

Water Rights by State

The guide for agriculture and land professionals

According to Public Trust, water is a public resource that can and should be used for the benefit of the People. Water rights grant the right to use a specified allocation of water but do not denote ownership.

Water rights vary widely from state to state, with stark differences between the eastern and western United States. In the East, they are almost uniformly riparian, while in the West, they tend to be either appropriative or a hybrid of the two. These systems play a key role in determining whether or not a piece of land is suitable for agriculture, and what kinds of crops can be grown on it.

As a report from Oklahoma State University explains:

“In areas where there is plenty of water and low demand, there is not much controversy; but where demand is high, conflict over water can determine success or failure of agricultural enterprises, limit growth and development of cities, and determine profitability of industries.”

Most water regulations make a distinction between surface and groundwater resources, and in many cases, freshwater resources are governed by [interstate compacts](#). That’s why it’s so important to understand the connection between water rights and water risk in your region before entering into a land deal or agricultural investment.

Simply transferring ownership of a property doesn’t guarantee that a water right will be attached to it, and even properties with a valid water right may not be the first in line to access those resources in times of [severe water stress](#).

In this guide, we’ll take a close look at water rights by state, as well as how you can look up additional information on a parcel-by-parcel basis. Check back often to find out how [new technologies and regulations](#) are impacting water rights in your state.

Riparian vs. Appropriative Rights

It is important to note that under Public Trust, water resources “belong” by the public; property owners can’t “own” water, but they may have the right to use, sell, or divert water resources,

depending on the laws in the state. The two main types of rights are riparian and appropriative.

As a general rule of thumb, most states east of the Mississippi River use a system of riparian water rights based on English Common Law. This system [grants a water right](#) to property owners “whose land physically touches a river, pond, or lake.” The right is transferred when the land is sold and remains valid even if the right is never exercised and the water isn’t used.

Appropriative rights, on the other hand, allocate water based on historical usage, rather than land ownership. Rights are based on seniority, or “priority date,” and can be lost if they aren’t used on a regular basis. Senior rights holders are first in line and can use their allocation even if there isn’t enough left over for junior rights holders.

This system is used in most of the states west of the Mississippi River, although some, like California, use a hybrid of the two systems. Appropriative rights can usually be transferred with or without the land, and some regions have set up [smart water markets](#) to buy and sell water rights.

This guide takes a look at how water rights are handled in the states below, and how they impact water risk and the agricultural systems in those states.

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California Water Rights

California is one of the few states that uses a hybrid of riparian and appropriative rights. It initially based its laws on the English common laws used in the eastern states, but the Gold Rush of 1849 changed everything. According to the [California Water Boards](#):

“Water development proceeded on a scale never before witnessed ... as [miners] built extensive networks of flumes and waterways to work their claims. The water carried in these systems often had to be transported far from the original river or stream.”

This led to the adoption of appropriative rights, or a “finders-keepers” system, in which the first miner to divert a water source laid claim to it. California standardized its water laws in 1914, with the Water Commission Act. Rights granted prior to 1914 have been grandfathered in, while rights granted after 1914 require a permit or license.

Recent changes

In 2014, California passed the [Sustainable Groundwater Management Act](#), which aims to address the depletion of groundwater resources due to irrigation. It divided the state into 515 basins or subdivisions, each of which will create a Groundwater Sustainability Plan (GSA) designed to recharge aquifers in the most at-risk basins.

These regulations will lead to caps on groundwater pumpings in many areas but have also spurred the development of [smart water markets](#) and water banking systems.

You can check out our in-depth guide to [SGMA and its effect](#) on the agricultural industry.

[Read more about the California water rights system here.](#)

Montana Water Rights

Montana water rights are based on the doctrine of prior appropriation, with most of them governed by the Montana Water

Use Act of 1973. The Montana Water Court was set up to adjudicate claims that existed prior to 1973, while all claims made after 1973 must go through a permitting process with the Water Rights Bureau.

Any groundwater use beyond 35 gallons per minute, or a total of 10 acre-feet per year, must be permitted, and any changes to the type of use or the purpose of use require an updated application. Montana also allows for the transfer of water rights under a 2013 bill that outlines the maximum amount of water that can be leased.

According to [West Water Research](#), water transfers in Montana average \$10 to \$25 per acre-foot, with a total of 5,000 acre-feet transferred in 2015, valued at \$1 million. This is less than in many other states, but Montana's high vulnerability to drought means that water right trading will be likely to increase in the years to come.

[Read more about the Montana water rights system here.](#)

Oregon Water Rights

Oregon's water rights were codified into law in 1909 and are based on the doctrine of prior appropriation. This means that water users must apply for a permit, and put the water to a "beneficial use," typically municipal, industrial, or agricultural. Notably, if a water right isn't used at least once every five years, it can be lost altogether.

There are several other relevant features to Oregon's agricultural system, including a network of over 1,000 dams and a system of canals run by Irrigation Districts. Since some canals are over a century old, they're undergoing an [Irrigation Modernization Program](#) designed to reduce water loss and impact on the environment.

Additionally, some of Oregon's water basins have been designated as [Serious Water Management Problem Areas](#) or Critical Groundwater Areas. These areas may have additional restrictions on groundwater use to reduce the depletion of aquifers.

Oregon allows for the sale and transfer of water rights and has multiple [water markets](#) and banking systems in place to facilitate these transactions.

[Read more about the Oregon water rights system here.](#)

Idaho Water Rights

Idaho's water system includes [3.3 million acres](#) of irrigated land, with 50 administrative basins that oversee water management within each region. In Idaho, a water right is governed by the doctrine of prior appropriation, and are treated as "real property rights." Senior rights holders are first in line based on the "priority date" of their claim.

A water right can be sold and traded on the open market and may be lost if they aren't used at least once every five years. Idaho maintains a [water banking system](#) that was established in

the 1930s, but it doesn't yet have a smart water market. Water right holders can turn to one of several rental pools, or negotiate a private sale.

Idaho also has several [Aquifer Recharge Districts](#) that are intended to address water scarcity issues in some of the aquifers most at risk of depletion, such as the Eastern Snake Plain Aquifer. Groundwater users have agreed to limit their use, and no new water rights have been issued in the region since 1992.

[Read more about the Idaho water rights system here.](#)

Washington Water Rights

Washington State established its [water rights system in 1917](#), declaring that “those who first put water to a good use retain the right to continue using it in the future.” In short, it relies on the same principle of prior appropriation used in many western states.

However, Washington is broken up into 15 [Water Resource Inventory Areas \(WRIAs\)](#), each of which can set additional policies on well permits, streamflow restoration, and other conservation measures. There are also 101 irrigation districts funded by water users, which irrigate up to 1 million acres of land in the east of the state.

There are two hot-button issues in Washington concerning water rights at the moment. One is the possible removal of four [dams on the Snake River](#), which may have impacts on the cost of

irrigation water in the state. The second is the increase in [water sales to private buyers](#), which may drive up the cost of water on the open markets.

Currently, Washington state allows water users to buy and sell a water right directly, or to make the transfer through a regional [water bank](#), which can facilitate the process.

[Read more about the Washington State water rights system here.](#)

Arizona Water Rights

Arizona's water rights are highly regulated, with different systems in place in each part of the state. Although they both operate on the principle of prior appropriation, surface water is regulated by the Surface Water Permitting Unit, while groundwater falls under the guidelines of the Groundwater Management Act of 1980.

Water users can buy and sell a water right, or receive credit for storing their unused water with the [Arizona Water Banking Authority](#). Arizona also has Active Management Areas, with additional groundwater reporting and conservation requirements, and Irrigation Non-Expansion Areas, where only land that has been used for agriculture within the last five years can continue to be irrigated.

Finally, water rights on the Lower Colorado River are governed by interstate compact, with a total of 2.8 million acre-feet allocated to Arizona each year.

[Read more about the Arizona water rights system here.](#)

Riparian Water Rights in Ag Lending and Investing

The [riparian water rights](#) system [grants a water right](#) to property owners “whose land physically touches a river, pond, or lake.” The right is transferred when the land is sold and remains valid even if the right is never exercised and the water isn’t used.

Riparian rights can add significant value to a parcel of land, but they aren’t a guarantee of reliable access to water resources. It’s especially important not to take a property title at face value, because any changes in riparian rights may not be shown on the deed.

[People don’t buy land, they buy access to water.](#)

Due diligence is valuable to lenders and investors because it helps ensure that a piece of land hasn’t been subdivided and stripped of its water rights in the process.

Read more about riparian water rights and why it's so important to understand them in the context of agricultural lending and investing.

Appropriative Water Rights in Ag Lending and Investing

Unlike riparian water rights, which have to do with the physical location of water in relation to a property, [appropriative water rights](#) allow for the diversion of water from a particular source, such as a river, even if it doesn't touch the piece of land in question.

In the western United States, this is a more common and newer type of water right (relative to the older riparian type). The concept of appropriative water rights was [established during the Gold Rush](#) in the mid-1800s, with miners posting a notice of the water they intended to use in the course of their mining operations. This practice was recognized by the courts and the general principle continues to this day. Water users must apply for a permit that outlines when and how the water will be used, including the date that they first appropriated it.

Water rights can be confusing and the last thing lenders, investors, and growers want to deal with, but this is precisely why the knowledge of them is so important. Understanding how appropriative water rights work, especially in contrast with

riparian water rights, can help in research, due diligence, land deals, and more, and can set agriculture professionals apart from others.

[Read more about appropriative water rights and why it's so important to understand them in the context of agricultural lending and investing.](#)

The Bottom Line

Not only do water rights vary from state to state, but there can be substantial differences in how water is managed and allocated within different basins in the same state. On top of that, some states allow for a water right to be forfeited if they aren't used in a certain timeframe, or require a new application if the usage of the water changes.

What this means is that a water right on paper isn't necessarily a water right in practice. Before closing a land deal, approving a loan, or making an agricultural investment, it's important to confirm that a water right is valid and from a reliable water source.

AQUAOSO makes it easy to do this research by providing data on water rights, water risk, and water district boundaries all in one place. With our easy-to-use [Water Security Platform](#), our clients can use our map-based tool to zoom in on a specific

groundwater basin to find water rights and many other data layers on a parcel-by-parcel basis. Users can also look at the [regions we serve](#) to see where we are currently operational and where we are expanding into.

With up-to-date information and actionable water data, AQUAOSO users are able to make better, informed decisions and support a water-resilient future.

Contact us directly to schedule a demo, or [explore our resources section](#) to learn more about water and regulations from state to state.

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