CONSERVATION DEPARTMENT: Issuance of hunting and fishing permit on "Discharge From Draft"; also, fishing rights of riparian owners along non-navigable streams.

July 14, 1933.

Hon. Kenneth M. Kunkel,
Director, Fish and Game Division,
Conservation Department,
Indianapolis, Indiana.

Dear Sir:

I am in receipt of your letter of July 11, 1933, asking my opinion upon certain matters therein referred to.

1. Your first question is whether or not Ava Earl Sutton, admittedly a bona fide resident of Fountain County, Indiana, is entitled to the issuance of a permit by the clerk of the Fountain Circuit Court to hunt and fish without license, on the strength of his discharge papers, a copy of which is attached to your inquiry.

The discharge is dated September 4, 1918, during the period of the late war with Germany. The only question presented, therefore, is whether or not the applicant was in the military service of the United States prior to such discharge. (See sections 13690 and 13691, Burns Annotated Indiana Statutes, Revision of 1926.)

The discharge is entitled "Discharge from Draft." However, the body of the instrument recites the discharge of the party "from the military service of the United States" for physical disability which existed "prior to induction." The discharge also recites that the party was "inducted into the service" on August 30, 1918, and gives his "Army Serial Number" as 3544760. It would appear that the title of the instrument is misleading and that the applicant actually was inducted into the military service prior to his discharge. Upon the facts contained in the body of the discharge papers, it is my opinion that Mr. Sutton is entitled to a permit to hunt and fish without license, as one who served during the late war with Germany.

2. You submit a further question, as to whether or not a farmer who owns land on both sides of a stream has the right to prohibit fishing in that part of the stream which flows entirely between lands owned by such farmer.
The weight of authority is to the effect that a person who owns land on both sides of a non-navigable stream has the exclusive right of fishing in the whole stream, so far as his lands extend along both sides thereof.

Holyoke Water Power Co. v. Lyman (U. S.), 21 L. Ed. 133;
Beckman v. Kreamer (Ill.), 92 Am. Dec. 146;
Cole v. Eastham, 133 Mass. 65;
Lincoln v. Davis (Mich.), 19 N. W. 103;
Rockefeller v. Lemore, 83 N. Y. S. 289.

This rule does not apply, of course, in cases where such exclusive right has been restricted by grant or lost by the doctrine of prescription.

Beckman v. Kreamer, supra;
Butrick v. Tilton, (Mass.), 29 N. E. 1088;
Schulte v. Warren, (Ill.), 75 N. E. 783;

Although the question has not been decided by the higher courts in this state, the rule as laid down in the foregoing citations is supported by correct legal reasoning. I would answer your second question, therefore, in the affirmative, assuming for the purpose of this opinion that the stream in question is non-navigable. If the stream is navigable, the rule would be otherwise.

3. Your third question is whether or not a farmer who owns to the middle of a stream may prohibit fishing in his half of the stream, in all of it, or in none of it.

It is my opinion, that such landowner may prohibit fishing in that portion of a non-navigable stream which flows over his portion of the bed of such stream. This same question is discussed in the cases cited under question two, supra, and the same reasoning has been applied.