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Water Rights of the Fifty States and Territories

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American Water Works Association



**American Water Works
Association**

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The Authoritative Resource for Safe Drinking Water SM

March 4, 2004

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Ms. Krista Evans
Montana State Legislature

Dear Ms. Evans:

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Thank you for your attention to this matter.

Sincerely,

Monica Joda Baruth
Director of Publishing

MJB/sm

Chapter 5

Water Rights of the Fifty States and Territories

Patricia K. Flood

Water rights information on the 50 states and territories was obtained from a standardized, nationwide survey directed to the attorney general of each state or territory. Completed questionnaires were received from the office of the attorney and/or the water rights administering agency.

This compilation of water rights data represents a valuable basic reference. It is useful for comparing practices in neighboring states, as when one state is interested in how an adjacent state deals with a problem similar to its own. For the individual or agency having a national water rights interest, or a consultant with a regional or nationwide practice, the availability of an accurate listing of water rights facts on each state will be useful.

This chapter includes a copy of the survey questionnaire (Figure 5-1, page 34), a summary table (Table 5-1, pages 32-33), and maps to provide a broad perspective of data for ready identification (Figures 5-2 through 5-6, pages 35-37). Following the figures and table are fact sheets for each state and territory. The data are as submitted by the state representative.

Table 5-1 Summary of Water Rights of the Fifty States and Territories

1	2	3		4		5	6	7	8	9	10
State or Territory	Surface Water Right System*	Permit Required		Court Approval		Buying/Selling	Disputes†	Number of Compacts	Number of Treaties	Legislative Activity	Administering Agency
		Surface Water	Ground-water	Surface Water	Ground-water						
Alabama	R	No	No	No	No	No	GC	0	0	No	None
Alaska	A	Yes	Yes	No	No	Yes	WA, GC	0	0	No	Dept. of Natural Resources
Arizona	A	Yes	Yes	No	No	Yes	WA, GC	2	1	Yes	Dept. of Water Resources
Arkansas	R	No	No	No	No	Yes	GC	0	0	No	None
California	O	Yes	No	No	No	Yes	GC	3	1	Yes	Water Resources Control Board
Colorado	A	No	Yes	No	No	Yes	SC	11	1	Yes	Div. of Water Resources
Connecticut	R	Yes	Yes	No	No	No	GC	2	0	Yes	Dept. of Environmental Protection
Delaware	R	Yes	Yes	No	No	No	WA, GC	4	0	No	Dept. of Natural Resources
Florida	O	Yes	Yes	No	No	No	WA	0	0	No	Regional Water Management Districts
Georgia	R	Yes	Yes	No	No	Yes	GC	0	0	No	Dept. of Natural Resources
Hawaii	O	No	Yes	No	No	No	WA, SC	0	0	No	State Water Commission
Idaho	A	Yes	Yes	No	No	Yes	GC	2	0	Yes	Dept. of Natural Resources
Illinois	R	No	No	No	No	No	GC	0	1	No	Div. of Water Resources
Indiana	R	No	No	Yes	No	Yes	WA, GC	0	1	Yes	Dept. of Natural Resources
Iowa	O	Yes	Yes	No	No	No	WA, GC	0	0	No	Dept. of Natural Resources
Kansas	A	Yes	Yes	No	No	Yes	GC	4	0	Yes	Div. of Water Resources
Kentucky	R	Yes	Yes	No	No	No	WA, GC	2	0	No	Div. of Water
Louisiana	R	No	No	No	No	Yes	GC	2	0	No	None
Maine	R	No	No	No	No	Yes	SC	0	1	No	None
Maryland	R	Yes	Yes	No	No	No	WA, GC	3	0	No	Water Resources Administration
Massachusetts	R	Yes	Yes	No	No	Yes	GC	0	0	Yes	Div. of Water Supply
Michigan	R	No	No	No	No	No	GC	1	1	No	Dept. of Natural Resources
Minnesota	R	Yes	Yes	No	No	Yes	WA, GC	1	1	No	Dept. of Natural Resources
Mississippi	O	Yes	Yes	No	No	No	WA, GC	0	0	No	Dept. of Natural Resources
Missouri	R	No	No	No	No	Yes	GC	0	0	No	None
Montana	A	Yes	Yes	No	No	Yes	WA	1	3	Yes	Water Resources Div.

*A—Appropriation; R—Riparian; O—Other

†WA—Water Agency; GC—General Courts; SC—Special Courts

Table continues on next page.

Table 5-1 Summary of Water Rights of the Fifty States and Territories (continued)

1	2	3		4		5	6	7	8	9	10
State or Territory	Surface Water Right System*	Permit Required Surface Water	Ground-water	Court Approval Surface Water Ground-water		Buying/Selling	Disputes†	Number of Compacts	Number of Treaties	Legislative Activity	Administering Agency
Nebraska	A	Yes	No	No	No	Yes	WA, SC	5	0	Yes	Dept. of Water Resources
Nevada	A	Yes	Yes	No	No	Yes	WA, GC	1	0	Yes	Div. of Water Resources
New Hampshire	R	No	No	No	No	Yes	GC	0	0	No	Water Resources Div.
New Jersey	R	Yes	Yes	No	No	No	WA, GC	1	0	No	Div. of Water Resources
New Mexico	A	Yes	Yes	No	No	Yes	GC	8	3	Yes	State Engineer's Office
New York	R	Yes	Yes	No	No	Yes	GC	3	1	No	Dept. of Environmental Conservation
North Carolina	R	Yes	Yes	No	No	Yes	GC	0	0	No	Div. of Water Resources
North Dakota	A	Yes	Yes	No	No	Yes	GC	1	1	Yes	State Water Commission
Ohio	R	Yes	Yes	No	No	No	GC	3	1	No	Dept. of Natural Resources
Oklahoma	A	Yes	Yes	No	No	Yes	WA, GC	3	0	Yes	Water Resources Board
Oregon	A	Yes	Yes	Yes	Yes	Yes	WA, SC	2	0	Yes	Dept. of Natural Resources
Pennsylvania	R	Yes	No	No	No	No	GC	5	2	No	Dept. of Environmental Resources
Rhode Island	R	No	No	No	No	No	GC	0	0	No	Water Resources Board
South Carolina	R	Yes	Yes	No	No	No	GC	0	0	Yes	Water Resources Commission
South Dakota	A	Yes	Yes	No	No	Yes	WA, GC	1	0	Yes	Dept. of Water & Natural Resources
Tennessee	R	No	No	No	No	Yes	GC	2	0	Yes	Dept. of Health & Environment
Texas	A	Yes	No	No	No	Yes	WA, GC	5	3	Yes	State Water Commission
Utah	A	Yes	Yes	No	No	Yes	WA, GC, SC	3	1	Yes	Dept. of Natural Resources
Vermont	R	No	No	No	No	Yes	GC	1	1	No	None
Virginia	R	No	Yes	No	No	No	GC	4	0	No	State Water Control Board
Washington	A	Yes	Yes	No	No	Yes	WA, GC	0	2	No	Dept. of Ecology
West Virginia	R	No	No	No	No	Yes	GC	3	0	No	Div. of Natural Resources
Wisconsin	R	Yes	Yes	No	No	Yes	WA, GC	3	2	Yes	Dept. of Natural Resources
Wyoming	A	Yes	Yes	No	No	Yes	GC	9	1	Yes	State Engineer's Office
<i>Territories:</i>											
American Samoa	O	No	Yes	No	No	No	GC	0	0	No	Dept. of Public Works
Guam	R	No	No	No	No	Yes	GC	0	0	No	Environmental Protection Agency
N. Mariana Island	O	No	No	No	No	Yes	GC	0	0	No	None
Puerto Rico	O	Yes	Yes	No	No	No	WA	0	0	No	Dept. of Natural Resources
Virgin Islands	O	Yes	Yes	No	No	No	WA	0	0	No	Dept. of Public Works

*A—Appropriation; R—Riparian; O—Other

†WA—Water Agency; GC—General Courts; SC—Special Courts

**WATER RIGHTS COMMITTEE
AMERICAN WATER WORKS ASSOCIATION**

By answering this questionnaire, you will assist the Water Rights Committee in compiling a summary of water rights of all fifty states plus possessions.

Returning the completed questionnaire will result in our providing you a copy of the final summary.

If you are uncertain about a particular response, please mark as being out of line. If a question is not applicable to your state, mark "n/a."

1. The following responses apply to the State of _____
2. My state is characterized as having a water right system based *primarily* on:
 - a. Riparian system _____
 - b. Appropriation doctrine _____
 - c. Other* _____
*Please state other system _____
3. Is a permit from a state agency required for use of:
 - a. Surface water: Yes _____ No _____
 - b. Groundwater: Yes _____ No _____
4. Is a court approval required to obtain a bona-fide water right for use of:
 - a. Surface water: Yes _____ No _____
 - b. Groundwater: Yes _____ No _____
5. Which agency in your state is charged with administering water rights?
Name of Water Agency _____
6. Can a water right be bought and sold in your state for use on a different piece of land, or for a different use, assuming the change does not injure other water users?
Yes _____ No _____
7. In the event of a dispute between owners of two water rights on water matters, where is the dispute settled?
 - a. Water agency _____
 - b. Court, general _____
 - c. Court, special _____
8. Please list interstate compacts in which your state is a party.

9. Please list any international water treaties which directly affect your state.

10. Does your state legislature generally pass at least one law per session dealing with water rights?
Yes _____ No _____
11. If there is anything else you believe the Water Rights Committee should know about water rights in the State of _____, please describe it below:

12. My name and address, as the responder, is:

Name _____	Title _____
Agency _____	State _____
Street Address, City, State and ZIP Code _____	
Phone _____	

Figure 5-1 Water rights survey questionnaire.

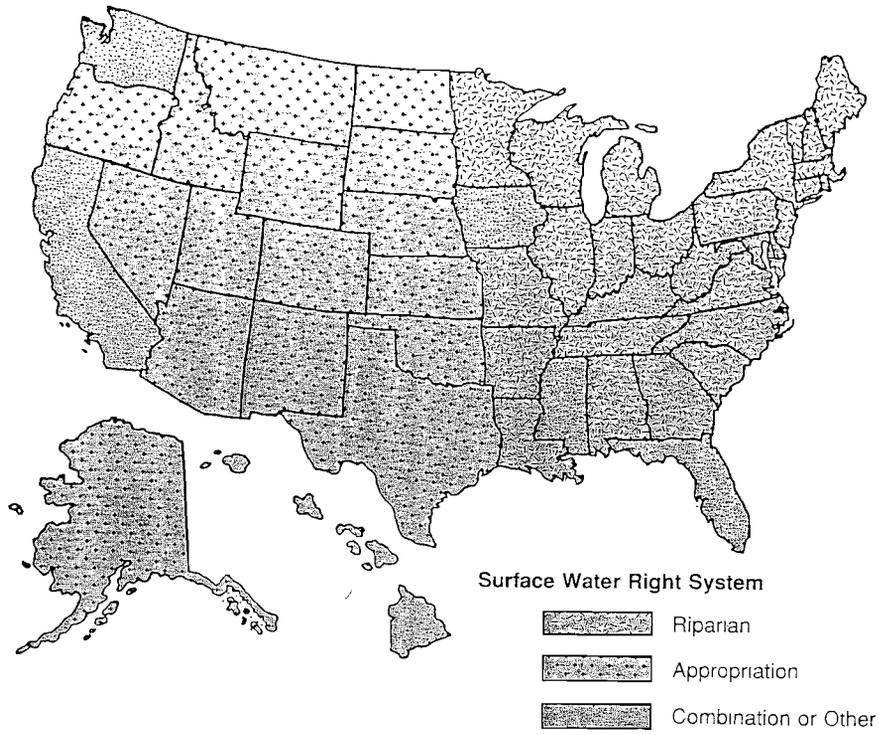


Figure 5-2 Surface water rights system.

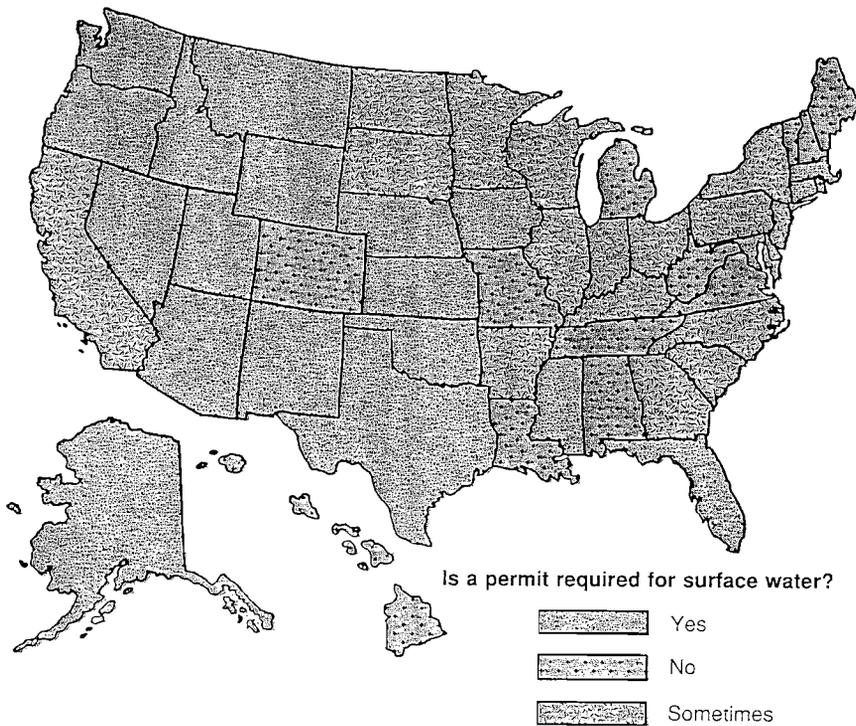


Figure 5-3 Surface water permit requirement.

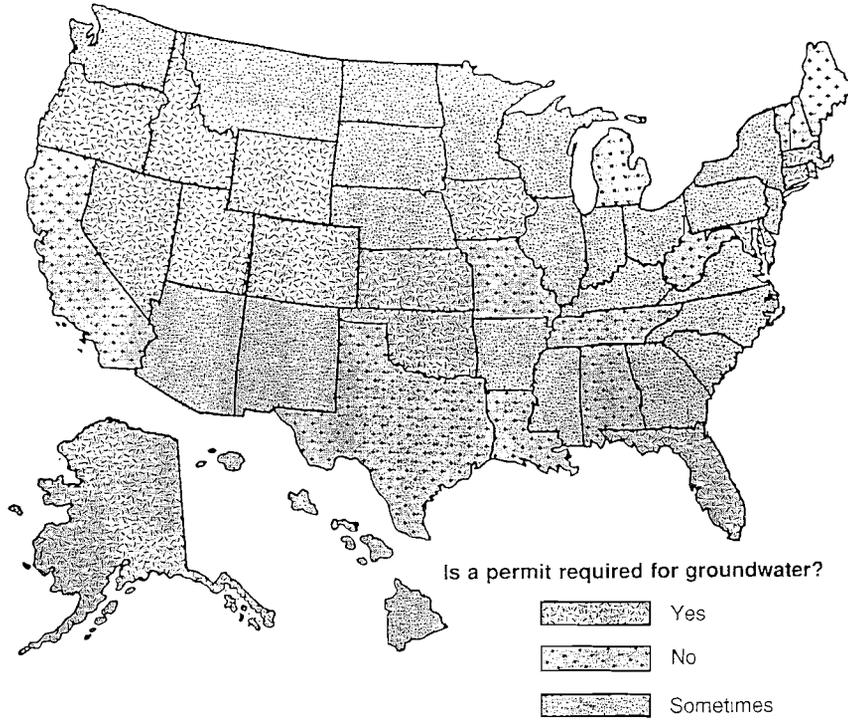


Figure 5-4 Groundwater permit requirement.

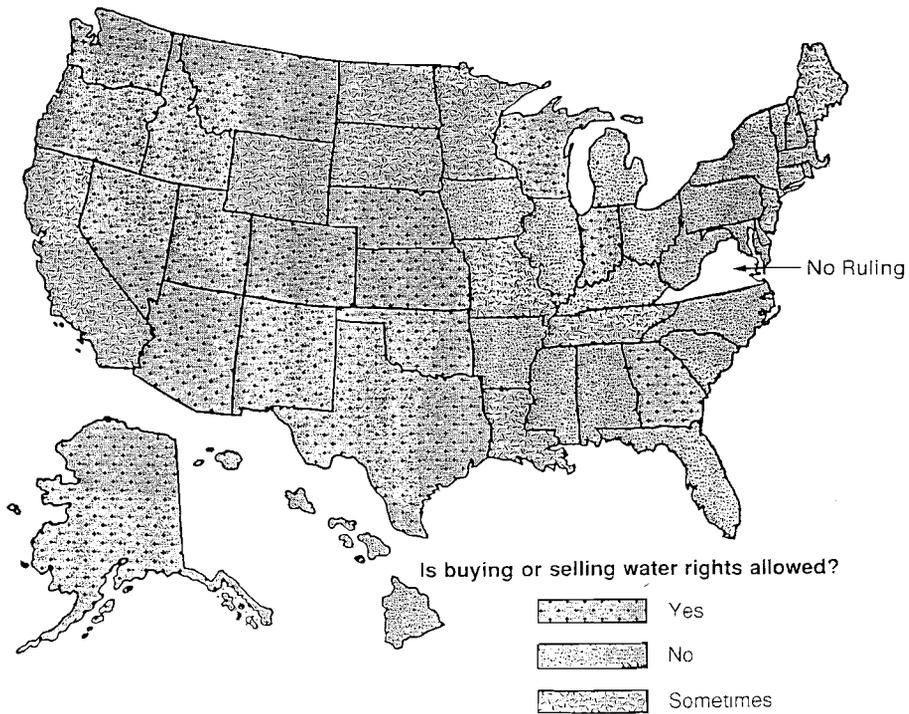


Figure 5-5 Buying/selling of water rights.

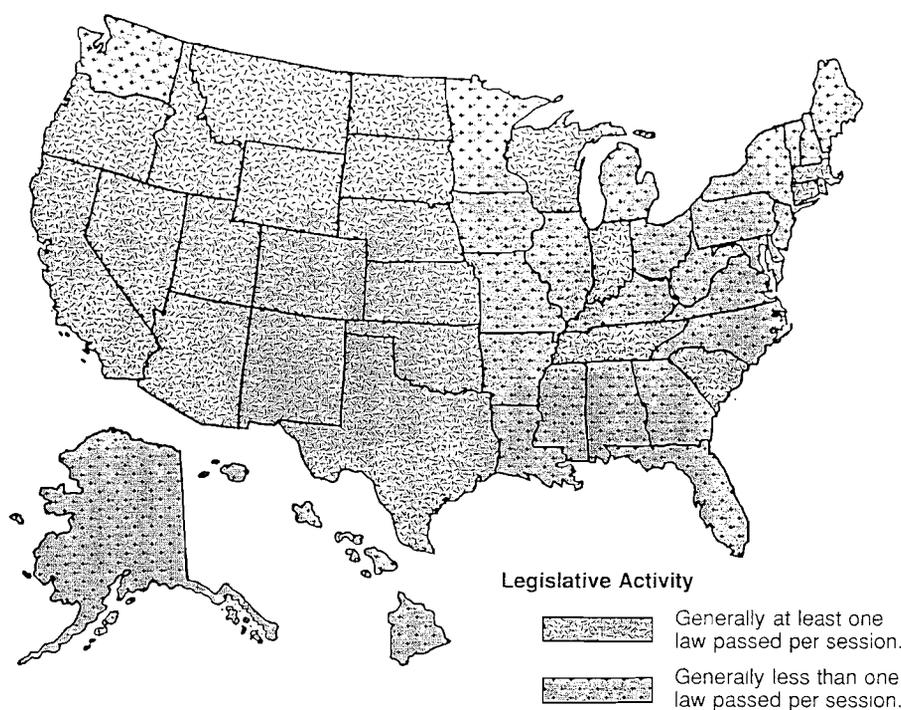


Figure 5-6 Water rights legislative activity.

Alabama

System: Riparian. Groundwater reasonable use.

Permit: Not required for surface water or groundwater.

Court Approval: Not required for surface water or groundwater.

Buying/Selling: Rights to surface water are attached to ownership of riparian land, and rights cannot be separately conveyed. No administrative procedure exists for changes in water use or transfer.

Disputes: General court.

Compacts: None.

Treaties: None.

Legislative activity: No.

General: Alabama is a riparian state, and there has not been significant legislation regarding water allocation. The problem of excess water is more often addressed in court cases.

Administrating agency: None.

Responding Agency: No response from Office of Attorney General. Information based on telephone interview with Department of Environmental Management, (205) 271-7700.

Alaska

System: Appropriation.

Permit: Required for surface water and groundwater.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may be sold. All rights, including irrigation rights, are appurtenant to the land, but rights may be severed.

Disputes: Water agency or general court.

Compacts: None.

Treaties: None.

Legislative activity: No.

General: The Alaska Water Use Act of 1966 and as amended in 1980 defines the appropriation system authorized by the state constitution. In-stream flow reservation uses include fisheries, navigation, water quality, and recreation. When there is competition for water, the commissioner must give preference to public water supply. To be entitled to preference, prior appropriators must be compensated for damage. Loss of appropriative rights occurs in the case of abandonment or ceasing to be beneficially used (five years). Appropriative rights are appurtenant to land at the place of use. The rights pass with the land, unless specifically excluded. Changes in point of use may be allowed if prior users will not be damaged.

Administrating agency:

Department of Natural Resources
Division of Land & Water Management
P.O. Box 107005
Anchorage, AK 99510-7005
(907) 561-2020

Responding agency:

Department of Natural Resources
Division of Land & Water Management
P.O. Box 107005
Anchorage, AK 99510-7005
(907) 561-2020

Arizona

System: Surface water—appropriation; Groundwater—permit or other right (within Active Management Areas); reasonable use (outside Active Management Areas).

Permit: A right based on pre-1919 use or a post-1919 certificate is required for surface water. Groundwater withdrawal and use within Active Management Areas and Irrigation Non-Expansion Areas must be based on a right in the Groundwater Code. Groundwater withdrawal and use elsewhere is allowed, subject only to a reasonable use standard.

Court approval: Not required for initial use of surface water or groundwater. Most areas of the state are now involved in general adjudications of existing water uses to determine relative rights to water.

Buying/Selling: Water rights may be sold; however, some types of groundwater rights within Active Management Areas may not be transferred to a different purpose of use or to a different place of use. Irrigation rights are appurtenant to the land. Some types of groundwater rights within Active Management Areas are tied to the land and can be moved or used on other land only as allowed by the Groundwater Code.

Disputes: Department of Water Resources or general court.

Compacts: Colorado River Compact. Upper Colorado River Basin Compact.

Treaties: Rio Grande, Colorado, and Tijuana Treaty, 1944.

Legislative activity: Yes.

General: In 1980, Arizona adopted a detailed Groundwater Code. The code regulates the uses of groundwater primarily in groundwater basins designated as Active

Management Areas (AMA). AMAs include the most heavily populated areas of the state. The purpose of the code is to conserve, protect, and allocate the use of groundwater through comprehensive regulations and through management plans for water conservation.

Surface water use is governed by the principles that first in time is first in right, and beneficial use is the measure of a right. Groundwater use is governed by the standard of reasonable use outside AMAs and by the comprehensive regulations of the Groundwater Code within AMAs.

Administrating agency:

Arizona Department of Water Resources
15 South 15th Ave.
Phoenix, AZ 85007
(602) 255-1554

Responding agency:

Arizona Department of Water Resources
15 South 15th Ave.
Phoenix, AZ 85007
(602) 255-1554

Arkansas

System: Riparian modified.

Permit: Not required for surface water and groundwater withdrawn for reasonable use by riparian owner. Permits are required for interbasin transfer, large users, or transfer to nonriparian users.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Rights to surface water are attached to ownership of riparian land.

Disputes: General court.

Compacts: None.

Treaties: None.

Legislative activity: No.

General: Riparian rights with the concept of reasonable use is the basis of water law in Arkansas. Surface water and groundwater are treated similarly.

The Arkansas Soil and Water Conservation Commission registers wells and groundwater use, inventories and plans for future water development, and issues permits. Permits are required for interbasin transfer or for use of a riparian right by a nonriparian user. The commission may allocate water during times of critical shortage.

Administrating agency: None.

Responding agency:

Office of Attorney General
Justice Building
Little Rock, AR 72201
(501) 371-2007

California

System: Appropriation, riparian and pueblo rights.

Permit: A permit is required for appropriate surface water, except for persons who divert under a riparian or pre-1914 appropriative claim of right. Permit is not required for groundwater, except from subterranean streams.

Court approval: Not required for surface water or groundwater, except in adjudicated watersheds and groundwater basins.

Buying/Selling: Appropriate water rights may be transferred and sold appurtenant or separate from land, provided that any change in the point of diversion, place of use, or purpose of use will not injure any legal user of water. Riparian rights are appurtenant to land.

Disputes: State of California Water Resources Control Board, general court.

Compacts: Klamath River Basin Compact. Goose Lake Interstate Compact. Colorado River Compact. Nevada-California Interstate Compact (not ratified by Congress).

Treaties: Rio Grande, Colorado, and Tijuana Treaty, 1944.

Legislative activity: Yes.

General: Pueblo, riparian, and pre-1914 appropriative water rights exist for which there may not be a record. Numerous court decrees have established rights, and legislative acts recognize certain rights. Since 1914, permits have been issued for any new appropriations of surface water, except for the activation of dormant riparian rights and water taken pursuant to the doctrine of progressive use and development under pre-1914 appropriative claims. No California statute defines riparian rights, but riparian rights have been defined by court decisions. Riparian rights are attached to a parcel of land and cannot be transferred. Water can be appropriated by storage and released downstream for fish and wildlife protection and enhancement. Federal and state water projects have appropriative water rights, and some federal projects may have reserved rights. Flow for in-stream beneficial use may be provided by permit conditions, authorizing legislation, and project operation. All rights to the use of water are subject to the state constitutional requirement that the fullest beneficial use be made of water and the prohibitions against unreasonable use, method of use, or method of diversion.

Administrating agency:

State Water Resources Control Board
 Division of Water Rights
 P.O. Box 2000
 Sacramento, CA 95810
 (916) 322-4503
 Permit Requirements

Responding agency:

State Water Resources Control Board
 Division of Water Rights
 P.O. Box 2000
 Sacramento, CA 95810
 (916) 322-4503
 Permit Requirements

Colorado

System: Appropriation.

Permit: Permit is required for diversion of groundwater and not required for surface water.

Court approval: Court approval is technically not required for diversions of surface water or groundwater; however, adjudication is recommended.

Buying/Selling: Water rights may be sold; however, changes of water rights require water court approval.

Disputes: Seven special water courts.

Compacts: Arkansas River Compact. Colorado River Compact. Amended Costilla Creek Compact. La Plata River Compact. Republican River Compact. Rio Grande

Compact. South Platte River Compact. Upper Colorado River Basin Compact. North Platte River Decree. Laramie River Decree. Pot Creek Agreement.

Treaties: Rio Grande, Colorado and Tijuana Treaty, 1944.

Legislative activity: Yes.

General: Colorado has an appropriative system based on first in time, first in right. The state engineer administers surface water and groundwater diversions through the district superintendents, with court decrees. Applications for permits to divert groundwater are issued and administered by the state engineer. The special water courts issue decrees, establish conditions and limitations on use, and resolve disputes. The state engineer administers diversions, through the division superintendents, with court decrees. Any change in use, point of diversion, season-of-use, or quantity requires a new decree, which must satisfy all objectors who may be injured by the change.

Complex water use plans involving out-of-priority diversions, exchange of use, augmentation to restore historical flow, and other changes require court approval and a new decree. In these matters the state engineer represents the state as an objector if the plan may injure the public interest. Minimum flow requirements and quality considerations may result in decreed stipulations, and quality considerations may result in decreed stipulations as a result of negotiations to prevent injury to other water users.

Administrating agency:

Colorado Division of Water Resources
1313 Sherman St., Room 818
Denver, CO 80203
(303) 866-3581

Responding agency:

Administrating Agency and Office of Attorney General
1525 Sherman St.
Denver, CO 80203
(303) 866-3611

Connecticut

System: Riparian, modified by Water Diversion Policy Act of 1982.

Permit: Required for surface water and groundwater diversions.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may not be sold.

Disputes: General court. Disputes are avoided by mitigating problems on a case-by-case basis before permitting diversion and by terms and conditions of permit.

Compacts: New England Interstate Water Pollution Control Compact. New York Harbor (Tri-State) Interstate Sanitation Compact.

Treaties: None.

Legislative activity: Yes.

General: The Water Resources Unit, through the Water Diversion Policy Act (CGS Sec. 22a-365 *et seq.*), permits new diversion of surface water and groundwater on a case-by-case basis. Diversions that existed when the law was enacted and that were registered by July 1, 1983, are exempt. A permitted use cannot be sold or transferred.

Permits are issued based on water supply needs; effects on existing and planned uses; impact to fish, wildlife, and recreation; and whether the diversion is necessary in view of alternatives, including water conservation.

In a declared water supply emergency, diversion permits may be modified or suspended and diversion authorized, without permit, to ease emergency conditions.

Preference of uses is not specified in the act. Permits are not rights and date of issue has no meaning.

Administrating agency:

Department of Environmental Protection
Water Resources Unit
State Office Building
165 Capitol Ave., Room 203
Hartford, CT 06106
(203) 566-7220

Responding agency:

Administering Agency and Office of Attorney General
165 Capitol Ave., Room 147
Hartford, CT 06106
(203) 566-2091

Delaware

System: Riparian, modified by allocation program for over 50,000-gallon-per-day diversion of groundwater or surface water.

Permit: Required for surface water and groundwater.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may not be sold.

Disputes: Water agency or general court.

Compacts: Delaware River Basin Compact. Delaware–New Jersey Compact. Atlantic States Marine Fisheries Compact. Appalachian Low-Level Radioactive Waste Management Compact.

Treaties: None.

Legislative activity: No.

General: The Division of Water Resources, through a July 1966 act, permits new surface water or groundwater uses. Minimum flow regulations exist and condition any permit after July 1966. Permits are not required of beneficial uses established prior to July 1966. Allocations granted by the commission may be transferred, subject to approval by the commission. Riparian rights that are appurtenant to the land may be severed or reserved by the grantor, but a permit is required before the severed riparian right can be used. Upon declaration of an emergency by the governor, the commission prioritizes water use to provide for life, health, and wealth in that order. The commission may terminate water use permits if the use is not exercised or is no longer reasonably beneficial.

Excepting rights in use of July 1966, all other permits to use water have equal priority without regard to date, except when the governor declares an emergency. The permit to use water is conditioned on providing minimum in-stream flow and such other conditions that the commission deems to be reasonable.

Permits to use groundwater are issued on a case-by-case basis with appropriate conditions and limitations. Delaware has never accepted the absolute ownership rule and permits are issued so as to balance the rights of property owners with the public interest to achieve the most beneficial use.

Administrating agency:

Department of Natural Resources and Environmental Control
Division of Water Resources
Water Supply Branch
89 King's Highway
P.O. Box 1401

Dover, DE 19903
(302) 736-4793

Responding agency:

Administering Agency and Department of Justice
89 King's Highway
P.O. Box 1401
Dover, DE 19903
(302) 571-3838

Florida

System: Statute, Florida Water Resources Act.

Permit: Required for surface water and groundwater

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may not be sold.

Disputes: Water agencies.

Compacts: None.

Treaties: None.

Legislative activity: No.

General: The state of Florida water law is based upon administrative regulation as set forth in the Florida Water Resources Act. Five regional water-management districts encompass the entire state. These districts are directed to regulate by permits the consumptive use of surface water and groundwater of the state. Water use must be reasonable and beneficial and involve only the amount of water that is necessary for efficient use. The use is to be in the public interest, and reasonable beneficial use includes minimum streamflow. The water management districts are subject to the direction of the Department of Environmental Regulation.

Administrating agencies: Five regional water-management districts.

Responding agency:

Department of Environmental Regulation
2600 Blair Stone Rd.
Twin Tower Office Building
Tallahassee, FL 32301
(904) 488-4805

Georgia

System: Riparian.

Permit: Required for all withdrawals in excess of 100,000 gallons per day for surface and groundwater withdrawals.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may be acquired by acquiring riparian land or may be severed and conveyed independent of sale of land.

Disputes: General court.

Compacts: None.

Treaties: None.

Legislative activity: No.

General: Georgia water law is based upon reasonable use riparian doctrine. Permits are required for surface water and groundwater withdrawals in excess of 100,000 gallons per day. The groundwater permit provisions include withdrawal timing, protection against salt-water encroachment, adverse effects on others, pumping rate and levels, and well depth and spacing.

In-stream flow protection consists of water rights conditions and protected rivers. No in-stream flow statute exists. Most rights have been acquired as a prescriptive right, which simply requires use for a prolonged period, usually 20 years or more.

Administrating agency:

Environmental Protection Division
Georgia Department of Natural Resources
205 Butler St., SE, Suite 1254
Atlanta, GA 30334
(404) 656-4807

Responding agency:

The Department of Law
132 State Judicial Building
Atlanta, GA 30334
(404) 656-3300

Hawaii

System: Other.

Permit: Permit is not required for surface water. Permit is required for groundwater in three designated areas in Oahu. Uses in nondesignated areas do not require permits.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may not be sold. The state may auction leases on state land.

Disputes: State Water Commission, State Circuit Court.

Compacts: None.

Treaties: None.

Legislative activity: No.

General: In 1987 Hawaii adopted a statewide water code which created a six-person water commission. If water resources in any area are threatened, the commission designates the area for management and requires each water user (ground and/or surface) to obtain a permit. Uses in nondesignated areas do not require permits. Currently, only three groundwater areas on Oahu are designated.

In-stream flow standards are to be established statewide (Hawaii Revised Statutes, 174c-71) by the end of 1988.

Water quality standards are to be established by the State Department of Health. The state prepares an overall water resources protection plan, and the counties must develop subsidiary island-wide plans that must integrate with state and county land-use plans.

State may auction leases of water on state lands (Hawaii Revised Statutes 171-58), but law does not otherwise recognize sale of water.

Administrating agency:

State Water Commission
1151 Punchbowl St.
Honolulu, HI 96813
(808) 548-7539

Responding agency:

Department of the Attorney General
Room 300, Kekuanao'a Building

465 South King St.
 Honolulu, HI 96813
 (808) 547-6350

Idaho

System: Appropriation.

Permit: Required for surface water and groundwater.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights, except those in permit stage, may be sold without approval of water agency if use is same as past use. Irrigation water rights are appurtenant to land, unless specifically severed.

Disputes: Exhaust to limit administrative relief, then may go to court.

Compacts: Snake River Compact. Bear River Compact.

Treaties: None.

Legislative activity: Yes.

General: Idaho has an appropriative water rights system. Irrigation rights are appurtenant to the land, unless specifically severed. Water rights cannot be changed in amount, type of use, season, point of diversion, point of use, or other changes without approval of the Department of Water Resources. There is a constitutional hierarchy of preference for exercising the public domain. In-stream minimum-flow appropriations may be made by the Idaho Water Resource Board.

There are critical groundwater designated areas that are closed to further permitting and management areas where possible allocation problems may exist.

Administrating agency:

Department of Water Resources
 1301 North Orchard St.
 Boise, ID 83706-2237
 (208) 334-4482

Responding agency:

Administering Agency and Office of Attorney General
 Statehouse, Room 210
 Boise, ID 83720
 (208) 334-2400

Illinois

System: Riparian, as modified by special laws in specific areas.

Permit: Not required for surface water or groundwater, except in certain areas.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may not be sold.

Disputes: Department of Transportation to limit of administrative relief and then to courts.

Compacts: None.

Treaties: International Joint Commission (Lake Michigan).

Legislative activity: No.

General: In the state of Illinois, laws and regulations for special areas are developed as needed to address specific river allocation and groundwater use problems. In critical areas, the Department of Transportation, Division of Water Resources, administers withdrawals. The Department of Agriculture administers groundwater management areas.

Generally, the doctrine of riparian rights is incident to ownership of land that abuts a stream. Reasonable use without undue interference with other riparian owners is allowed. Secondary uses, such as manufacturing, are secondary in priority to natural uses, such as watering livestock or domestic use.

Administrating agency:

Department of Transportation
Division of Water Resources
2300 S. Dirksen Parkway
Springfield, IL 62764
(217) 782-2152

Responding agency:

Office of Attorney General
160 N. LaSalle St.
Room 900
Chicago, IL 60601
(312) 793-2503

Indiana

System: Modified riparian, reasonable use.

Permit: Not required for surface water, except for navigable streams, Lake Michigan, and public freshwater lakes. Permit is not required for groundwater, unless area is restricted or more than 100,000 gallons per day is withdrawn.

Court approval: Required for other than natural, reasonable, riparian surface water. If there is a conflict, such as greater than reasonable use, then court will decide what is reasonable at that moment in time. Court approval is not required for groundwater, but case law does not allow unreasonable use.

Buying/Selling: Water rights are appurtenant to the land, but may be severed, transferred, or reserved.

Disputes: Water agency, by hearing that is not binding, and general court.

Compacts: None.

Treaties: International Joint Commission (Lake Michigan).

Legislative activity: Yes.

General: Indiana has a modified riparian, reasonable-use water rights system. A right to use water separate from the riparian land may be acquired by prescriptive use for a period of 20 years under certain conditions. Withdrawals more than 70 gallons per minute of surface water or groundwater require registration of use on navigable streams and limits withdrawal at the 7-day, 10-year low-flow level. Riparian use is modified by upstream reservoirs wherein an owner can store floodwater and upon release can divert an equal amount even during period of low flow. The statutes place a preference on residential domestic use, then livestock, and then all other uses. The Department of Natural Resources, Division of Water, has statutory authority to determine damage to existing wells from large groundwater users. The Scenic and Recreational Streams Act may indirectly affect water withdrawal in some areas.

Administrating agency:

Department of Natural Resources
Division of Water
Director's Row
Indianapolis, IN 46241
(317) 232-4160

Responding agency:

Office of Attorney General
 219 State House
 Indianapolis, IN 46241
 (317) 232-6201

Iowa

System: Permit.

Permit: Required for surface water and groundwater.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may not be sold.

Disputes: Water agency and/or court. Judicial review of the final agency action may be sought through the state court system.

Compacts: None.

Treaties: None.

Legislative activity: No.

General: Iowa, prior to May 16, 1957, had a riparian system. Since that time, water rights have been determined under a permit system.

Provisions of legislation effective July 1, 1986, include: (1) establishment of relative priorities among various types of water use in times of emergency or shortage; (2) compensation to owners of unregulated wells (for example, domestic and livestock wells that use less than 25,000 gallons per day) that fail because of well interference caused by permitted wells; and (3) elimination of the exemption from permit requirements for previously grandfathered uses and requirement of a permit for any use greater than 25,000 gallons per day, on any one day in a year.

Administrating agency:

Department of Natural Resources
 Wallace State Office Building
 Des Moines, IA 50319-0034
 (515) 281-5145

Responding Agency:

Department of Natural Resources
 Wallace State Office Building
 Des Moines, IA 50319-0034
 (515) 281-5145

Kansas

System: Appropriation; reasonable use and water resource statute.

Permit: Required for surface water and groundwater (Kansas Water Appropriation Act).

Court approval: Not required for surface water or groundwater.

Buying/Selling: Prior approval of the chief engineer is required for a transfer of ownership of a water right only if the water right is severed from the land that is the authorized place of use for that right. Prior approval of the chief engineer is required for a change in the place of use, type of use, or point of diversion, whether or not there is a change in ownership involved.

Disputes: Chief engineer and/or general court.

Compacts: Republican River Compact. Arkansas River Compact. Arkansas River Basin Compact. Big Blue River Compact.

Treaties: None.

Legislative activity: Yes.

General: The Kansas Water Appropriation Act, passed in 1945, provides for two types of water rights--vested rights and appropriation rights. A vested right is the right to continue the use of water actually applied to beneficial use on or before June 28, 1945 (the date the act was effective). An appropriation right is a right, acquired pursuant to the provisions of the Water Appropriation Act, to divert from a definite water supply a specific quantity of water at a specific rate of diversion and to apply such water to a specific beneficial use or uses in preference to all appropriation rights of later date. Although the 1945 act established a process for acquiring a water right based on the principle of prior appropriation (first in time, first in right), the act did not make it illegal to appropriate water without a permit.

In 1978, the act was amended to make it illegal to appropriate or threaten to appropriate water without the prior approval of the chief engineer of the Division of Water Resources. Also in 1978, the act was amended to require all persons claiming a vested right to file a verified claim with the chief engineer by July 1, 1980.

A water right is appurtenant to and severable from the land as soon as beneficial use is made of the water pursuant to an approved application. The Certificate of Appropriation is evidence of the extent to which a water appropriation right has been perfected.

Administrating agency:

State Board of Agriculture
Division of Water Resources
109 SW Ninth St.
Topeka, KS 66612-1283
(913) 296-3717

Responding agency:

Office of Attorney General
2nd Floor
Kansas Judicial Center
Topeka, KS 66612
(913) 296-2215

Kentucky

System: Riparian; reasonable use and water resource statute.

Permit: Required for surface water and groundwater. Domestic and agricultural users and users withdrawing less than 10,000 gallons per day are exempted from permit requirements.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may not be sold or transferred. Power of eminent domain is invoked to allow public water suppliers to transfer water greater than 10,000 gallons per day for use on nonriparian lands.

Disputes: Water agency (statutory) and general court (common law).

Compacts: Ohio River Valley Water Sanitation Compact. Ohio River Basin Commission.

Treaties: None.

Legislative activity: No.

General: Kentucky is a riparian state with a mixture of both common law and statutory water rights. A comprehensive water law was passed by the Kentucky legislature in 1966. Diversions and construction of dams and impoundments are regulated by the Department of Natural Resources and Environmental Protection. Water rights based on common law are exempt from regulation. All withdrawals in

excess of 10,000 gallons per day require a permit of indefinite term, which cannot be transferred.

The law or regulations do not provide for preference in uses. At present, no specific mention of consumptive use is made. Currently, minimum flow protection is based on 7-day, 10-year flow, but this regulation is subject to a proposed revision.

Administrating agency:

Natural Resources and Environmental Protection
Division of Water
18 Reilly Rd.
Fort Boone Plaza
Frankfort, KY 40601
(502) 564-3410

Responding agency:

Natural Resources and Environmental Protection
Division of Water
18 Reilly Rd.
Fort Boone Plaza
Frankfort, KY 40601
(502) 564-3410

Louisiana

System: Riparian.

Permit: Generally not required for surface water or groundwater.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights are appurtenant to the land or by prescriptive use for prolonged periods, but voluminous case law allows prescriptive rights, transfers, severance, and sales under certain riparian and common law property rights.

Disputes: General court. Water rights are not of record and must be established by proof of use and/or adjacent real property ownership before use can be conveyed as a property right.

Compacts: Sabine River Compact. Red River Compact.

Treaties: None.

Legislative activity: No.

General: Louisiana has a nearly pure riparian water rights system. The Capital Area Groundwater Conservation Commission is authorized to issue well permits in the Baton Rouge area. Conservation education has been used by the commission instead of permits, and no need for permits exists. Some limits exist on use of the Sabine River and the Red River; the state monitors use, but does not require a permit.

Administrating agency: None.

For registration of wells:

Department of Transportation and Development
Water Resources Section
P.O. Box 94245
Baton Rouge, LA 70804
(504) 379-1434

Responding agency:

Department of Justice
7434 Perkins Rd., Suite C
Baton Rouge, LA 70808
(504) 756-2416

Maine

System: Riparian as to flowing waters; English common law as to groundwater, but preference given by statute to certain existing residential uses.

Permit: Not required for surface water or groundwater (environmental regulations may require permit).

Court approval: Not required for surface water or groundwater.

Buying/Selling: There are no water rights other than riparian rights, except from those obtained from legislature in the past. No agency has records of riparian rights. Owners of riparian rights and prescriptive rights may sever, reserve, transfer, or sell the right to the use of water, but this is not traditionally done.

Disputes: Superior court.

Compacts: None.

Treaties: International Joint Commission.

Legislative activity: No.

General: Department of Environmental Protection (DEP) frequently requires assessment of environmental factors for large projects. Public utilities have obtained water rights from the legislature in the past. Minimum flow is indirectly managed by DEP in that withdrawals that damage the environment are subject to DEP regulations. No special preference is given to municipal use. Withdrawals of large amounts of water may be approved by the legislature as a water right. New legislation governing ground and surface water allocation has been proposed. A permit system is anticipated within a few years. Some rivers are protected from further development or use.

There are no statutes in Maine (though several are under consideration) relating to the acquisition or administration of water rights, and consequently no state agency or officer has any delegated responsibility over water rights.

Administrating agency: None.

Responding agency:

Office of Attorney General
State House Station
Augusta, ME 04347
(207) 289-3661

Maryland

System: Riparian.

Permit: Required for surface water and groundwater.

Court approval: Not required for surface water or groundwater.

Buying/Selling: No water right exists, except as a permit to use under specific conditions.

Disputes: Permit holders go before agency first, then court.

Compacts: Susquehanna River Basin Commission. Potomac River Basin Compact. Ohio River Basin Commission.

Treaties: None.

Legislative activity: No.

General: Maryland Water Appropriation and Use Law of 1933, as amended, requires term permit (usually 12 years) for most uses. Permits may be transferred to new owners for same use and allocation. Permits may be conditioned to allow minimum flow, to give preference to municipal withdrawals, or other reasonable causes. Minimum flows are based on the Maryland Method of Analysis of Natural or Historic

Hydrographs. No water right exists, except as a permit to use water under specified conditions for certain amounts.

Administrating agency:

Water Supply Division
Maryland Water Resources Administration
Tawes State Office Bldg. D-3
Annapolis, MD 21401
(301) 974-3675

Responding agency:

Water Supply Division
Maryland Water Resources Administration
Tawes State Office Bldg. D-3
Annapolis, MD 21401
(301) 974-3675

Massachusetts

System: Riparian for surface water and absolute ownership of groundwater has been modified by the Water Management Act of 1985.

Permit: Required for surface water and groundwater withdrawals. Permits required for all withdrawals greater than 100,000 gallons per day on the average for public and private use.

Court approval: Not required for surface water and groundwater.

Buying/Selling: Water rights may be sold subject to regulatory conditions.

Disputes: Administrative appeals and/or general court.

Compacts: None.

Treaties: None.

Legislative activity: Yes.

General: The Water Management Act of 1985 provides:

- Users of over 100,000 gallons per day, which withdraw the ground- or surface water, must register by January 1, 1988, at which time they secure a water right. Includes agricultural use.
- Users of over 100,000 gallons per day applying for a new withdrawal source after January 1, 1989, will obtain a permit (term up to 20 years) with conditions, but not a water right.
- Municipalities may request an emergency declaration. If verified by the Division of Water Supply, and if the city has taken certain conservation measures, the city may acquire additional water from emergency water supplies and enforce mandatory use restrictions.

Minimum flows and total water available are considered in issuing new permits.

With declared emergencies, there may be a preference to municipalities.

Administrating agency:

Division of Water Supply
Department of Environmental Quality Engineering
One Winter St.
Boston, MA 02108
(617) 292-5653

Responding agency:

Division of Water Supply
Department of Environmental Quality Engineering

One Winter St.
Boston, MA 02108
(617) 292-5653

Michigan

System: Riparian, common law.

Permit: Not required for surface water and groundwater. Reports of municipal use are required for surface water and groundwater.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may not be sold.

Disputes: Courts.

Compacts: Great Lakes Basin Compact.

Treaties: International Joint Commission.

Legislative activity: No.

General: Currently a common law, riparian system. The Great Lakes and Water Resources Planning Commission was authorized for a two-year period ending in October 1987. The commission proposed certain reporting and permitting requirements as well as management plans. There is no statutory preference or minimum streamflow law at present. The Natural Rivers Program has designated certain reaches of some rivers as protected, which limits development and may indirectly provide for some flow level.

Administrating agency:

Michigan Department of Natural Resources
Office of Water Resources
P.O. Box 30028
Lansing, MI 48909
(517) 373-0014

Responding agency:

Michigan Department of Natural Resources
Office of Water Resources
P.O. Box 30028
Lansing, MI 48909
(517) 373-0014

Minnesota

System: Riparian, reasonable use.

Permit: Required for surface water and groundwater, 10,000 gallons per day or 1,000,000 gallons per year.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights are appurtenant to the land, but may be severed or transferred according to established case law. Prescriptive rights may be severed or transferred under certain conditions.

Disputes: Water agency and general court on appeal in case of dispute between holders of water appropriation permits.

Compacts: Great Lakes Basin Compact.

Treaties: International Joint Commission.

Legislative activity: No.

General: Refer to Minnesota Statutes, Sections 105.41-105.418 and Minnesota Rules, Parts 6115.0600-6115.0810. The Water Appropriations Act of 1937 requires permits for groundwater and surface water use in excess of 10,000 gallons per day or 1,000,000 gallons per year. Protected flow regulations provide a type of minimum flow

for specific reaches. Preference of use is established by statute and is the basis for priority. Order of priority is domestic, agriculture, and industry.

Administrating agency:

Department of Natural Resources
Division of Water, Third Floor
500 Lafayette Rd.
St. Paul, MN 55155-4001
(612) 296-0436

Responding agency:

Administering Agency and Office of Attorney General
444 Lafayette Rd.
St. Paul, MN 55105
(612) 296-6196

Mississippi

System: Permit.

Permit: Required for surface water and for groundwater for wells six inches in diameter and larger.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights are appurtenant to land.

Disputes: Permit board, state of Mississippi court on appeal only.

Compacts: None.

Treaties: None.

Legislative activity: No.

General: State Water Law of 1985 provides a permit system for allocation of surface water and groundwater. Proposed regulations will give municipal water highest preference. Most municipal, industrial, and agricultural processing water is from aquifers and not subject to drought. Permits are conditioned by law, rule, and regulation and by agency under special cases. Permits are treated case by case. No water right exists. Permits to use waters are conditioned for minimum flow. Permits are routinely transferred to new owners if everything remains the same. New uses or amounts require new permits. Disputes between permit holders and between permit holder and agency are resolved by the State of Mississippi Permit Board. Decisions by the board are required prior to *appeal* to courts. Courts judge appeal on basis of record only.

Administrating agency:

Department of Natural Resources
Bureau of Land and Water Resources
P.O. Box 10631
Jackson, MS 39209
(601) 961-5200

Responding agency:

Department of Natural Resources
Bureau of Land and Water Resources
P.O. Box 10631
Jackson, MS 39209
(601) 961-5200

Missouri

System: Riparian, reasonable use.

Permit: Not required for surface water and groundwater.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Severance of water right from real property not provided by statute, but courts have indicated that a riparian owner may convey his right to a nonriparian tract.

Disputes: Court, as in all civil disputes.

Compacts: None.

Treaties: None.

Legislative activity: No.

General: Wells and major surface water withdrawals require registration and record keeping. Preference is by common law natural flow and reasonable use, not statute. Nonriparian rights acquisition. Minimum flow is not statutorily required, but the Water Quality Control Act provides for the protection of aquatic life.

Administrating agency: None.

Responding agency:

Department of Natural Resources
Office of Attorney General
P.O. Box 899
Jefferson City, MO 65102
(314) 751-3321

Montana

System: Appropriation

Permit: Required for surface water and for groundwater, if over 100 gallons per minute.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may be sold.

Disputes: Water agency, if dispute concerns water right permit, and by water court, if dispute concerns pre-1973 water right.

Compacts: Yellowstone River Compact.

Treaties: Boundary Waters Treaty, 1909 (Milk and St. Mary's Rivers). Columbia River Basin Treaty. Recommended Apportionment on Poplar River.

Legislative activity: Yes.

General: The water courts adjudicate all pre-permit (July 1973) water rights. A Reserved Rights Compact Commission has been established to negotiate Indian and federal reserved rights for the purpose of adjudicating those rights. State water law provides for state, federal, or local government to reserve unappropriated water for existing or future beneficial uses, or to maintain a minimum flow, level, or quality of water.

Administrating agency:

Department of Natural Resources and Conservation,
Water Resources Division
1520 East Sixth Ave.
Helena, MT 59620
(406) 444-6601

Responding agency:

Department of Natural Resources and Conservation,
Water Resources Division
1520 East Sixth Ave.
Helena, MT 59620
(406) 444-6601

Nebraska

System: Appropriation.

Permit: Required for surface water and not required for groundwater, but well must be registered. Permit is required in control areas.

Court approval: Not required for surface water or groundwater. Court decrees have established some rights and preferences.

Buying/Selling: Water rights may be transferred in location only, not for different use.

Disputes: Initially by water agency, with appeal to State Supreme Court.

Compacts: South Platte River Compact. Big Blue River Compact. Nebraska Republican River Compact. Upper Niobrara Compact. North Platte Decree.

Treaties: None.

Legislative activity: Yes.

General: Some riparian rights do exist because of court decisions. Groundwater is not allocated, but three local areas do require permits before large capacity wells can be drilled. Recent laws were passed to recognize incidental and intentional underground storage of surface water.

In-stream flow law allows the Game and Parks Commission and Natural Resource Districts to obtain in-stream flow water rights for fish and wildlife or recreational uses.

The Department of Water Resources administers water rights in priority order, first in time is first in right. Courts have required recognition of preferences for out-of-priority use with compensation to senior appropriator.

Administrating agency:

Department of Water Resources
301 Centennial Mall South
P.O. Box 94676
Lincoln, NE 68509-4676
(402) 471-2363

Responding agency:

Department of Water Resources
301 Centennial Mall South
P.O. Box 94676
Lincoln, NE 68509-4676
(402) 471-2363

Nevada

System: Prior appropriation.

Permit: Required for surface water and groundwater. Some vested groundwater and surface rights exist.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may be sold.

Disputes: The water agency and general court judicial review. The state engineer is the administrative head of the Division of Water Resources. The state engineer's decision is final and is subject only to judicial review upon petition of an aggrieved party.

Compacts: Nevada-California Interstate Water Compact (not ratified by Congress). Colorado River Compact.

Treaties: None.

Legislative activity: Yes.

General: Vested rights are rights acquired by diversion and beneficial use prior to enactment of appropriation statutes. Surface permitting dates back to 1905. Prior to the appropriation statutes, some vested rights had been permitted and Certificates of Appropriation recorded. Some unrecorded vested rights may still exist. Although the state engineer has power to determine the most beneficial use of waters, the rule applied is first in time, first in right, as in most appropriation states. No minimum flow statute exists. Permits may be issued to allow minimum flow, and existing appropriations can be changed or modified. Water rights must be used. Nonuse for five or more years may, under prescribed conditions, result in forfeiture of the water right.

Administrating agency:

Department of Conservation and Natural Resources
 Division of Water Resources
 201 South Fall St.
 Carson City, NV 89710
 (702) 885-4380

Responding agency:

Department of Conservation and Natural Resources
 Division of Water Resources
 201 South Fall St.
 Carson City, NV 89710
 (702) 885-4380

New Hampshire

System: Riparian, reasonable use.

Permit: Not required for surface water and groundwater.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may be sold.

Disputes: Court.

Compacts: None.

Treaties: None.

Legislative activity: No.

General: The status of water rights is currently under review and subject to change. Riparian rights are under reasonable use doctrine. The legislature has granted numerous water rights over the last 100 years, frequently to municipal suppliers. Nonconsumptive flow rights may require permits to divert large quantities of water. A joint legislative committee is studying the water laws and recodification. Legislation is expected from this effort in a few years. Proposed regulations will require users diverting 20,000 gallons per day to register and report use for inventory purposes.

Administrating agency:

Water Resources Division
 Department of Environmental Services
 37 Pleasant St.
 P.O. Box 2008
 Concord, NH 03301
 (603) 271-3406

Responding agency:

Water Resources Division
 Department of Environmental Services
 37 Pleasant St.

P.O. Box 2008
 Concord, NH 03301
 (603) 271-3406

New Jersey

System: Statutory and reasonable use riparian doctrine.

Permit: Required for surface water to divert over 100,000 gallons per day (70 gallons per minute). Permit is required for groundwater to divert over 100,000 gallons per day or 10,000 gallons per day in designated critical groundwater areas.

Court approval: Not required for surface water and groundwater.

Buying/Selling: Water rights generally cannot be sold and riparian rights cannot be severed. A new owner or different use must apply for new allocation permit. There is an exception for critical areas where water rights may be transferred and compensation provided.

Disputes: Agency and/or court.

Compacts: Delaware River Basin Compact.

Treaties: None.

Legislative activity: No.

General: New Jersey statutes annotated 58:1-35 establishes extensive administrative controls over the acquisition and use of surface water, groundwater, and water rights. Uses exceeding 70 gallons per minute must be permitted in designated watersheds, and all interstate uses must be permitted. Prescriptive rights are recognized for uses on nonriparian lands, but transfer of prescriptive rights and riparian rights is controlled by statute. The Bureau of Water Allocation reviews plans for use and/or development of water; new permits are required to be compatible with the state water plan and are issued without preference in time. Most permits issued after 1983 are limited to five years, and renewals are subject to change upon reapplication. Conditions and limitations on the permit protect other users and may provide in-stream flow minimums and other environmental constraints.

Administrating agency:

Department of Environmental Protection
 Bureau of Water Allocation
 Division of Water Resources
 P.O. Box CN-029
 Trenton, NJ 08625
 (609) 292-2957

Responding agency:

Department of Environmental Protection
 Bureau of Water Allocation
 Division of Water Resources
 P.O. Box CN-029
 Trenton, NJ 08625
 (609) 292-2957

New Mexico

System: Appropriation.

Permit: Required for surface water statewide. Permit is required for groundwater in declared underground water basins (presently encompassing 70 percent of New Mexico).

Court approval: Not initially required for surface water or groundwater.

Buying/Selling: Water rights are appurtenant to land or use, but may be severed with consent of the owner. Point of diversion, place, and purpose of use may be changed with permission of State Engineer Office.

Disputes: State Engineer Office, then by timely appeal to State District Court.

Compacts: Pecos River Compact. Rio Grande Compact. Amended Costilla Creek Compact. Canadian River Compact. La Plata River Compact. Animas-La Plata Project Compact. Upper Colorado River Basin Compact. Colorado River Compact.

Treaties: Rio Grande Convention, 1906. Rio Grande Rectification Convention, 1933. Rio Grande, Colorado, and Tijuana Treaty, 1944.

Legislative activity: Yes.

General: Appropriative system, where first in time is first in right. System modified by numerous compacts that limit New Mexico's share of flow and may indirectly provide some minimum flows. No use has preference. Water right may be forfeited after four years of nonuse, State Engineer Office notice, and one year for response.

Administrating agency:

State Engineer Office
Bataan Memorial Building #101
Santa Fe, NM 87503
(505) 827-6175

Responding agency:

State Engineer Office
Bataan Memorial Building #101
Santa Fe, NM 87503
(505) 827-6175

New York

System: Riparian, reasonable use, and statutes.

Permit: Required for surface water and groundwater only when involving public water supply, designated basin, or Long Island.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights appurtenant to and conveyed with riparian land or established by statute. Rights are not established nor affected by permits.

Disputes: General court and the Department of Environmental Conservation.

Compacts: Delaware River Basin Compact. Susquehanna River Basin Commission. Great Lakes Basin Compact.

Treaties: International Joint Commission.

Legislative activity: No.

General: The state owns the water. Permits have been required since 1905 for public supply statewide and since 1935 for all wells on Long Island producing 45 gallons per minute or more, including agricultural wells. Permits are conditioned for reasonable use and mitigation of environmental impacts.

Administrating agency:

Department of Environmental Conservation
50 Wolf Rd.
Albany, NY 12233-3504
(518) 457-1627

Responding agency:

Department of Environmental Conservation
50 Wolf Rd.
Albany, NY 12233-3504
(518) 457-1627

North Carolina

System: Riparian, reasonable use.

Permit: Required for surface water and groundwater if in a designated capacity-use area.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights are transferred with conveyance of riparian land.

Disputes: General court.

Compacts: None.

Treaties: None.

Legislative activity: No.

General: North Carolina is a riparian state with a reasonable use rule. Landowners may make reasonable use of water flowing past riparian land so long as there is not injury to a downstream user. Groundwater may be used on overlying land subject to requirements of beneficial use and no waste. The Environmental Management Commission may declare capacity-use areas where it finds management is necessary to protect the water resource.

Administrating agency:

Department of Natural Resources and Community Development
 Division of Water Resources
 P.O. Box 27687
 Raleigh, NC 27611-7687
 (919) 733-4064

Responding agency:

Administering Agency and North Carolina Department of Justice
 P.O. Box 629
 Raleigh, NC 27602-0629
 (919) 733-3377

North Dakota

System: Prior appropriation, as modified by a statutory permit system.

Permit: Required for surface water and groundwater, except domestic livestock, fish and wildlife, and other recreational uses of 12-1/2 acre-feet.

Court approval: Not involved in permitting unless there is an appeal to the court.

Buying/Selling: Irrigation water rights only are appurtenant to the land and cannot be severed, except as provided in section N061-04-15 when approved by the state engineer.

Disputes: State engineer, general court.

Compacts: Yellowstone River Compact.

Treaties: Boundary Waters Treaty, 1909.

Legislative activity: Yes.

General: The State Water Commission does not administer water rights unless it has issued a resolution specific to a particular permit and then only for appropriation of greater than 5000 acre-feet annually. The State Water Commission's purpose is to provide water development through the funding of projects proposed by others. While it does have the authority to build and operate water projects and obtain appropriations, it has not done so.

The state engineer, upon findings from its inspection that water has been put to a beneficial use, issues a perfected permit. Prescriptive rights are valid only if they have been exercised and filed. The United States Supreme Court ruling in *Texaco v. Short*, 454 U.S. 516 (1982) leads us to believe those riparian landowners who neither

exercised their rights or filed them will have no protection. The first-in-time, first-in-right doctrine is affected by the statutory priority of Section 61-04-06.1 only when competing applications are being considered at the same time. We believe this statute attempts to ameliorate the result the North Dakota Supreme Court expressed a desire for in *Baeth v. Hoivsvveen*, 157 N.W.2d 728 (N.D. 1968).

Administrating agency:

State Water Commission
900 East Blvd.
Bismarck, ND 58505-0817
(701) 224-2750

Responding agency:

State Water Commission
900 East Blvd.
Bismarck, ND 58505-0817
(701) 224-2750

Ohio

System: Riparian, reasonable use.

Permit: Required for surface water or groundwater for diversion of over 100,000 gallons per day out of Lake Erie or Ohio River Basin; or for consumption of over two million gallons per day and registration of all facilities with capacity to withdraw over 100,000 gallons per day.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights are not severable and may not be sold.

Disputes: General court.

Compacts: Pymatuning Reservoir Compact. Ohio River Valley Water Sanitation Compact. Great Lakes Basin Compact.

Treaties: Boundary Waters Treaty, 1909.

Legislative activity: No.

General: A 1985 Supreme Court decision changed the concept of reasonable use of groundwater to include the characteristics of aquifers and influence of drawdown on adjacent wells. Riparian ownership no longer permits unreasonable withdrawal, which damages nearby users. Permits are not required for withdrawal of less than 100,000 gallons per day.

Administrating agency:

Ohio Department of Natural Resources
Division of Water
Fountain Square
Columbus, OH 43224
(614) 265-6717

Responding agency:

Office of Attorney General
30 East Broad St.
State Office Tower
Columbus, OH 43215
(614) 466-3376

Oklahoma

System: Appropriation for surface water and allocation doctrine for groundwater, based on reasonable use.

Permit: Required for surface water or groundwater.

Court approval: Not required for surface water and groundwater.

Buying/Selling: Water rights may be sold.

Disputes: Water agency and/or general court.

Compacts: Arkansas River Basin Compact. Canadian River Compact. Red River Compact.

Treaties: None.

Legislative activity: Yes.

General: Stream water is considered public water subject to appropriation first-in-time, first-in-right system, except for domestic use by riparian owners. Groundwater is owned by the surface owner, subject to use regulation through permitting of allocated shares, except for domestic use. Permits for surface water are obtained from the Oklahoma Water Resources Board and must be granted if the use is beneficial, there is unappropriated water, there is a present or future need, and the use will not interfere with domestic or existing appropriative uses. Permits for groundwater are issued if the applicant owns or leases land overlying a groundwater basin and water is put to beneficial use, and the water is not wasted. There are no minimum-flow or use-preference laws.

Administrating agency:

Oklahoma Water Resources Board
1000 N.E. 10th St.
P.O. Box 53585
Oklahoma City, OK 73152
(405) 271-2555

Responding agency:

Oklahoma Water Resources Board
1000 N.E. 10th St.
P.O. Box 53585
Oklahoma City, OK 73152
(405) 271-2555

Oregon

System: Appropriation.

Permit: Required for surface water or groundwater. Some minor uses are exempt from permit requirement.

Court approval: Adjudication is required for surface water prior to 1909 and is required for groundwater appropriation prior to 1955 west of Cascades and 1927 east of Cascades.

Buying/Selling: Water rights may be sold (indirectly).

Disputes: Administrative hearing with proposed order from Department of Water Resources. Final permit decision is issued by Department of Water Resources. Decision may be appealed to State Court of Appeals.

Compacts: Klamath River Basin Compact. Goose Lake Interstate Compact.

Treaties: None.

Legislative activity: Yes.

General: Oregon has an appropriation system. First in time, first in right, with the water belonging to the state. Water rights are appurtenant to land for irrigation or facility for domestic, municipal, or industrial, but may be severed, if allowed by Department of Water Resources. In-stream flows may be protected by reservation.

Administrating agency:

Department of Water Resources
3850 Portland Rd., NE

Salem, OR 97310
(503) 378-3739

Responding agency:

Administering Agency and Office of Attorney General
100 Justice Building
Salem, OR 97310
(503) 378-6002

Pennsylvania

System: Modified riparian, reasonable use.

Permit: Required only for public water supplies using surface water.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may not be sold; granted only through water allocation permit.

Disputes: Environmental Hearing Board (allocation permit) and court.

Compacts: Delaware River Basin Compact. Susquehanna River Basin Compact. Potomac River Basin Compact. Ohio River Valley Water Sanitation Compact. Great Lakes Basin Compact.

Treaties: Great Lakes Water Quality Agreement of 1978 with the 1987 Protocol Amendment. Boundary Waters Treaty, 1909.

Legislative activity: No.

General: Pennsylvania has a riparian system based on reasonable use and as modified by the 1939 Water Rights Act, which allows for public water suppliers to obtain a water right. Recent water allocation permits may be conditioned to provide minimum flow. Water management legislation has been recently proposed.

Administrating agency:

Department of Environmental Resources
Bureau of Water Resources Management
208 Evangelical Press Bldg.
P.O. Box 1467
Harrisburg, PA 17120
(717) 787-6750

Responding agency:

Department of Environmental Resources
Bureau of Water Resources Management
208 Evangelical Press Bldg.
P.O. Box 1467
Harrisburg, PA 17120
(717) 787-6750

Rhode Island

System: Riparian, reasonable use.

Permit: Not required for surface water or groundwater.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may not be sold.

Disputes: Court.

Compacts: None.

Treaties: None.

Legislative activity: No.

General: The state riparian system is based on reasonable use supported by case law. Significant out-of-state transfers require approval of the Water Resources Board. Minimum stream flow is not regulated by statute, but is indirectly partially regulated by wetland protection or dilution requirements on discharges of wastewater. There is no preference of use outside normal reasonable use as supported by case law.

Administrating agency:

Water Resources Board
265 Melrose St.
Providence, RI 02907
(401) 277-2217

Responding agency:

Water Resources Board
265 Melrose St.
Providence, RI 02907
(401) 277-2217

South Carolina

System: Riparian, reasonable use.

Permit: Not required for surface water, except for interbasin transfer over 1.0 million gallons per day or 5 percent of 7-day, 10-year flow, whichever is less. Permit is not required for groundwater for less than 100,000 gallons per day capacity.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may not be sold.

Disputes: General court.

Compacts: None.

Treaties: None.

Legislative activity: Yes.

General: Common law riparian doctrine generally applies, however, some water use is governed by statutory permitting programs covering surface and groundwaters. The 1969 Groundwater Use Act requires permits for wells with a capacity to produce over 100,000 gallons per day in declared groundwater-control areas. The 1985 Interbasin Transfer of Water Act identifies 15 basins and requires a permit to transfer 1 million gallons per day or 5 percent of the 7-day, 10-year flow, whichever is less, to another basin for use or discharge. The 1985 Drought Response Act allows emergency allocation and gives preference to domestic use. There is no statutory minimum-flow requirement, but the state is currently studying minimum flows.

Administrating agency:

Water Resources Commission
P.O. Box 4440
Columbia, SC 29201
(803) 737-0800

Responding agency:

Water Resources Commission
P.O. Box 4440
Columbia, SC 29201
(803) 737-0800

South Dakota

System: Appropriation.

Permit: Required for surface water or groundwater, except for domestic use.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may be sold with the following qualifications.

- Nonirrigation rights may be transferred only with Water Management Board approval.
- Irrigation rights may be transferred only with board approval to other land (when the original land becomes impractical to irrigate) or for domestic or fire-prevention purposes.
- Special statutory provisions allow the South Dakota Conservancy District to obtain and then sell or lease a water right for energy industry use.

Disputes: Water Management Board and general court.

Compacts: Belle Fouche River Compact.

Treaties: None.

Legislative activity: Yes.

General: South Dakota has an appropriation system that still has some vested rights and court-decreed rights that are not recorded with the Water Rights Division.

The state is attempting to convert any nonrecorded vested right or decreed right into a current water right. Preference or priority is normally first in time, first in right, except that municipal use has preference over some water rights under certain conditions. Municipal use may be reserved under reasonable conditions for future expansion. There is no in-stream flow statute.

Administrating agency:

Department of Water and Natural Resources
 Division of Water Rights
 Foss Building
 Pierre, SD 57501
 (605) 773-3352

Responding agency:

Department of Water and Natural Resources
 Division of Water Rights
 Foss Building
 Pierre, SD 57501
 (605) 773-3352

Tennessee

System: Riparian, reasonable use.

Permit: Not required for surface water right. There is a statutory requirement for registration of withdrawals greater than 50,000 gallons per day. Water quality permits may be necessary for some withdrawals, if physical alteration of stream is required. Permit is not required for groundwater. There is a statutory requirement for registration of withdrawals greater than 50,000 gallons per day.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights are appurtenant to the land, but may be severed or transferred under restrictions imposed by case law.

Disputes: General court.

Compacts: Tennessee River Basin Water Pollution Control Compact. Tennessee-Tombigbee Waterway Development Compact.

Treaties: None.

Legislative activity: Yes.

General: Riparian system based on doctrine of reasonable use, modified by federal regulation of Army Corps of Engineers and Tennessee Valley Authority (TVA) projects.

The Water Use Law of 1963 solicits registration of all uses in excess of 50,000 gallons per day. Tennessee Emergency Management laws provide for allocation of supplies during drought emergencies. The emergency allocation has never been used.

Administrating agency:

Tennessee Department of Health and Environment
Office of Water Management
TERRA Building, Second Floor
150 Ninth Ave., North
Nashville, TN 37219-5404
(615) 741-6623

Responding agency:

Tennessee Department of Health and Environment
Office of Water Management
TERRA Building, Second Floor
150 Ninth Ave., North
Nashville, TN 37219-5404
(615) 741-6623

Texas

System: Appropriation.

Permit: Required for surface water and not required for groundwater.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may be sold (requires water agency approval).

Disputes: Water agency and general court.

Compacts: Pecos River Compact. Rio Grande Compact. Canadian River Compact. Sabine River Compact. Red River Compact.

Treaties: Rio Grande Convention, 1906. Rio Grande Rectification Convention, 1933. Rio Grande, Colorado and Tijuana Treaty, 1944.

Legislative activity: Yes.

General: Texas water law has evolved from early Hispanic influence, later adopting the riparian doctrine. In the late 1800s, the prior appropriation system was instituted, creating a complex system. Recently Texas has converted from the riparian/appropriative water rights system through a water rights adjudication program, which is nearly completed. Groundwater rights are based on rule of absolute ownership. Withdrawal of groundwater causing land subsidence problems have permit systems to control groundwater withdrawals.

Administrating agency:

Texas Water Commission
Water Rights and Uses Division
1700 N. Congress Ave.
Austin, TX 78711-3087
(512) 463-7830

Responding agency:

Texas Water Commission
Water Rights and Uses Division
1700 N. Congress Ave.
Austin, TX 78711-3087
(512) 463-7830

Utah

System: Appropriation.

Permit: Required for surface water or groundwater.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may be sold.

Disputes: Water agency, general court, and special court.

Compacts: Colorado River Compact. Upper Colorado River Compact. Bear River Compact.

Treaties: Rio Grande, Colorado, and Tijuana Treaty, 1944.

Legislative activity: Yes.

General: The appropriation system for both surface and groundwater is under the general administrative supervision of the state engineer. Adjudication follows a statutory procedure and may be initiated by the state engineer or the courts. The state engineer assists the court in the general adjudication procedure. The first-in-time, first-in-right doctrine prevails. The water right is appurtenant to the land, but may be severed, transferred, exchanged, or sold. Any change in point of diversion, type of use, amount, or season of use requires approval of the state engineer. All surface and groundwater uses are regulated. In times of shortage, domestic use has priority over all other uses, regardless of priority date.

Forfeiture occurs when right is not used for five years. Abandonment occurs when the owner's intent to abandon is proven without regard to nonuse.

Administrating agency:

Department of Natural Resources
Division of Water Rights
1636 West North Temple #220
Salt Lake City, UT 84116-3156
(801) 538-7240

Responding agency:

Administering Agency and Office of Attorney General
1636 West North Temple #300
Salt Lake City, UT 84116
(801) 538-1015

Vermont

System: Riparian (surface water), correlative rights doctrine (groundwater).

Permit: Not required for surface water or groundwater.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may be sold with real property, but cannot be severed.

Disputes: General court.

Compacts: New England Interstate Water Pollution Control Commission (indirect and very little effect on quantity in Vermont).

Treaties: International Joint Commission.

Legislative activity: No.

General: Until 1985, the groundwater doctrine was one of absolute ownership. Title 10 V.S.A., Chapter 48 (1985) established the right for one person to sue another for unreasonable damages due to withdrawing, diverting, or altering the character or quality of groundwater. A town that receives a zoning permit application for drilling a well over 50 feet deep or that could produce over 25,000 gallons per day is to notify the Department of Environmental Conservation 30 days prior to issuing the permit. There are no in-stream flow or preference laws.

Administrating agency: None.

Responding agency:

Department of Environmental Conservation
103 South Main St.
Building 10 North
Waterburg, VT 05676
(802) 244-8755

Virginia

System: Riparian, reasonable use.

Permit: Not required for surface water. Permit is required for groundwater, but only in designated groundwater-management areas (southeastern Virginia and Eastern Shore).

Court approval: Not required for surface water or groundwater.

Buying/Selling: No ruling has been made by the courts on the question of sale of water rights.

Disputes: General court.

Compacts: Ohio River Valley Water Sanitation Commission. Ohio River Basin Commission. Potomac River Basin Compact. Potomac River Low Flow Allocation Agreement.

Treaties: None.

Legislative activity: No.

General: The State Water Commission is currently studying whether to recommend a withdrawal permit system or other changes in riparian law. The water law of Virginia is basically a riparian, reasonable use doctrine supplemented by recent legislation. Domestic use has a higher priority than other uses. Water supply for municipal use in some cases has been obtained through eminent domain. Withdrawal is limited to an amount that does not cause injury to other users. Groundwater-management areas have been designated in some areas requiring a permit for beneficial use of groundwater that does not interfere with existing wells.

Administrating agency:

State Water Control Board
P.O. Box 11143
Richmond, VA 23230-1143
(804) 367-0056

Responding agency:

State Water Control Board
P.O. Box 11143
Richmond, VA 23230-1143
(804) 367-0056

Washington

System: Appropriation and riparian (since 1917 by appropriation only).

Permit: Required for any surface water diversion. Permit is required for groundwater withdrawal of 5000 gallons per day or more.

Court approval: Not required for surface water or groundwater acquisition, but rights may be adjudicated by the court.

Buying/Selling: Water rights may be sold and transferred. Change in place of use, purpose of use, and point of diversion or withdrawal require approval from the Department of Ecology.

Disputes: Water agency, general court adjudications, and State Pollution Control Hearings Board.

Compacts: None.

Treaties: Boundary Water Treaty, 1909. Columbia River Basin Cooperative Development Treaty, 1961.

Legislative activity: No.

General: The State Department of Ecology (DOE) develops and implements a comprehensive state water resources program. The DOE controls in-stream flow, water quality, administration of water rights, delivery of water, and all aspects of permitting new uses. The DOE assists the courts in adjudicating water rights and then issues certificates. The DOE resolves conflict based on the best public interest. Both riparian and appropriation rights exist. Riparian and prescriptive rights were required to be claimed by 1974. Riparian rights do not exist on navigable waters, as defined by the state. Riparian and prescriptive rights may be severed and transferred, which usually changes the right to an appropriative right.

Appropriation rights cannot now be obtained by adverse possession or prescriptive means. Appropriation rights utilize the first-in-time, first-in-right doctrine, but domestic and municipal uses have higher priority and DOE considers the highest and best use. Forfeiture results from nonuse for at least five years without just cause, and abandonment requires both intention and nonuse.

Administrating agency:

Department of Ecology
Mail Stop PV-11
Olympia, WA 98504-8711
(206) 459-6000

Responding agency:

Department of Ecology
Mail Stop PV-11
Olympia, WA 98504-8711
(206) 459-6000

West Virginia

System: Riparian.

Permit: Not required for surface water withdrawal or groundwater withdrawal.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights generally transferred with conveyance of riparian land.

Disputes: General court, County Circuit Court.

Compacts: Ohio River Valley Water Sanitation Compact. Ohio River Basin Commission. Potomac River Basin Compact.

Treaties: None.

Legislative activity: No.

General: Each year for the last several years, the legislature has considered legislation that would require major water users to obtain permits for water usage.

Administrating agency:

Department of Natural Resources
Division of Water Resources*
1201 Greenbrier St.
Charleston, WV 25311

*Limited authority.

Responding agency:

Department of Natural Resources
 Division of Water Resources
 1201 Greenbrier St.
 Charleston, WV 25311

Wisconsin

System: Modified riparian, reasonable use.

Permit: Required for surface water for irrigation only. Permit required for diversion, dams, mining, discharges, and various consumptive uses. Permit is not required for groundwater, except wells with capacity to greater than 100,000 gallons per day or 70 gallons per minute.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may be sold (see *Mayer v. Grueber*, 29 Wis. 2d 168, 138 N.W.2d 197, 1965).

Disputes: Water agency or general court. Administrative agency decision may be appealed to the courts in these matters.

Compacts: Great Lakes Basin Compact. Minnesota-Wisconsin Boundary Waters Compact. Mississippi River Parkway Compact.

Treaties: Boundary Waters Treaty, 1909. Lake of the Wood Convention, 1925.

Legislative activity: Yes.

General: Generally, riparian surface water use in Wisconsin is subject to a reasonable use standard. Beyond that, permits are required. The state owns the water; riparian owners have a right to reasonable use. Public water supplies have preference, which results in conditions on high-capacity well permits or surface withdrawals. Irrigation permits have priority in time. Permits may contain conditions regarding flows and use. In-stream flow protection by water rights conditions, protected rivers, administrative action, project operation, and public trust.

Administering agency:

Department of Natural Resources
 Bureau of Water Supply
 P.O. Box 7921
 Madison, WI 53707
 (608) 266-9264

Responding agency:

Department of Justice
 123 West Washington Ave.
 Madison, WI 53702
 (608) 266-1221

Wyoming

System: Appropriation.

Permit: Required for surface water or groundwater.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may be sold generally, as long as it is a preferred use.

Disputes: State Engineer's Office or Board of Control, with appeal to courts provided.

Compacts: Bear River Compact. Belle Fouché River Compact. Colorado River Compact. Upper Colorado River Basin Compact. Snake River Compact. Yellowstone River Compact. Upper Niobrara River Compact. North Platte Decree. Laramie River Decree.

Treaties: Rio Grande, Colorado, and Tijuana Treaty, 1944.

Legislative activity: Yes.

General: The Wyoming Constitution declared water to be property of the state and established the Office of State Engineer and the Board of Control. Applications for permits for beneficial use are administered by the state engineer. Changes to adjudicated permits are administered by the Board of Control, which includes the state engineer. The Board of Control has adjudicated all territorial claims, which are now known as territorial appropriations. A few water rights were confirmed by court decree prior to establishment of the Board of Control. Most rights, including irrigation rights, attach to the lands described in the Certificate of Appropriation, but may be transferred to municipal upon approval of the Board of Control. This requires a detailed analysis of historic diversions and beneficial consumptive use, historic return flows, and proposed uses. Petitions to the Board of Control for changes in water rights usually must be accompanied by certified maps describing the historic and proposed places of use, records of diversion measurements, and engineering analysis of the proposed changes.

Administrating agency:

State Engineer's Office
Herschler Building
Cheyenne, WY 82002
(307) 777-7354

Responding agency:

State Engineer's Office
Herschler Building
Cheyenne, WY 82002
(307) 777-7354

American Samoa

System: Government and village operated water systems.

Permit: Not required for surface water. Permit is required for groundwater (pending legislation).

Court approval: No litigation to date on water rights.

Buying/Selling: Not applicable.

Disputes: General court under Land and Titles Division.

Compacts: None.

Treaties: None.

Legislative activity: No.

General: The original Articles of Cession (1900) gave all water rights to the government. However, because of the Matais and Communal land systems, getting to the water is a different story. The same thing is true in trying to pass a water code, because it is in direct conflict with the Communal land customs and has been defeated twice in the Fono (legislature).

Administrating agency:

Department of Public Works (pending)
Office of Attorney General
Government of American Samoa
P.O. Box 7
Pago Pago, AS 96799

Responding agency:

Department of Public Works (pending)
Office of Attorney General

Government of American Samoa
 P.O. Box 7
 Pago Pago, AS 96799

Guam

System: Surface water—riparian; groundwater—legislated policy.

Permit: Not required for surface water or groundwater.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may be sold.

Disputes: General court.

Compacts: None.

Treaties: None.

Legislative activity: No.

General: The territory of Guam has entered into a number of memorandums of understanding with various federal departments regarding the regulation and use of water on Guam, including protection of groundwater. Northern Guam is designated as a principal-source aquifer.

The groundwaters of Guam are considered public domain. The rights of property owners with respect to groundwater have never been adjudicated by the Guam courts, but may be in the near future.

Although Guam's water right system is based primarily on a riparian system, the Guam legislature has enacted legislation which affects water rights. Section 46101 et seq. of the Government Code of Guam (P.L. 17-87) declared that an emergency condition exists with respect to the availability of surface and underground water on Guam. Section 46101 of the Government Code provides in pertinent part "That all of the water resources of Guam are the property of the people of Guam" The legislation also addressed Guam's need for more comprehensive environmental and pollution controls. Since this legislation was only recently enacted, its impact on the riparian system cannot be accurately gauged.

Administrating agency:

Guam Environmental Protection Agency
 P.O. Box 2999
 Agana, Guam 96910

Responding agency:

Administering Agency and Office of Attorney General
 Government of Guam
 Pacific News Building
 238 O'Hara St.
 Agana, Guam 96910
 (671) 471-6841/6844

Northern Mariana Islands

System: Common law as stated in restatement of laws.

Permit: Not required for surface water or groundwater.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may be sold.

Disputes: General court.

Compacts: None.

Treaties: None.

Legislative activity: No.

General: The northern Mariana Islands are in the process of studying the water rights system for possible changes.

Administrating agency: None.

Responding agency:

Office of Attorney General
Nauru Building
Saipan, CM 96950
(011) 670-7771

Puerto Rico

System: The people of Puerto Rico own all waters and bodies of water in the commonwealth.

Permit: Required for surface water or groundwater.

Court approval: Not required for surface water or groundwater.

Buying/Selling: Water rights may not be sold.

Disputes: Water agency.

Compacts: None.

Treaties: None.

Legislative activity: No.

General: On June 3, 1976, a Water Law was approved, which made all waters and bodies of water property of the people of Puerto Rico. Prior to that, the Water Law of 1903, which was mostly a copy of the Spanish Water Law of 1880, established a system similar to that of appropriation for groundwaters and waters in creeks. Ocean and river waters always were property of the people of Puerto Rico, and a permit was required for their use. Persons who acquired water rights prior to 1976 will have them recognized through the system established by the Rules and Rights for the Appropriation, Use, Conservation, and Administration of the Waters of Puerto Rico, September 1984.

Administrating agency:

Water Resources Division
Department of Natural Resources
P.O. Box 5887
Puerto de Tierra Sta.
San Juan, PR 00906
(809) 724-4418

Responding agency:

Water Resources Division
Department of Natural Resources
P.O. Box 5887
Puerto de Tierra Sta.
San Juan, PR 00906
(809) 724-4418

Virgin Islands

System: Other.

Permit: Required for surface water and groundwater, unless use is less than 500 gallons per day.

Court approval: Not required for surface water or groundwater.

Buying/Selling: No private water rights; all waters are public waters.

Disputes: Appeal of decision of Commissioner of Public Works to Water Resources Commission.

Compacts: None.

Treaties: None.

Legislative activity: No.

General: All waters of the Virgin Islands are public waters (12 V.I.C. Section 151). Water is defined as "ponds, springs, wells and streams and all other bodies of surface or underground water, natural or artificial, island or coastal, fresh or salt, public or private." The right to appropriate water is conferred by the Commissioner of Public Works by the issuance of an appropriation permit. No permit is required if the proposed use is less than 500 gallons per day or if a property owner intends to drill a well, by his own labor, to supply water for his dwelling and animals or crops. The Water Resources Commission oversees the use of water resources.

The Water and Power Authority is the independent public utility that supplies the water system for the Virgin Islands (30 V.I.C. Section 101 *et seq.*).

Administrating agency: Department of Public Works.

Responding agency:

Office of Attorney General
Department of Justice
#46 Norre Gade
St. Thomas, Virgin Islands 00801
(809) 774-5666

