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Inishowen
Rivers
Trust

Riparian Rights and Responsibilities

A workshop funded by



**Comhairle Contae
Dhún na nGall**
Donegal County Council

Local Authority
Waters
Programme



vibrant communities | catchment assessment | healthy waters

Who I am – Paul McMahon



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Solicitors and Legal Consultants

- McMahon Legal, Solicitors
- Practising Irish Solicitor for 25 years
- Legal Consultant
- Irish Legal Guide (legalguide.ie)
- McMahon Legal Guide
- Writer and Publisher
- Detailed Guides to Law and Regulation



The Big Picture



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- Rules about Rivers
- Where do the Rules come from?
- What is legal?
- Is there a property right to do it?
- Liability if it damages others
- Property owners agrees



The Big Picture



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- What is the consequence of breaching law?
- Limits on property law
- Fisheries law
- Planning law
- Modern Environmental Law



Bodies and Information



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- Local Authority
- Irish Water
- Environmental Protection Agency
- Office of Public Works / Department of Finance
- National Parks and Wildlife Service
- IFI and Loughs Agency
- Waterways Ireland



Bodies and Information

- Dept. Housing, Planning & Local Government (Water)
- Dept. of Agriculture Food and the Marine
- Coillte
- Dept. of Communications, Climate Action & Environment
- Dept. of Culture, Heritage and the Gaeltacht
- Information about the Environment
- Information Enforcement



Enforcement



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- Public Authorities Enforcement
- Prosecution
- Civil Application to Court
- Common Law Rights (Courts)
- Remediation Obligation
- EU Environmental Law (Binds State & Authorities)



Enforcement



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- EU Monitoring
- Farm Payment Incentives
- Participation in Decision Making
- Challenging Public Authority Decisions
- Legal Costs in Environmental Matters
- Practical Aspects of Private Legal Action



Riparian Owner's Right

- Natural Rights Attach to Land
- Fisheries
- When Enjoyed
- When Available and Limits
- Must be natural
- Underground Waters



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Riparian Owner's Rights



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- Not Like Easement
- Rights of Navigation
- Taking Water for Ordinary Use
- Taking Water for Non-Ordinary Use
- Irrigation and Extraordinary Use
- Flow of the Water



Riparian Owner's Rights



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- Changing the Flow
- Preservation of Water Quality
- Remedies
- Wells at Common Laws
- Possible Limits to Groundwater Rights
- Important Limits



Balancing Owners' Rights



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- Obstructions
- Drainage
- Preventing Flooding
- Negligence
- Duty to Take steps?



Nuisance



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- Public Nuisance
- Private / Ordinary Nuisance
- Overlaps with other areas
- Nuisance Protecting Riparian Rights
- Defences
- Accumulations on Land
- Non-Natural Accumulation and Escapes



Easements



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- Easement Rights and Easements
- Acquiring Easement
- Extra or Reduced Rights by Easements / Long Use
- Easement Limiting or Augmenting Riparian Rights
- Easement “to Pollute” at Common Law
- Customs and Statute



Fisheries Rights



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- General
- Types of Rights
- Public Rights
- Ownership of Fishing Rights
- Can be Owned Separate to Land; Several Fishery
- Proving Private Several Fishery



Fisheries Rights



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- The State, the Public and Fisheries
- Special State Cases
- Lease / Licence Consent to Use
- Free Flow
- Access to Waters



Water Framework

- General Requirements
- River Basin Districts
- River Basin Management Plan
- Advisory Bodies
- Action Required
- Obligations on Public Bodies
- Enforcement



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Water Standards

- Groundwater
- Sewage and Wastewater
- Bathing Water
- Surface Waters
- Drinking Water
- Marine Pollution
- International Standards



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Water Pollution



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- Fisheries Offences
- Planning Conditions
- Water Pollution Act
- Water Pollution Licences
- Effluent discharge licences (Irish Water)
- Water Management Plans



Water Pollution



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- Special requirements for Some Substances
- Notification of Incidents and Obligations
- Regulations and Byelaws may exist
- Notices and Information
- EPA Licensing
- Compensation for Damage



Water and Wastewater



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- Local Authority
- Water Abstraction Registration
- Requirement to Register
- Wastewater Discharge Authorisation
- Irish Water
- Regulation on Irish Water



Water and Wastewater

- Drinking Water Standards
- Water Schemes
- Wastewater
- Domestic Wastewater
- Duties of Owners



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Agriculture



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- Local Authorities and Farming
- Nitrates Directive; Implementing Regulations
- Protection of Waters
- Cross Compliance SMR/ GAEC
- Greening, GLAS and AEOS
- Screening and Environmental Impact Assessment



Planning

- Planning Permission Requirement
- Exemptions
- Agriculture Exemptions
- Special Rural Exemptions
- Exceptions to Exemptions
- Drainage of wetlands
- Peat Extraction



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Planning Permission



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- Environmental Impact Statement
- Environmental Impact Assessment
- EIA Water and Dams
- EIA Agriculture, Silviculture and Aquaculture
- EIA Extractive Industry Drilling
- EIA Drilling



Planning Permission

- Enforcement of Planning Law
- Planning permission
- Local Authority Development
- State Sector Development
- Consultation Procedures
- EIA Requirements



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Special Designated Areas



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- Special Areas of Conservation
- Implementation
- Special Protection Areas (Birds)
- Natural Heritage Areas and Nature Reserves
- Wildlife Legislation and Other
- Planning; County Development Plan



Screening and Consent

- Restriction on Development
- Controls on SAC, SPA and NHA
- Screening
- Appropriate Assessment
- Activities Requiring Consent
- Foreshore and other Controls



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Fisheries Legislation



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- Fisheries and the Foyle
- Litigation about Foyle Fisheries
- Foyle Fisheries Act
- Regulation by the Loughs Agency
- Control of Fishing
- Permits Required
- Aquaculture Licensing



Drainage and Flood Waters



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- Drainage and flood water
- Planning Permission
- EU Flood Risk Directive
- Arterial Drainage Schemes
- Maintenance of Drainage Works
- Weirs
- Repair of Watercourses



Drainage

- Bridges
- Compulsory Drainage Orders
- Consent to Alteration
- Agricultural Drainage Works
- Environmental Impact Assessment
- OPW Environmental Activities



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Forestry and Wildlife

- Forestry Management
- Coillte
- Felling
- Enforcement
- Land Management
- Wildlife Act Offences
- General Wildlife Protection



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Brexit

- Environment Issues
- EU Rules Bind State
- Not in NI Protocol
- Level Playing Fields
- Post-Brexit
- All Island Cooperation



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Thank You - Questions

