE ISLAND OF CUBA**

Mar. 17 Cuba. Laws, statutes, etc. Water law *ack f*
TRANSLATION

THE LAW OF WATERS

IN FORCE IN

THE ISLAND OF CUBA.

DIVISION OF CUSTOMS AND INSULAR AFFAIRS,
WAR DEPARTMENT.
May, 1900.

WASHINGTON:
GOVERNMENT PRINTING OFFICE,
1900.

Bola.

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Rec. Oct. 25, 1900.

LAW OF WATERS IN FORCE IN THE ISLAND OF CUBA.

ROYAL DECREE OF JANUARY 9, 1891.

In view of the reasons submitted to me by the colonial secretary, and making use of the authority which article 89 of the constitution of the monarchy vested in the Government, and in pursuance with the report of the full Council of State:

In the name of My August Son, the King, Don Alfonso XIII, and as Queen Regent of the Kingdom,

I decree the following:

ARTICLE 1. The law of waters promulgated for the Peninsula on June 13, 1879, shall be in force in the island of Cuba as a law, without any other changes than those contained in the following text.

ART. 2. The colonial secretary shall issue the instructions necessary for the execution of the law and shall inform the Cortes of this decree.

Given at the Palace on January 9, 1891.

MARIA CRISTINA.

ANTONIO MARIA FABIÉ,
Colonial Secretary.

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TITLE I.

OWNERSHIP OF TERRESTRIAL WATERS.

CHAPTER I.

Ownership of pluvial waters.

ARTICLE 1. The water which falls upon an estate during rains belongs to the owner thereof while it flows thereon. He may, therefore, build or construct within his property reservoirs, dams, cisterns, or tanks in which to retain the same, or employ any other proper means, provided it does not injure the public or a third person.

Pluvial waters for the purposes of this law are considered those which are the immediate result of rainfalls.

ART. 2. Pluvial waters which flow through ravines or hollows are of public ownership if their channels are also public property.

ART. 3. Municipalities may grant to any person who may request it authority to construct cisterns or tanks for the collection of rain water on public lands, situated within the district and under the jurisdiction of said municipality, informing the governor of the province of said permission.

Should the decision of the municipality be a negative one, an appeal lies to the governor of the province and finally to the governor-general of the island, whose decision shall be final.

CHAPTER II.

Ownership of running water, springs, and streams.

ART. 4. The following are public or of public ownership:

1. Waters which rise continuously or intermittently on ground of public ownership.
2. Continuous and intermittent waters of springs and creeks which course through their natural beds.
3. Rivers.

ART. 5. Waters which rise continuously or intermittently on estates of private ownership, as well as on the property of the State, provinces or towns, belong to the respective owners for their use and benefit while they course through said property.

As soon as water not utilized leaves the estate where it originated, it shall be considered public for the purposes of this law. But if after

leaving the estate in which it originated, it naturally flows through another private estate, either before reaching public channels or after coursing through the same, the owner of said estate may temporarily utilize it, and afterwards the owner of the estate situated immediately below, should there be one, and thus successively, in accordance with the provisions of the second paragraph of article 10.

ART. 6. Every temporary utilization of the waters of springs and creeks in natural beds may be used without restriction by the owners of the lower estates, provided they do not make use of any other impounding material except earth and loose stone, and that the amount of water consumed by each does not exceed 10 litres per second.

ART. 7. The order of preference for the temporary utilization shall be the following:

1. The estates through which the waters course before joining the river, observing the order of their proximity to the source of the streams and respecting their right to the temporary utilization for the entire length of these estates.

2. The riparian estates by order of proximity thereto, and always giving preference to the superior.

But it is understood that in the lower and lateral estates he who has had the utilization for one year and one day can not be deprived thereof by another, even though the latter be a superior estate, and that no temporary utilization can interrupt or attack rights previously acquired to the same waters on lower lands.

ART. 8. The right to utilize indefinitely the waters of springs and brooks is acquired by the owners of lower estates and by those of the riparian estates, in a proper case, when they have been utilized without interruption for a term of twenty years.

ART. 9. The waters not utilized by the owner of the estate on which they rise, as well as the surplus after he has made use thereof, shall leave the estate at the point of the natural and customary channel, and can not in any manner whatsoever be turned from their original course. The same is understood with regard to the estate next below, this order being always observed.

ART. 10. If the owner of an estate in which a natural spring rises should not make use of more than one-half, one-third, or any other fractional part of its waters, the remainder or surplus is subject to the conditions mentioned in article 5 with regard to lower utilizations.

When the owner of an estate on which a natural spring rises should not make use of more than a fractional part and fixed portion of its waters, he shall at periods of diminution or reduction of the spring, continue to use and enjoy the same amount of water, and the shrinkage shall be suffered by the lower irrigators or users, no matter what titles they may have to the use thereof.

In consequence of these provisions, the inferior estates and those

situated laterally, in a proper case, acquire by the order of their situation the option to utilize said waters and establish their right by uninterrupted use.

But it is understood that in these inferior or lateral estates, he who should have first utilized or first utilizes the waters for one year and one day can not be deprived thereof by another even though the latter should be located higher upstream.

ART. 11. If after twenty years have elapsed, to be counted from the date of the promulgation of the law of August 3, 1866, the owner of an estate on which waters naturally rise should not have made use thereof, consuming the same totally or partially in any manner whatsoever, he shall lose all rights to interrupt the uses and utilizations of the same waters by lower estates which may have been exercised for a period of one year and one day.

ART. 12. Waters found in the zone of public works, even though said works are being executed by a concessionaire, belong to the State unless the contrary has been stipulated in the conditions of the concession. The concessionaires shall nevertheless enjoy the gratuitous use of such waters for the service of the construction as well as for the operation of the same works.

ART. 13. The overflow from fountains, sewers, and public establishments belongs to the respective towns. But if it has been utilized by the owners of the inferior estates for a period of twenty years, either by virtue of concessions of municipalities or by implied consent, the course of said waters can not be turned, nor can the continuance of the utilization be interrupted except for a reason of public utility duly proven and after payment for losses and damages.

When the overflow ceases temporarily on account of greater consumption, dry seasons, or works, the users shall not be entitled to indemnity even though they use said overflow by virtue of a concession, but they shall not lose their right thereto when said causes cease.

ART. 14. Both in the case of article 5 as well as in that of article 10, provided that twenty years have elapsed since the publication of the law of 1866, if the owner of an estate where waters originate, after having begun to use them in whole or in part, should interrupt their use for a period of one year and a day consecutively, he shall lose the ownership of all, or of the part of the waters not utilized, said right being acquired by the person or persons who may have used them for a similar period of one year and one day, according to articles 10 and 18.

Nevertheless, the owner of the estate on which they originated shall always preserve the right to make use of the waters within the same estate as motive power or for other purposes, which do not produce an important diminution in their amount or a change in the quality of the waters injurious to the lower uses established.