

## GENERAL RULES GOVERNING THE EXISTENCE OF AND USE OF WATER PURSUANT TO RIPARIAN CLAIMS OF RIGHT

1. A riparian right exists by reason of ownership of land abutting upon a stream or body of water and affords no basis of right to use water upon nonriparian land.
2. A parcel of land generally loses its riparian right when severed from the stream channel via a parcel split (i.e., “physical severance”) unless the right is specifically reserved for the severed parcel in the deed of transfer or other conveyance document. However, the California Supreme Court has held that where a physical severance has previously taken place, if the severed tract was receiving water from the creek at the same time the conveyance created the severance, that fact can be used in court to argue that the grantor and grantee did not intend any severance of riparian rights notwithstanding the physical severance, and the riparian right might be preserved as a result – if the court so decides. The riparian right also may be lost when transferred apart from the land by grant, contract, or condemnation. Once lost or severed, the riparian right can **NEVER** be restored.
3. Riparian water right holders may only divert a share of the “natural streamflow” of water in the stream. “Natural streamflow” is the flow that occurs in a watercourse due to accretions from rainfall, snowmelt, springs and rising groundwater. To the extent that flow in its natural state reaches or flows through their property, riparian right holders have a proportional right, based on need, to the use of the natural flow.
4. A riparian right does not allow diversion of water that is foreign to the stream source. Water that is: a) imported from another watershed; b) stored and subsequently released later in time into the stream system from upstream dams; or c) irrigation runoff generated from the application of percolating groundwater applied to upstream lands; is not available for diversion under a riparian claim of right.
5. Water diverted under claim of riparian right may only be used on the parcel of land that abuts the stream - - unless the severed parcel’s riparian status has been somehow retained (see #2 above), and then only on that portion of the parcel that drains back into that portion of the stream from which the water was originally diverted.
6. In order to divert water under claim of riparian right, the diverter must use the water on riparian land but need not own the land at the point of diversion. That is, the diversion may be made at a point upstream (or downstream) from the land being served so long as permission is granted to use that point of diversion and intervening land owners between the point of diversion and place of use are not adversely affected by such practice. However, water cannot be diverted upstream or downstream under a riparian claim of right if this water would not have reached the diverter’s land in the “natural” state of affairs. (In other words, the land is only riparian to the stream when the stream, in the natural state, would actually reach or touch the parcel in question.)
7. Riparian rights are not lost by nonuse of the water.

8. **"Seasonal storage"** of water cannot be accomplished under a riparian claim of right. *"Seasonal storage"* is generally defined as the collection of water during a period of excess flow for use during a period of deficient flow. However, water may be retained for strictly *"regulatory"* purposes. **"Regulatory storage"** of water means the direct diversion of water to a tank or reservoir in order that the water may be put to use shortly thereafter at a rate larger than the rate at which it could have been diverted continuously from its source. Regulatory ponds should generally be drained at the end of the season of use (e.g., irrigation season).
9. If there is insufficient water for the reasonable, beneficial use requirements of all riparian owners, they must share the available supply. Apportionment is governed by various factors, including each owner's reasonable requirements and uses. In the absence of mutual agreement, recourse to a determination in the Superior Court may be necessary.
10. The riparian diverter is subject to the doctrine of reasonable use, which limits the use of water to that quantity reasonably required for beneficial purposes. The method of diversion and conveyance must also be reasonable and non-wasteful.
11. A diverter who possesses a valid riparian claim of right does **NOT** need to obtain a permit from the State Water Resources Control Board for the **act of diverting water**. However, any alteration made to a natural channel in order to divert the water will probably require acquisition of a "streambed alteration agreement" from the Department of Fish and Game and may require a Section 404 Permit from the Army Corps of Engineers or a waste discharge requirement from the appropriate Regional Water Quality Control Board. Compliance is also required with any other local, state, or federal requirements regarding construction and operation of the diversion facilities.
12. Water Code section 5100, et seq. requires that a "Statement of Water Diversion and Use" be filed with the Division for any diversion under riparian right if no other entity reports this use. As of 2007, there is no charge to file this document and forms are available upon request from the Division of Water Rights.