

TYPES OF WATER RIGHTS IN CALIFORNIA

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I. RIGHTS TO USE OF SURFACE WATER

A. Appropriative Water rights

1. Pre-1914 Appropriative right:
 - a. No permit required
 - b. Right acquired by diverting and applying water to beneficial use prior to December 19, 1914.
2. Post-1914 Appropriative right:
 - a. Permit (or license) from State Water Resources Control Board (SWRCB) or predecessor agency is required.
 - b. Permit is to be granted only if water is available for appropriation and if proposed use is in the public interest.
 - c. Diversion and use of water is subject to terms and conditions specified by SWRCB.
3. Common characteristics of appropriative rights
 - a. Priority is based on time of use or recording (pre-1914) or date of application (post-1914). “First in time, first in right.” In times of scarcity, later (junior) appropriators are cut off before earlier (senior) appropriators. That is, early priority rights must be satisfied before later rights receive any water.
 - b. Right is quantified—a definite amount (although not necessarily available in every year).
 - c. Right is granted for particular use, and particular place of use, and point of diversion is specified. There will also be a specified season of diversion.
 - d. Right may be lost through 5 or more years of non-use (“Use it or lose it.”)

B. Riparian Water Rights

1. For use on riparian property adjoining a watercourse.
2. Riparian rights are “correlative,” that is, owners share the water in case of shortage, have equal rights among themselves (not based on time of first use).
3. Must be in watershed of the stream. No seasonal storage allowed.
4. Applies only to water available under natural conditions. No “foreign” water.
5. No permit from SWRCB required.
6. Generally have priority over appropriative rights (but not always). Priority vis-à-vis appropriators depends on date of patent (deed from U.S. Government), not date of first use.
7. Riparian rights are not lost by non-use, but can be given lower priority than presently exercised rights when the SWRCB determines all the rights to a stream (statutory adjudication).

II. RIGHTS TO USE OF GROUNDWATER

- A. Owners of land overlying a groundwater basin have “overlying” rights to pump water from the basin for use on overlying land.
- B. Among overlyers, the rights are correlative (like riparians)—they share in the “safe yield” of the basin.
- C. If there is a surplus, it may be taken for use away from the basin. Such use is called “appropriative”, but does not require a permit from SWRCB.
- D. Among appropriators, the rights are first in time, first in right.
- E. Between overlyers and appropriators, overlyers have priority.
- F. Use by municipalities is considered appropriative, even if the city lies over the groundwater basin.
- G. No permits are required for pumping of “percolating groundwater” (most groundwater is percolating). However, water flowing in

“subterranean streams” is treated like surface water and requires an SWRCB permit.

- H. Prescription (wrongful taking of another person’s water) can occur when users pump more than the safe yield of a basin for more than five consecutive years (“overdraft”). The rules for prescription are complicated and based on a few California Supreme Court decisions.
- I. Some groundwater basins have been adjudicated, that is, all the rights have been determined. In that case, the judgment defines the rights.
- J. In four Southern California counties, those who pump over 25 acre-feet of water per year must report the pumping to the SWRCB (even though they don’t need a permit).

III. OTHER TYPES OF WATER RIGHTS

- A. Federal reserved rights (based on implicit Congressional intent to reserve water when it reserves land from the public domain for a particular purpose, e.g. national forest, national park). This is the only water right created by federal law.
- B. Pueblo right. Right of a municipality that was a pueblo under Mexican law to the use of water within the municipality for its residents.
- C. Contractual right to obtain water from someone having a water right.