

# Water Rights in the United States

## INTRODUCTION

The American landmass is home to a wide variety of ecosystems. From sea to shining sea, rain forests lie just miles from deserts and great plains stretch up into vast mountain ranges. Different regions in the United States receive extremely different amounts of precipitation at different times of the year. As such, the states of our nation have written their water right policy differently, based on a number of factors relating to geography, climate and society.

- A 'water right' is right of a person or organization to use water from nature – water is a shared resource
  - Tragedy of the Commons
- The right may be tied to or independent of land ownership
- The water use may be consumptive – is completely used up
- The water also may be returned to the system

There are two general models for water rights in the United States are the Prior Appropriation Doctrine and the Riparian Doctrine. States that use prior appropriation systems are found in the arid west, while states in the wetter east utilize versions of the riparian doctrine. These two regions are approximately divided by the 100<sup>th</sup> parallel.

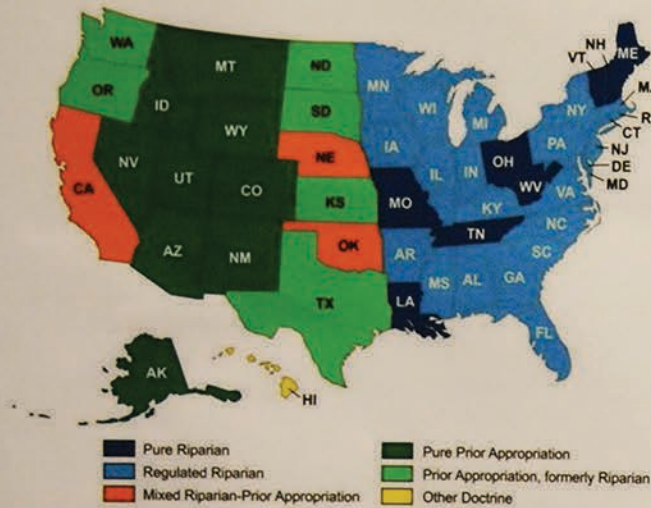


Figure 1: Water Right Doctrine of the United States *Source: WaterWired*

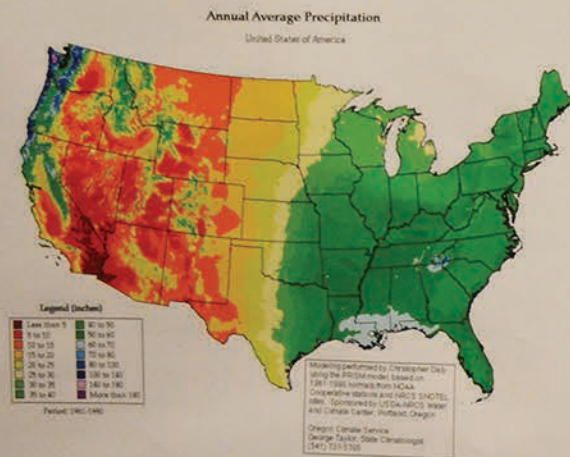


Figure 2: Annual Precipitation Map of the United States *Source: WRCC*

## PRIOR APPROPRIATION

Much of the western United States is arid or mountainous and receives much less precipitation every year than the east. The precipitation that falls in this region does so during a short wet season caused by snowmelt in the spring and early summer, while the rivers run low the rest of the year. A system was devised to appropriate the water based on the first use in time.

According to the Colorado Division of Water Resources, prior appropriation doctrine "controls who uses how much water, the types of uses allowed, and when those waters can be used."

- Water rights are unconnected to land ownership
- First in time, first in right – the age of the water right determines who can use the available water first.
  - A downstream water right from the 1910's will be able to draw before an upstream right from the 1950's.
- A "date of appropriation" is assigned to the water right, and will stay with the water right as it is sold.
- The water taken out of a stream must be put to beneficial use as defined by the state

## RIPARIAN DOCTRINE

- Riparian Doctrine limits the use of water to only those landowners with riparian land. In order to be classified as a riparian landowner, the landowner must own a parcel of land adjacent to a water body, such as a stream, lake, or pond.
- The water may only be put to a reasonable use, and the courts can enjoin unreasonable uses.
- This means that the riparian landowner may make a reasonable use of the waters, as long as that use does not interfere with the reasonable use of another downstream riparian landowner.
- The law considered any natural uses, such as water for drinking, watering livestock, or watering a garden, as reasonable. Artificial uses, such as those for irrigation or industry, are considered reasonable uses under most states' laws.
- Under riparian rights, use of the water is not required to keep the right alive. (Because the right is attached to the riparian land, non-use does not extinguish the right.)
- New uses may be started at any time as long as the new use is a reasonable one.
- Today, almost all riparian states have enacted some form of a permit system, moving towards what has been described as a "regulated riparian" system.

## REGULATED RIPARIAN DOCTRINE

- Regulated Riparian Doctrine allows for a permit system to allocate water usage. Each state that uses a form of regulated riparianism has a central state agency with the control to say who may use the water, how much they can use, and when they can use it.
- Regulated riparianism departs from common law riparianism by looking at the projected use before any water is ever actually used. The state will use the same reasonable use criterion as with the common law but determine beforehand if the new use is reasonable. This allows the state to take into account both the potential benefits to society and the compatibility with current uses before granting a new permit.
- The permitting system allows the state to plan for the future, and maximize water usage in the future.

## HAWAIIAN WATER RIGHTS

- Hawaii has its own set of rules for water rights, compared to prior appropriation and riparian.
- Ancient Hawaiian rules for water guaranteed fresh water for all natives to use however they liked.
- These rules became modernized in 1842, when laws were added about water use regarding irrigation. This led to many lawsuits between the government and the natives of Hawaii.
- Makai v Hastings (1884) - must provide irrigation water to those of which are in need of it.
- Waiahole I – Surface and subterranean waters are part of a "public trust."
- Public trust was defined as:
  - Preserving water in its natural state.
  - Preserve water for potable uses.
- Must use the traditional and customary practices of the old traditional native Hawaiians.
- Rights to trust revenue from water licenses.
- Irrigation later on it switched from publically owned, to being owned by private corporations.
- This has led to many problems during recent times, including lack of irrigation water to sugarcane farms. This is a big problem because sugarcane is a very water intensive plant.

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